

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**  
**MEETING MINUTES OF**  
**October 18, 2010**

**MEETING HELD IN THE GRACE GOUVEIA BUILDING**

**Members Present:** Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts.

**Members Absent:** None.

**Others Present:** David Gardner (Assistant Town Manager), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**PUBLIC HEARING**

Chair Anne Howard called the Public Hearing to order at 5:00 P.M.

**FY11-24**      **8 Fishburn Court (*Residential 3 Zone*), Deborah Paine, Inc. on behalf of Russell Friedman and Wayne Briggs –**  
The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to partially demolish, reconstruct and extend a pre-existing, non-conforming setback by adding a second story. Anne Howard recused herself because of a conflict of interest. Robert Littlefield chaired the case. Elisabeth Verde, Amy Germain, David Nicolau and Tom Roberts were also seated.  
***Robert Littlefield moved to reconsider Case #FY11-24, 8 Fishburn Court, for the purposes of invoking the Mullin Rule in accordance with the rules specified by Town Counsel, Tom Roberts seconded and it was so voted, 5-0.***

Chair Robert Littlefield declared the Case re-opened and stated that the public portion of the case was closed and that the Case was being heard under the *Goldhirsh v. McNear* ruling. Amy Germain seeks to invoke the Mullin Rule and has submitted a form to the Board related to that request. The form certifies that she has listened to an audio recording of the Public Hearing when the Case was initially presented.

***Robert Littlefield moved to accept Amy Germain's invocation of the Mullin Rule, Elisabeth Verde seconded and it was so voted, 5-0.***

***Robert Littlefield moved to hear Case #FY11-24 under the Goldhirsh v. McNear ruling, Tom Roberts seconded and it was so voted, 5-0.***

***David Nicolau moved to approve a Special Permit under Article 3, Section 3110***

*of the Zoning By-Laws to partially demolish, reconstruct and extend a pre-existing, non-conforming setback by adding a second story at the property located at 8 Fishburn Court (Res 3), Amy Germain seconded and it was so voted, 4-1 (Elisabeth Verde opposed).*

**FY11-35**      **21 Bradford Street Extension (Residential 1 Zone), WK Red Clay, LLC –**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a modification of a Special Permit granted in Case 2007-18 with a revision granted in Case 2007-57 to re-orient the location of six previously approved dwelling units. (Present use of premises is Multi-family Dwellings and 5 Commercial Tennis Courts and proposed use of premises is Multi-family Dwellings with two Private Tennis Courts). David Nicolau recused himself because of a conflict of interest. Anne Howard, Elisabeth Verde, Robert Littlefield, and Tom Roberts sat on the case.

**Presentation:** Attorney Lester J. Murphy and Dave Krohn were present to discuss the case.

**Board Discussion:** The Board discussed the issue of whether this Case should be heard under Article 4, Section 4170 of the Zoning By-Laws with David Gardner, Attorney Murphy and Mr. Krohn.

*Anne Howard made a motion to reconsider the vote of October 7, 2010, Tom Roberts seconded and it was so voted, 4-0.*

*Anne Howard made a motion to amend the Special Permit granted in Case #FY11-35 to add a condition that if the Zoning Enforcement Office determines that a change in use requiring a Special Permit under Article 4, Section 4170 of the Zoning By-Laws will occur, then an application under Article 4, Section 4170 will be filed forthwith by the applicant, and that the Special Permit granted in Case #FY11-35 will have no effect until the Board acts on the application under Article 4, Section 4170, Elisabeth Verde seconded.*

The Board discussed the motion.

Elisabeth Verde withdrew her second of the above motion.

*Robert Littlefield made a motion that the Board finds that a change in use from commercial to residential has occurred in Case #FY11-35, Anne Howard seconded and it was so voted, 3-1 (Elisabeth Verde opposed).*

*Robert Littlefield moved to add a condition to the original decision in Case #FY11-35 that no Building Permit issue until after the Public Hearing and vote on the application for a Special Permit under Article 4, Section 4170 of the Zoning By-Laws, Elisabeth Verde seconded and it was so voted, 4-0.*

**ADJOURNMENT:** *Elisabeth Verde moved to adjourn at 5:45 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on November 4, 2010.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2010  
Anne Howard, Chair