

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 4, 2010

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: Elisabeth Verde (excused).

Others Present: Russ Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 6:15 P.M.

PENDING DECISIONS:

FY11-29 **4 Dyer Street (Town Commercial Center and Residential 3 Zones), Lester J. Murphy, Jr., Attorney, on behalf of Dawn L. McCall and Gail P. Williams –** Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case. Robert Littlefield read the decision. *David Nicolau moved to approve the language as written, Anne Howard seconded and it was so voted, 3-0.*

FY11-30 **35B Court Street (Residential 3 Zone), Richard Tedesco –** Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case. Robert Littlefield read the decision. *Anne Howard moved to approve the language as written, David Nicolau seconded and it was so voted, 3-0.*

FY11-32 **698 Commercial Street (Residential 1 Zone), Christopher J. Snow, Esq. on behalf of 698 Commercial Street Realty Trust –** Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case. Amy Germain read the decision. *Anne Howard moved to approve the decision with an amendment to include a reference to the certified plot plan PL-1 dated September 1, 2010, Robert Littlefield seconded and it was so voted, 4-0.*

MINUTES: October 7, 2010 – David Nicolau moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0.

October 18, 2010 – Amy Germain moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.

September 9, 2010 – David Nicolau moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.

PENDING DECISIONS:

FY11-31 167 Commercial Street, Unit #7 (Town Commercial Center Zone), Ruth Gilbert –
Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case. Tom Roberts read the decision. **Robert Littlefield moved to approve the language as written, Amy Germain seconded and it was so voted, 5-0.**

Chair Anne Howard postponed the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:00 P.M. There were six members of the Zoning Board of Appeals present and none absent.

CONTINUED CASES:

FY11-35 21 Bradford Street Extension (Residential 1 Zone), WK Red Clay, LLC
(continued to November 18, 2010) –
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).

NEW CASES:

FY11-36 4 Kiley Court (Residential 3 Zone), Zachary M. Luster of Ciro and Sal's Restaurant –
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for outdoor dining with the service of food and alcoholic beverages and for indoor entertainment. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.
Presentation: Zachary M. Luster appeared to present the application. He seeks to

move 14 seats outdoors under the gazebo for dining and cocktail service and to provide acoustic entertainment for his indoor patrons.

Public Comment: Deb Taft, Steven Cozzi, Daniel Cleary, Neva Hanson, Phillip Incarnato, Van Afes, John Siegfried and Klara Muller, all abutters, spoke against the application. There were 2 letters in support of and 5 letters against the entire application in the file. There were 2 letters in support of the outdoor dining, but against the indoor entertainment in the file.

Board Discussion: The Board questioned Mr. Luster. After polling the Board, Chair Anne Howard asked the applicant if he would like to withdraw the application without prejudice and he made that request.

Amy Germain moved to accept the withdrawal without prejudice of Case #FY11-36, Robert Littlefield seconded and it was so voted, 5-0.

FY11-37 293 Commercial Street (Town Commercial Center Zone), Julie Knapp of Julesan, Inc., d/b/a Twistd Sister –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of beer and wine. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Julie Knapp appeared to present the application. She seeks to serve beer and wine at Twistd Sister.

Public Comment: None. There were 2 letters in opposition to the application in the file. There was also a letter from Steve Boggess, the owner of the building, giving the applicant permission to seek the Special Permit.

Board Discussion: The Board questioned Ms. Knapp.

David Nicolau moved to approve a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of beer and wine at the property located at 293 Commercial Street (TCC) with the conditions that the service of alcohol will be restricted to the interior of the premises, that the 32 seats and the measurement of the service area be noted on the floor plan and that beer and wine be served only from 11:00 A.M. to 11:00 P.M., Robert Littlefield seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY11-38 300 Commercial Street (Town Commercial Center Zone), William N. Rogers, P.E., P.L.S. –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to repair/reconstruct an existing walk-in cooler/freezer area (14' x 24') located at the rear of the Mayflower Café and repair/reconstruction of the 14' x 29' associated second floor deck. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Gary Locke and Darin Janoplis appeared to present the application. The repairs are located in the rear of the building where the walk-in is located. There will be no increase in the footprint, height or structure of the building or any change in use on the property. The deck is in great need of repair.

Public Comment: None. There were 12 form letters from abutters in favor of the application in the file.

Board Discussion: The Board questioned Mr. Locke and Mr. Janoplis.

Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to repair/reconstruct an existing walk-in cooler/freezer area (14' x 24') located at the rear of the Mayflower Café and repair/reconstruction of the 14' x 29' associated second floor deck at the property located at 300 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY11-39 19 Commercial Street (Residential 2 Zone), Mark P. Kinnane of Cape Associates on behalf of Kathy Cote –

The applicant seeks a Special Permit under Article 2, Section 2540 of the Zoning By-Laws to construct an addition and deck up and along a pre-existing, non-conforming Harbor setback and Article 3, Section 3110 of the Zoning By-Laws to construct an addition and a deck up and along a pre-existing, non-conforming side yard and rear yard setback. This case has been postponed until the November 18, 2010 Public Hearing.

FY11-40 48 Franklin Street (Residential 3 Zone), Robert Valois on behalf of Don Eunson and D. Evans –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure up and along a front (north) setback by adding dormers on the east and west sides with an addition within the dimensional setbacks. David Nicolau recused himself because of a conflict of interest. Chair Anne Howard explained that there were only four members of the Board seated on the case and that a unanimous decision would be needed in order to grant a Special Permit. The applicant had the choice of proceeding with four members or postponing until a full, five-member Board could be seated. The applicant chose to proceed. Anne Howard, Robert Littlefield, Amy Germain, and Tom Roberts sat on the case.

Presentation: Attorney Lester J. Murphy, Robert Valois and Don Eunson appeared to present the application. Attorney Murphy requested that the case be heard under the *Goldhirsh v. McNear* ruling.

Robert Littlefield moved to hear Case #FY11-40 under the *Goldhirsh v. McNear* ruling, Tom Roberts seconded and it was so voted, 3-1 (Amy Germain opposed).

The structure is in great need of rehabilitation and has not been occupied in 10 years. There is only a small portion of a dormer on the right (west) side of the structure that needs relief from the setback requirements. The remainder of the renovations fall within the required setbacks. Attorney Murphy asserted that the proposed dormer addition would not be substantially more detrimental to the neighborhood than the existing non-conformity of the structure.

Public Comment: None. There were 3 letter from abutters in support and 1 letter from an abutter in opposition to the application in the file.

Board Discussion: The Board questioned Attorney Murphy, Mr. Valois and Mr. Eunson.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure up and along a front (north) setback by adding dormers on the east

and west sides with an addition within the dimensional setbacks at the property located at 48 Franklin Street (Res 3) under the Goldhirsh v. McNear ruling, finding that the proposed changes will not be more substantially detrimental to the neighborhood, Tom Roberts seconded and it was so voted, 4-0.

Robert Littlefield left the Hearing.

FY11-41 14 Johnson Street (Residential 3 Zone), Neal Kimball of Kimball Residential Designs, LLC on behalf of Carpe Diem Guesthouse –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along the non-conforming south and west sides by adding a second story above the western-most building segment within the existing footprint.

FY11-42 14 Johnson Street (Residential 3 Zone), Neal Kimball of Kimball Residential Designs, LLC on behalf of Carpe Diem Guesthouse –

The applicant seeks a Special Permit under Article 3, Section 3340 of the Zoning By-Laws for a deviation in building scale. The Board will hear the two cases together. Robert Littlefield recused himself because he is an abutter to the project. Chair Anne Howard explained that there were only four members of the Board seated on the case and that a unanimous decision would be needed in order to grant a Special Permit. The applicant had the choice of proceeding with four members or postponing until a full, five-member Board could be seated. The applicant chose to proceed. Anne Howard, Amy Germain, David Nicolau and Tom Roberts sat on both cases.

Presentation: Neal Kimball appeared to present the application. The applicant seeks to improve its tourist business and to increase the functionality of the premises by expanding a space above the old garage portion, above an existing spa, by raising the ridgeline. A small kitchen area will be increased in size and a function room will be created on the second floor on the northeast side of the structure. The proposed addition of an exterior stairway will function as an emergency egress for the second floor. Mr. Kimball argued that the building is in a neighborhood containing several as large, or larger, buildings, so the proposed increase in scale will not be out of character with the rest of the neighborhood. The existing scale is 113.38 scale units, the neighborhood average is 84.64 s.u., the allowable is 97.34 s.u., the proposed increase is 32.08 s.u. for a total proposed of 145.46 s.u.

Public Comment: None. There was 1 letter of support for the application in the file.

Board Discussion: The Board questioned Mr. Kimball about the location of the rear stairway and how the large increase in building scale was in keeping with the goals and policies of the Local Comprehensive Plan. Mr. Kimball requested a continuance for Case #FY11-41 so he could re-work the stairway.

Amy Germain moved to grant the request for a continuance for Case #FY11-41 to the November 18, 2010 Public Hearing, Tom Roberts seconded and it was so voted, 4-0.

Mr. Kimball requested a continuance for Case #FY11-42.

David Nicolau moved to grant the request for a continuance for Case #FY11-42 to the November 18, 2010 Public Hearing, Tom Roberts seconded and it was so voted, 4-0.

Chair Anne Howard adjourned the Public Hearing at 10:05 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 10:05 P.M.

PENDING DECISIONS:

- FY11-33** **61 Harry Kemp Way (Residential B Zone), William N. Rogers, II, P.E. & P.L.S. on behalf of Thomas G. Tannariello –**
Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and David Nicolau sat on the case. David Nicolau read the decision. *Tom Roberts moved to approve the language as written, Anne Howard seconded and it was so voted, 4-0.*
- FY11-20** **284B Commercial Street (Town Commercial Center Zone), Fred Ambrose of Ambrose Homes, Inc. on behalf of Ralph Santora –**
Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *David Nicolau moved to approve the language as written, Amy Germain seconded and it was so voted, 3-0.*
- FY11-21** **284B Commercial Street (Town Commercial Center Zone), Fred Ambrose of Ambrose Homes, Inc. on behalf of Ralph Santora –**
Anne Howard, Elisabeth Verde, Robert Littlefield, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 3-0.*

NEXT MEETING: The next meeting will take place on November 18, 2010. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 10:15 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 18, 2010.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2010
Anne Howard, Chair