

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**  
**MEETING MINUTES OF**  
**December 2, 2010**

**MEETING HELD IN THE JUDGE WELSH ROOM**

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

**Members Absent:** None.

**Others Present:** Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Anne Howard called the Work Session to order at 6:30 P.M.

**MINUTES: November 18, 2010 – Elisabeth Verde moved to approve the language as written, David Nicolau seconded and it was so voted, 5-0.**

Chair Anne Howard reminded the Board that revised Zoning By-Laws that were passed at Fall Town Meeting are now in effect. Case #FY11-41 and #FY11-42 will now be subject to the newly adopted building scale By-Law, Article 2, s. 2640E.

The Board briefly discussed asking the Building Commissioner for a report on the cases being heard by the Board. *David Nicolau moved to instruct the Building Commissioner to render his opinion of each case on the Zoning Board's agenda in writing prior to its Public Hearing, Anne Howard seconded and it was so voted, 7-0.*

Chair Anne Howard postponed the Work Session at 6:40 P.M.

## PUBLIC HEARING

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

### CONTINUED CASES:

- 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. The Board will discuss the two cases together. Robert Littlefield recused himself because of a conflict of interest. Elisabeth Verde invoked the Mullin Rule. *David Nicolau moved to accept Elisabeth Verde's request to sit on the case pursuant to the Mullin Rule, Amy Germain seconded and it was so voted, 4-0.* Elisabeth read her testimony in regard to the Mullin Rule into the record. Anne Howard, Elisabeth Verde, Amy Germain, David Nicolau and Tom Roberts sat on both cases.
- 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 2, Section 2640E of the Zoning By-Laws for a deviation in building scale.  
**Presentation:** Neal Kimball and Rainer Horn appeared to discuss the cases. The rear egress stairs from the second floor have been re-configured pursuant to the Building Commissioner's request at the last Public Hearing. The stairs are still within the allowed setbacks. The revised site plans are not yet available from the engineer. Mr. Kimball reiterated how the project was consistent with the Local Comprehensive Plan's Chapter 1, 1.2 Goals and Policies, Goal 3, Policy B.  
**Board Discussion:** The Board questioned Mr. Kimball and Mr. Horn.
- FY11-41**     *David Nicolau moved to grant 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 for the property located at 14 Johnson Street (Res 3), Tom Roberts seconded and it was so voted, 5-0.*
- FY11-42**     *David Nicolau moved to grant a Special Permit under Article 2, Section 2640E of the Zoning By-Laws for a deviation in building scale at the property located at 14 Johnson Street (Res 3), Tom Roberts seconded and it was so voted, 5-0.*  
Anne Howard will write both decisions.

Amy Germain voiced her objection to the new building scale By-Law, Article 2, Section 2640E (6) of the Zoning By-Laws.

Amy Germain and David Nicolau both recused themselves from Cases # FY11-35, FY11-39 and #FY11-43-FY11-46 and left the Hearing.

**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). A condition of the ZBA decision in this case, which has not yet been read or voted on, stated that no Building Permit issue in this case until after the Public Hearing and vote on the application for a Special Permit under Article 4, Section 4170 of the Zoning By-Laws in Case #FY11-43. The decision in this case will be read and voted on at the end of the Public Hearing. *Robert Littlefield moved to table Case #FY11-35 until Case #FY11-43 is heard, Elisabeth Verde seconded and it was so voted, 4-0.*

#### **NEW CASES:**

**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. Tom Roberts disclosed that the applicant is residing in a cottage on his property, but he has checked with the State Ethics Commission and they found no issue with his sitting on the case. Harriet Gordon disclosed that she is a friend of the applicant. Anne Howard, Elisabeth Verde, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case.  
**Presentation:** Mark Kinnane and Kathy Cote appeared to present the application. The applicant seeks to construct a small addition on the north side of the building, a second story addition, an expansion of the living space into the porch on the Harbor side, construction of a new deck and stairways, (mostly over existing decked areas) on the east and water side, a renovation of the existing wood frame structure and the replacement of decking on the Harbor side. There will be a slight reduction in lot coverage.  
**Public Comment:** None. There were 6 letters in the file in support and none in opposition to the project.  
**Board Discussion:** The Board questioned Mr. Kinnane and Ms. Cote.  
*Tom Roberts moved to grant 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 at the property located at 19 Commercial Street (Res 1), Robert Littlefield seconded and it was so voted, 5-0.* Robert Littlefield will write the decision.

**FY11-43**

**21 Bradford Street Extension (*Residential 1 Zone*), WK Red Clay, LLC –**

The applicant seeks a Special Permit under Article 4, Section 4170 for an amendment to a Special Permit under Article 3, Section 3110 of the Zoning By-Laws granted in Case #2007-18, revision granted in Case #2007-57 for “Change in Use” in a Residential 1 Zone from “Mixed Use” (residential/commercial) to “Residential Use” only. Anne Howard, Elisabeth Verde, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case.

**Presentation:** Attorney Lester J. Murphy and Dave Krohn appeared to present the application. The applicant’s commercial tennis business is no longer economically viable, having suffered a loss of 50% of its membership over the last five years. As a consequence, the proposed project at the site has been modified and now includes 17 residential units and two tennis courts, which will become private and whose operation will be turned over to the owners of the condominium units. The Board, in Case #FY11-35, has already voted to modify the Special Permit for the revised project. The Board determined, at the October 18, 2010 Public Hearing, that relief under Article 4, Section 4170 of the Zoning By-Laws was also required for the project. Even though Attorney Murphy briefly argued that the project did not warrant relief under this section of the By-Laws, as the project was retaining the same number of residential units as the previous development plan, he argued that the social, economic or other benefits to the neighborhood and Town of the new development plan outweighed any adverse effects such as hazard, congestion or environmental degradation. According to his argument, there will be less vehicular traffic to the site, reduced noise and congestion in the neighborhood, an increase in green area on site, more protection for the adjacent wetlands and a reduction in the amount of impervious surfaces and fencing. Also the new plan makes the site more compliant with the Residential 1 Zone and privatizing the two tennis courts will allow the struggling Provincetown Tennis Club in the east end of Town to increase their business.

**Public Comment:** Rhoda Rossmore spoke against the application. There were 2 letters in the file in opposition to the application.

**Board Discussion:** The Board questioned Attorney Murphy and Mr. Krohn. *Robert Littlefield moved to grant a Special Permit under Article 4, Section 4170 for an amendment to a Special Permit under Article 3, Section 3110 of the Zoning By-Laws granted in Case #2007-18, revision granted in Case #2007-57 for “Change in Use” in a Residential 1 Zone from “Mixed Use” (residential/commercial) to “Residential Use” only at the property located at 21 Bradford Street Extension (Res 1), Harriet Gordon seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

**FY11-44**

**15 Commercial Street (*Residential 1 Zone*), Phillip Mossy on behalf of the Red Inn, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2540 and Article 3, Section 3110 of the Zoning By-Laws to construct an addition and dormers up and along pre-existing, non-conforming front yard and Harbor setbacks.

**FY11-45**

**15 Commercial Street (*Residential 1 Zone*), Phillip Mossy on behalf of the Red Inn, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2640E of the Zoning By-Laws for a deviation in building scale to construct an addition and dormers.

**FY11-46**

**15 Commercial Street (*Residential 1 Zone*), Phillip Mossy on behalf of the Red Inn, LLC –**

The applicant seeks a Variance under Article 2, Section 2560 of the Zoning By-Laws to increase Lot Coverage from 39.1% to 42.6%, thereby exceeding the maximum of 40%. The Board heard these three cases together. Anne Howard, Elisabeth Verde, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the cases.

**Presentation:** Attorney Lester J. Murphy, Phillip Mossy, Sean Burke and David Silva appeared to present the application. The applicant seeks to improve the kitchen operations, expand the restaurant/bar area, add handicapped-accessible restrooms to the structure and improve handicapped access to the property. The project also includes reducing the number of guestrooms on the first floor from five to two and moving them away from the kitchen area, increasing the second floor guest rooms from three to six and improving access to the second floor. The project would result in an increase in the lot coverage to 42.6% from the existing 39.1%. The front and west side of the structure will require bump-out additions and dormers to the second floor in order to accommodate the moving of guest rooms. However, the west side of the building is blocked from the street by a fence. Attorney Murphy argued that the change in the structure will not be more detrimental to the neighborhood than what presently exists. No changes will take place on the side of the building facing the Harbor. Attorney Murphy argued that the social, economic and other benefits to the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation. The improvements to the building will enhance and improve the applicant's inn and restaurant business.

According to the Assessor's Office, the average neighborhood volume is 100.93 scale units. The maximum allowable scale is 116.07 s.u. The existing scale is 361.37 s.u. The proposed addition is 50.25 s.u. for a proposed total scale is 411.62 s.u. The percentage increase is 13.9%. The proposed structure will be harmonious with the other structures in the neighborhood. Attorney Murphy specified how the project was consistent with numbers 1, 5 and 6 of subsection E of Article 2, Section 2640 of the Zoning By-Laws.

The proposed increase in lot coverage to 42.6% will exceed the 40% maximum allowable lot coverage. Attorney Murphy argued that the substantial hardship, financial or otherwise, to the applicant that would justify the granting of a Variance is owing to circumstances related to the soil conditions and topography at the site. This relief would not be detrimental to the public good and could be granted without nullifying or substantially derogating from the intent or purpose of the By-Law. The property is located on the waterfront, which is both accreting and eroding. The shoreline is moving closer to Commercial Street and at least 1,000 sq. ft. of land area has been lost since 1975. Currently the mean high water mark has migrated to the bulkhead on the premises. Attorney Murphy explained that the entire project is dependent upon exceeding the lot coverage and is

consistent with the goals stated in Chapter 1, 1.2, Policy B, Goal 2, 3 and 4; Chapter 4, 4.2, Goal 1, Policy A and B and Goal 2, Policy A and B, Chapter 5, 5.2 Goal 1 and Policy A of the LCP.

**Public Comment:** None. There were 4 letters in favor of Case #FY11-44, 4 letters in favor of Case #FY11-45 and 1 letter in favor of Case #FY11-46 in the file.

**Board Discussion:** The Board questioned Attorney Murphy, Mr. Mossy, Mr. Burke and Mr. Silva. The issue of adequate parking to accommodate the increase in the restaurant/bar area was raised.

**FY-11-44**     ***Robert Littlefield moved to grant a Special Permit under Article 2, Section 2540 and Article 3, Section 3110 of the Zoning By-Laws to construct an addition and dormers up and along pre-existing, non-conforming front yard and Harbor setbacks at the property located at 15 Commercial Street (Res 1) with the condition that the applicant verify the floor area of the restaurant/bar and if greater than 1350 sq. ft., will apply for a Parking Variance and will include a parking plan with that application, Elisabeth Verde seconded and it was so voted, 5-0. Anne Howard will write the decision.***

**FY11-45**     ***Robert Littlefield moved to grant a Special Permit under Article 2, Section 2640E of the Zoning By-Laws for a deviation in building scale to construct an addition and dormers at the property located at 15 Commercial Street (Res 1) with the condition that the applicant will verify the scale calculations with the Assessor's Office, Anne Howard seconded and it was so voted, 5-0. Robert Littlefield will write the decision.***

**FY11-46**     ***Robert Littlefield moved to grant a Variance under Article 2, Section 2560 of the Zoning By-Laws to increase Lot Coverage from 39.1% to 42.6%, thereby exceeding the maximum of 40% at the property located at 15 Commercial Street (Res 1), Tom Roberts seconded and it was so voted, 5-0. Robert Littlefield will write the decision.***

Chair Anne Howard adjourned the Public Hearing at 9:56 P.M.

## **WORK SESSION**

Chair Anne Howard reconvened the Work Session at 9:56 P.M.

**FY11-35**     ***21 Bradford Street Extension (Residential 1 Zone), WK Red Clay, LLC – Anne Howard, Elisabeth Verde, Robert Littlefield and Tom Roberts sat on the case. Robert Littlefield read the decision. Tom Roberts moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0.***

**NEXT MEETING:** The next meeting will take place on December 16, 2010. It will consist

of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Elisabeth Verde 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 December 16, 2010.

Respectfully submitted,  
Ellen C. Battaglini

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