



## Public Meeting

March 21, 2011

Auditorium

6:30 p.m.

**Members Present:** Marianne Clements, Eric Gelinias, Peter Page, Dorothy Palanza, and Mark Weinress.

**Member Absent:** John Golden

**Staff:** David Gardner and Maxine Notaro

### Site Visits

**65 Bayberry Avenue at 5:30 p.m.**

**56 Creek Road at 6:00 p.m.**

The meeting was called to order at 7:15 p.m. in order to give some members a chance to review the March 9<sup>th</sup> meeting on tape.

### Meeting Agenda 7:00 p.m.

#### Public Comments

There were none.

#### Request for Approval Not Required

Application by Lester J. Murphy, Jr. Attorney on behalf of the Provincetown Conservation Trust for a division of property into non-buildable parcels with no new ways being created for the property located at **56 Creek Road, Provincetown, MA.**

Dorothy Palanza stepped down because she is on the Provincetown Conservation Trust.

Attorney Murphy accompanied by John McElwee from Felco, Inc. presented the case – once again – to the Planning Board. Much the same things were said that had been said at the March 7<sup>th</sup> meeting with J. Murphy outlining the divisions and who would benefit

from them. He concluded by saying that he hoped the Planning Board would act favorably on this ANR since all the parties involved have arrived at this resolution.

Marianne C. asked why the narrow strip between b and d on the map? It was felt that this may be for a future walking path and also to eliminate any development risk.

**Motion: Move to endorse the ANR plan for 56 Creek Road as detailed on the map.**

**Motion: Peter Page                      Seconded: Marianne Clements                      Vote: 4-0-0.**

### **Request for Approval Not Required**

Town of Provincetown, **49 Harry Kemp Way**, to convey a parcel of land for a parking easement for Outer Cape Health Services, Provincetown, MA

Marianne Clements stepped down because she is an employee of Outer Cape Health.

David Gardner reported and co-endorsed the ANR plan and said that by changing the alteration of the layout it would allow Annual Town Meeting to grant the easement.

The following is what was voted on at the March 7<sup>th</sup> meeting:

***Motion: Move to recommend to the BoS that they move forward and approve the easement of Harry Kemp Way but also recommend that the Planning Board's approval be tied to the following conditions that would be included in the recommendation:***

- 1. the easement never become a buildable lot***
- 2. the easement is for the purpose of parking***
- 3. the easement be tied to the existing health center use and shall expire upon a change of use of the property.***

***Motion: Mark Weinress                      Seconded: John Golden Vote: 3-0-0.***

**Motion: Move to support the ANR for 49 Harry Kemp Way.**

**Motion: Mark Weinress                      Seconded: Eric Gelinias                      Vote: 3-0-1 ab (PP)**

### **Request for Approval Not Required Pre-Application**

Application by John McElwee of Felco, Inc. on behalf of Timothy Barry, to convey a portion of **242 Commercial Street to 101 Bradford Street, Provincetown, MA**

J. Murphy, the attorney for Mr. Barry introduced the case. He said that we have a situation where Mr. Barry owns both properties and it has been determined that one property encroaches on another; to further elaborate – the structure at 101 Bradford Street is partly on the 242 Commercial Street's lot. They have already been before the ZBA and the ZBA voted in favor (4-1) but the approval hasn't been filed as yet.

J. said that this is the way to resolve the issue rather than tearing a part of 101 Bradford Street property apart. The issue surfaced when Mr. Barry attempted to get a mortgage and the bank demanded a clean title and - because of the encroachment - couldn't provide one. Peter P. asked for further clarification and was told by J. that an easement can't be granted on one's own property and liabilities would not be enforceable.

It was decided that since the property lays outside the windows of the auditorium that a site visit was not needed.

**Motion: This case was moved, approved, and seconded by all.**

### **Continued Cases**

#### **Case #FY11-04 Site Plan Review (Continued to April 11, 2011)**

**Application by Victor DePoalo under Article 4, Section 4100 of the Zoning Bylaws for Dwelling Units and Commercial Accommodations.** The applicant seeks approval to reconfigure the parking having the same number of parking spaces, which is 28 spaces reducing the handicap spaces from three to two at the property located at **175 Bradford Street Extension, Provincetown, MA (Res3 Zone).**

#### **Case #FY11-16 Site Plan Review (Continued from March 03, 2011)**

**Application by John McElwee of Felco, Inc. on behalf of Robert M. Levin and Jerome P. Colin under Article 2, Section 2320 of the Zoning Bylaws for High Elevation Protection District A.** The applicant seeks approval to remove an existing 12' x 24' swimming pool and install a new 18' x 34' swimming pool and landscape the backyard at the property located at **65 Bayberry Avenue, Provincetown, MA (Res1 Zone).**

Marianne Clements, Eric Gelinis, and Peter Page each individually declared that they had reviewed the video tape of the March 7<sup>th</sup> Planning Board meeting and therefore were able to sit on case FY11-16.

Jamie Veara, an attorney, presented the case and was accompanied by John McElwee. He promised that he was not going to repeat what already had transpired but the ZBA had unanimously approved the case.

The Planning Board members had quite a few questions and misgivings about the entire project mainly relating to the degradation of the land. Most felt that the area where the enlarged pool was going to be installed was fragile at best.

Jamie V. insisted that it wasn't a dune but merely a "high elevation." This is where there was a semantic disagreement, i.e., what is the difference between a dune and a high elevation?

Each aspect of the installation was discussed from lights - to plantings - to drainage, and beyond. The two designers of the pool joined into responding to the objections and told the members why the pool couldn't possibly be installed any other way.

Dorothy P. said that it's still a question of how close you're coming to the "dune" or "high elevation" - whatever you want to call it.

Mark agreed and repeated much the same argument. He also said that it just seems like a lot of disturbance to a fragile area. He continued by saying that the other issue would be lighting. The pool designer argued that lights are not a detraction.

Eric G. finally said, "What are we really concerned about; the ConCom has already discussed this." Eric then made the following motion:

**Motion: Move to approve the pool with the condition that the up lighting must be eliminated.**

**Motion: Eric Gelinias                      Seconded: Marianne Clements**

**Vote: 1 in favor (EG) and 4 against..... motion failed.**

Jamie V. continued by saying that a whole lot of thought went into this and then he quoted from rules & regulations in order to prove that this is technically NOT A DUNE. Then he further said that next door there was a pool put in illegally and yet his clients are trying to do things properly and are being denied.

**Motion: Move to reopen the public hearing of FY11-16 - Site Plan Review**

**Motion: Marianne Clements    Seconded: Eric Gelinias                      Vote: 4-1 opp. (PP) - 0**

There were then four letters of support of this project read into the record and no public comments from the gathered group. The public portion was then closed.

Jamie V. said that there is no impact. "What are you here to protect?"

Peter P. countered by saying that this is still a considerable dune or "whatever you want to call it." You are still coming right up to the crest. Peter has seen it happen before when installations went right to the edge and after every rain storm some of the dune came down - so that's has been his experience.

The applicants will submit new plans at a future date.

**Motion: Move to approve a resubmitted plan with the following conditions:**

- 1. there shall be no uplighting**
- 2. the catch basin shall be omitted.**
- 3. elimination of the negative edge.**
- 4. the pool will be installed 5 ft. from the contour line.**
- 5. downlighting with no more than 24 lights in addition to the existing 6 step lights.**
- 6. the approved lights will be micheliter GD-3209CU**

**Motion: Eric Gelinas    Seconded: Marianne Clements    Vote: 5-0-0.**

### **Case #FY11-17 Site Plan Review**

**Application by Christopher J. Snow, Attorney on behalf of 698 Commercial Street Realty Trust (The Provincetown Harbor Hotel) under Article 4, Section 4100 of the Zoning Bylaws for Dwelling Units and Commercial Accommodations.** The applicant seeks approval for landscaping alterations and parking reconfiguration at the property located at **698 Commercial Street, Provincetown, MA (Res1 Zone).**

The hotel in case FY11-17 is now called Cape Inn and has new owners. They want to break up some of the parking spaces and they also desire landscaping alterations.

Their plan calls for reconfiguring their parking area and adding additional handicapped parking spaces which will be placed adjacent to the main entrance. The engineer they hired for the reconfiguration said that his plan of vegetating the corner of 6A and Snail Road will help the traffic flow. They are not moving the canopy but now you won't be able to drive underneath it.

David Gardner cautioned that if people coming in are not familiar with the property, they will not know where to go. He suggested signage to direct them to the main lobby which would be visible from both Snail Road and Route 6A.

**Motion: Move to approve the site plan conditioned on having a site plan that has been properly stamped.**

**Motion: Eric Gelinas                      Seconded: Marianne Clements                      Vote: 5-0-0.**

### **Public Hearing on Zoning Bylaw Amendments**

Kevin Redmond, an attorney, represented Matthew Mascaro who was the proponent of ATM Article 37. Kevin said that the purpose of this article is to bring commercial accommodations into the downtown district. After a lot of discussion, the following motion was made:

**Motion: Move to support ATM Article 37.**

**Motion: Mark Weinress                      Seconded: Marianne Clements                      Vote: 5-0-0.**

**ATM Article 25 – Zoning By-law Amendment: Article 1**

**Motion: Move to support ATM Article 25 as printed in the warrant.**

**Motion: Peter Page      Seconded: Marianne Clements      Vote: 5-0-0.**

**ATM Article 26 – Zoning By-law Amendment: Article 2 – Districts and District Regulations**

David said that this update is to ensure insurance coverage.

**Motion: Move to support ATM Article 26 as printed in the warrant.**

**Motion: Dorothy Palanza      Seconded: Marianne Clements      Vote: 5-0-0.**

**ATM Article 27 – Zoning By-law Amendment: Article 4 – Special Regulations**

**Motion: Move to support ATM Article 27 as printed in the warrant.**

**Motion: Marianne Clements      Seconded: Mark Weinress      Vote: 5-0-0.**

**ATM Article 28 – Zoning By-law Amendment: Article 6 – Special Regulations**

**Motion: Move to support ATM Article 28 as amended.**

**Motion: Dorothy Palanza      Seconded: Marianne Clements      Vote: 5-0-0.**

There are five articles to be presented at the Annual Town Meeting and each member was given one to present. Each member was given his/her assignment and David G. will help with the prose if needed. John Golden will probably be asked to read a report.

**ATM Article 16 – Alteration of Layout of Harry Kemp Way and Conveyance of Discontinued Portion.**

**Motion: Move to support ATM Article 16 as written in the warrant.**

**Motion: Dorothy Palanza      Seconded: Mark Weinress      Vote: 4-0-1 ab (MC)**

**Minutes of March 7<sup>th</sup> meeting.**

**Motion: Move to approve the minutes of the March 7<sup>th</sup> meeting as amended.**

**Motion: Dorothy Palanza      Seconded: Mark Weinress  
Vote: 2-0-3 ab (JG-MC-PP)**

**Any other business that shall properly come before the Board**

There was none.

**NEXT MEETING DATE**  
**APRIL 11, 2011**  
**6:30 P.M.**

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

*Evelyn Gaudiano*

Evelyn Rogers Gaudiano

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2010.  
Marianne Clements, Chair