



**Public Meeting**  
November 7, 2011  
**Judge Welsh Hearing Room**  
6:30 p.m.

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

**Staff:** David Gardner and Maxine Notaro

**Public Comments**

There were none.

**Public Hearing**

**Case #FY11-24 Site Plan Review**

**Application by William N. Rogers, II, P.E. & P.L.S. under the Zoning Bylaws Article 4, Section 4100 for Dwelling Units and Commercial Accommodations.** The applicant seeks approval for the construction of five buildings to consist of 6 dwelling units with a total of 15 bedrooms at the property located at **67 Harry Kemp Way, Provincetown, MA (Res3 Zone).**

The members who sat on the case were Eric Gelinias, John Golden, Peter Page, Dorothy Palanza, and Mark Weinress.

Lester J. Murphy, the attorney, presented the plan and said that he had lost track of when he last was before the Board regarding this plan. We had a site review and we then ran into a problem with the Conservation Commission. J. continued by saying that we are now resolving issues with the Conservation Commission and have now received an amended order of conditions from the ConCom. If you recall we were going to have 15 bedrooms contained within 5 buildings. One building and one bedroom have been removed in the amended plan. Building #4 has been pulled back and will be 50 ft away from the wetland. The ConCom has been satisfied that enough has been done, thus, we have become more compliant. Green space has been increased and the parking design has been redone. The one concern from the Planning Board before had to do with the parking design and how

accessible it might or might not be. This design takes all that into consideration and rectifies it.

Also, because of the location there is really no scale calculation. J. concluded by saying that he feels that this is an optimal design for this property.

Wm. Rogers, II, added that part of what we agreed to – was to remove fragamite species from the wetland. The client paid \$8K and will probably wind up paying \$20K for the removal of this invasive species. He also feels that this is a better plan than what had been originally proposed. There are 12 parking spaces and they have been located so as not to impact the septic system.

**Motion: Move to approve FY11-24–plan P11 1071E as amended on October 13, 2011.**

**Motion: Dorothy Palanza                      Seconded: Eric Gelinis                      Vote: 5-0-0.**

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

**Application by Donald T. Poole, P.L.S. on behalf of Jane Taves to create one lot into two lots with the required frontage and lot area per lot at the property located at 48 Shank Painter Road.**

Donald Poole presented the plan, once again, to the Planning Board. The members had many questions regarding the wetland, etc. Mr. Poole suggested that the Board meet with the Building Commissioner to assuage any doubts they had.

Dorothy Palanza said that this area is part of Shankpainter Pond. David Gardner then gave a wetland definition which included vegetation. Again his recommendation is that you can endorse conditionally and if the property is split – the onus would be on any new buyer.

**Motion: Move that the Planning Board’s endorsement of the ANR at 48 Shankpainter Road under the Subdivision Control Law should not be construed as either an endorsement or an approval of zoning lot area requirements.**

**Motion: John Golden                      Seconded: Peter Page                      Vote: 5-0-0.**

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

**Application by William N. Rogers, II, P.E. & P.L.S. to divide one large lot into two lots to create lot 45 and lot 46 with the required frontage and lot area per lot at the property located at 59 & 61 Harry Kemp Way.**

Mr. Rogers presented this plan last summer and the owner finally made a decision to move forward after going through the land court.

Dorothy Palanza noted that there was a pool on the original plan; Billy said that the pool is not going in.

Maxine said that this is just a pre-application and there will be no vote on this. She urged everyone to hang on to this ANR because if anything changes you will have the original record.

### **Discussion on Fee Schedule**

David Gardner said that about 2 ½ yrs ago the FinCom asked us to review our planning board fees. Specifically they wanted us to be able to cover the mapping costs for ANRs. David said that fees were last revised in 2005. David passed out a chart on what we charge for all the different fees as well as a comparison chart on what other town's charge for these same services. It was also stated as our motto so succinctly puts – "Provincetown Like Nowhere Else" is so very true. For example, many people planning projects, have to notify a myriad of abutters, i.e., condo owners, etc. which considerably boosts the extraordinary expense. This is basically due to the density of our Town.

After a bit more discussion the members were asked for an opinion. They could either take a stab at a new fee schedule or rely on David to work on it and come up with one. They all agreed to pass the torch to David and he will present the proposed changes at a future meeting.

### **Discussion on Board Policy and Procedures**

Mark Weinress said that he would like people assigned to particular projects to follow-thru and check them. It makes a big difference even if we've had a site visit and he's not sure at how we go thru assigning this. Then there were different ideas on how to assign – alphabetically or last names, or what?

Maxine said that the chair can ask for volunteers to follow-thru on different cases.

A few ideas were mentioned and then Peter Page wondered if we have the authority to do this?

There was a lot of discussion with no final conclusion.

### **Lighting Issue**

Mark W. said that he had received complaints about the lighting around a pool area on Bayberry Avenue. Copy of the case is attached for your perusal:

Planning Board March 21, 2011

**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 7th 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 Gelinis 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 Gelinis 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 Gelinis Seconded: Marianne Clements Vote: 5-0-0.**

Maxine said that it was on the plan but it wasn't specific on the Planning Board's Order of Conditions. After a great deal of discussion about the lighting it was agreed that Mark would draft a letter to the Building Commissioner.

**Motion: Move to have Mark Weinress draft a letter to the bylaw enforcement officer regarding 65 Bayberry Avenue regarding their lighting.**

**Motion: Dorothy Palanza      Seconded: John Golden      Vote: 5-0-0.**

**Minutes of previous meeting**

**Motion: Move to approve the minutes of the October 17<sup>th</sup> meeting as amended.**

**Motion: Mark Weinress      Seconded: John Golden      Vote: 5-0-0**

Adjournment happened at 8:39 p.m.

Respectfully submitted,

*Evelyn Gaudiano*

Evelyn Rogers Gaudiano

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2011.  
John Golden, Chairman