

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 17, 2012**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, Amy Germain, David Nicolau (left at 8:40 P.M.), Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Leif Hamnquist (not excused) and Elisabeth Verde (excused).

Others Present: Russ Braun (Building Commissioner) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Anne Howard called the Work Session to order at 6:45 P.M.

MINUTES: May 3, 2012 – *Amy Germain moved to approve the language as written, Harriet Gordon seconded and it was so voted, 6-0.*

PENDING DECISIONS:

FY12-65 269 Commercial Street (Town Commercial Center Zone), Benjamin E. Zehnder, LLC on behalf of El Mundo, LLC –
Anne Howard, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case. Harriet Gordon read the decision. The vote was postponed until the end of the meeting in order to revise the decision.

FY12-66 24 Pleasant Street, Unit U-B3 (Residential 3, Zone), Sharon Louise Bunn and Cynthia Lou Gilman –
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Joe Vasta sat on the case. David Nicolau 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 7:09 P.M. There were seven members of the Zoning Board of Appeals present and two absent. Anne Howard called for a motion to hear Cases #FY12-70 and #FY12-71 first. ***Amy Germain moved to hear Cases #FY12-70 and***

#FY12-71 first, Tom Roberts seconded and it was so voted, 7-0.

NEW CASES:

FY 12-70 **135 Bradford Street (Town Commercial Center Zone), Edward T. Patten, Esq., of Zisson & Veara, on behalf of Richard L. Campbell –**

The applicant seeks an Appeal of the Building Commissioner's decision dated March 9, 2012 under Article 5, Section 5223 of the Zoning By-Laws.

Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Attorney Ed Patten and Richard L. Campbell appeared to present the application. Attorney Patten reviewed the regulatory history of the unit in question. The building itself is pre-existing, non-conforming in many respects, including the lot coverage and setbacks. The building is a mix of commercial and residential spaces, both of which are allowed by right in the TCC Zone. The applicant's commercial unit, Unit F, was one of several created by Special Permit #2009-41. The applicant seeks a change of use from a commercial to a residential space and to renovate the interior. The applicant was told by the Building Commissioner that he would need zoning relief. Attorney Patten argued that there is no increase in the non-conforming situation if the alteration as proposed complies with the applicable Sections of the Zoning By-Laws. The change is from one permitted use to another permitted use by right. The applicant requests that the decision of the Building Commissioner is in error and should be annulled and reversed.

Public Comment: None. There were no letters in the file.

Board Discussion: The Board questioned Attorney Patten and Mr. Campbell.

David Nicolau moved to uphold the decision of the Building Commissioner dated March 9, 2012, Amy Germain seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY12-71 **135 Bradford Street (Town Commercial Center Zone), Edward T. Patten, Esq., of Zisson & Veara, on behalf of Richard L. Campbell –**

The applicant seeks a Special Permit and/or Variance under Article 3, Section 3110 and Article 4, Section 4120 and Section 4170 of the Zoning By-Laws to alter the use of a pre-existing structure on a pre-existing, non-conforming lot by changing the use of the second floor condominium unit from office space to a residential dwelling unit. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Special Permit under Article 3, Section 3110:

Presentation: Attorney Ed Patten and Richard L. Campbell appeared to present the application. Attorney Patten argued that what exists at the property is a lawful, pre-existing, non-conforming situation where the structure is non-conforming. However the applicant is not seeking to renovate the building and the use is conforming, but because of a combination of factors, the whole conglomerate has been deemed to be a non-conformity needing zoning relief. Unit F is the one unit that has a deeded right to a parking space. There will be no increase in the number

of units or in the lot coverage. Attorney Patten stated that the change of use from a permitted commercial to a permitted residential use will not be substantially more detrimental to the neighborhood and that a residential would actually be more benign than a commercial use. He cited examples of similar relief that had been granted by the Board in the past. The applicant has a hardship in that he has been unable to find a commercial tenant to occupy the unit.

Public Comment: None. In the file, there were 4 letters in favor, 1 letter of concern and no letters in opposition to the application.

Board Discussion: The Board questioned Attorney Patten and Mr. Campbell. *David Nicolau moved to deny the request for a Special Permit under Article 3, Section 3110 alter the use of a pre-existing structure on a pre-existing, non-conforming lot by changing the use of the second floor condominium unit from office space to a residential dwelling unit at the property located at 135 Bradford Street (TCC), Amy Germain seconded.*

The Board discussed the motion.

The motion was so denied by a vote of 4-1 (Robert Littlefield opposed). Robert Littlefield will write the decision.

David Nicolau moved to reconsider the vote, Amy Germain seconded and it was so voted, 5-0.

David Nicolau moved to deny the request for a Special Permit under Article 3, Section 3110 alter the use of a pre-existing structure on a pre-existing, non-conforming lot by changing the use of the second floor condominium unit from office space to a residential dwelling unit at the property located at 135 Bradford Street (TCC), Amy Germain seconded and it was so denied by a vote of 5-0.

Variance under Article 4, Sections 4120 and 4170:

Presentation: Attorney Ed Patten and Richard L. Campbell appeared to present the application. Attorney Patten again referenced prior decisions of the Board, as evidence of those decisions does bear upon the arbitrariness or capriciousness of any present day Board decisions. He indicated that this unit is the only one in the building that has a parking space assigned to it. He cited examples of Town properties that were granted Variances by the Board for parking relief. He argued that the property will suffer a hardship by not being granted relief to convert the unit from commercial to residential. The previous tenant had to move out because of his inability to pay the rent. The hardship is not self-imposed, but is the result of market conditions that the applicant has encountered. He argued that the change of use would not be a substantial derogation from the purpose or intent of the By-Law and there would be only minimal, if any, increase in trash, traffic or water and sewage usage as a result.

Public Comment: None. The same letters as above pertained to this section of the application.

Board Discussion: The Board questioned Attorney Patten and Mr. Campbell. After discussion, the sense of the Board was that Article 4, Section 4170 does not apply to this case.

Robert Littlefield moved to deny the request for a Variance under Article 4,

Section 4120 of the Zoning By-Laws to alter the use of a pre-existing structure on a pre-existing, non-conforming lot by changing the use of the second floor condominium unit from office space to a residential dwelling unit at the property located at 135 Bradford Street (TCC), Tom Roberts seconded and it was so denied by a vote of 5-0. Robert Littlefield will write the decision.

- FY 12-67** **28 Nickerson Street (Residential 3 Zone), Mark P. Kinnane of Cape Associates, Inc. on behalf of Patty Rogers –**
The applicant seeks a Special Permit under Article 3, Section 3110 and Section 3115 of the Zoning By-Laws to demolish and reconstruct the larger unit of a two-unit, one-story structure (approximately two-thirds of the existing structure is to be demolished) and under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Mark Kinnane appeared to present the application. The proposed scale is 14,060 cu. ft. The neighborhood allowable without a Special Permit is 13,582 cu. ft. The structure will be demolished and re-built with a second floor. The building will be squared off and re-built in the same footprint as previously situated. The second floor will be built up and along the pre-existing, non-conforming rear and side yard setbacks. According to Mr. Kinnane, this will render the house similar to other structures in the neighborhood.
Public Comment: None. There was a letter from an abutter requesting that construction begin only after the summer season ends.
Board Discussion: The Board questioned Mr. Kinnane.
- 3110 & 3115:** *Robert Littlefield moved that the Board make a finding that the proposal was not substantially more detrimental than what exists.*
The Board discussed the motion.
Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 and Section 3115 of the Zoning By-Laws to demolish and reconstruct the larger unit of a two-unit, one-story structure (approximately two-thirds of the existing structure is to be demolished) at the property located at 28 Nickerson Street (Res 3), Harriet Gordon seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining). Tom Roberts will write the decision.
- 2640:** **Board Discussion:** The Board found that the increase in scale had not been adequately justified. Mr. Kinnane will consult with his client about the possibility of revising the plans so that the proposal would not need zoning relief for building scale.
Robert Littlefield moved to continue the request for a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to demolish and reconstruct the larger unit of a two-unit, one-story structure (approximately two-thirds of the existing structure is to be demolished) at the property located at 28 Nickerson Street (Res 3) to the June 7, 2012 Public Hearing, Amy Germain seconded and it was so voted, 5-0.
- FY12-68** **148 Commercial Street, #1 (Town Commercial Center Zone), Debbie Nadolney of AMP/Art Market Provincetown –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to have occasional poetry readings, conceptual performance pieces and some live acoustic music at gallery openings. There was a request submitted by the applicant to withdraw the application without prejudice.

FY12-69 151 Commercial Street (*Town Commercial Center Zone*), Juan C. Pisani and Valsin A. Marmillion –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to enclose the existing first floor (rear) deck and enlarge the existing second floor balcony over the proposed enclosed porch up and along the pre-existing, non-conforming side setback dimension. Amy Germain recused herself because of a conflict of interest. Anne Howard, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Robert Valois and Juan C. Pisani appeared to present the application. The project involves an extension of a second floor deck along a side yard setback dimension without intruding further into the property. This expansion will not be visible from the street and will increase living space and the value of the property. The footprint of the structure will remain the same. No hazard or congestion will result from the addition and it will not be substantially more detrimental to the neighborhood than what exists. Mr. Valois pointed out that in regard to the project being in keeping with the Local Comprehensive Plan, the structure will be harmonious with local architecture, has appropriate scale, does not block the views of abutters and provides more yearround usage of the building.

Public Comment: T.J. Walton spoke in favor of the application. In the file, there was a letter, signed by 5 abutters, in favor of the application.

Board Discussion: The Board questioned Mr. Valois and Mr. Pisani.

Robert Littlefield moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to enclose the existing first floor (rear) deck and enlarge the existing second floor balcony over the proposed enclosed porch up and along the pre-existing, non-conforming side setback dimension at the property located at 151 Commercial Street (TCC), Harriet Gordon seconded and it was so voted, 5-0. Anne Howard will write the decision.

FY12-72 8 Pleasant Street (*Residential 3 Zone*), Ethan Poulin on behalf of Michael Palmer –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and replace an existing retaining wall in the same footprint. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.

Presentation: Ethan Poulin and Michael Palmer appeared to present the application. The project involves the removal and replacement of a retaining wall that is in a dilapidated state and a potential safety hazard. It is pre-existing, non-conforming and will be extended along a side yard dimension. The extension will not be substantially more detrimental to the neighborhood than what exists.

Public Comment: None. There were no letters in the file.

Board Discussion: The Board questioned Mr. Poulin and Mr. Palmer.
Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and replace an existing retaining wall in the same footprint at the property located at 8 Pleasant Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Tom Roberts will write the decision.

Chair Anne Howard adjourned the Public Hearing at 9:47 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 9:47 P.M.

PENDING DECISION:

FY12-65 269 Commercial Street (Town Commercial Center Zone), Benjamin E. Zehnder, LLC on behalf of El Mundo, LLC –
Anne Howard, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case. The Board discussed the proposed revisions to the decision. The decision was not voted on as the applicant had failed to submit a revised seating plan as requested by the Board.

NEXT MEETING: The next meeting will take place on June 7, 2012. 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 its meeting on June 7, 2012.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2012
Anne Howard, Chair