

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 19, 2012**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, David Nicolau, Tom Roberts, Harriet Gordon and Joe Vasta.

Members Absent: Amy Germain (excused) and Elisabeth Verde (excused).

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: January 5, 2011 – *Robert Littlefield moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.*

PENDING DECISIONS:

FY12-34 **334 Commercial Street (Town Commercial Center Zone), Peter and Ann Okun/Broken Wheel Farm, LLC, d/b/a Purple Feather** –
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Robert Littlefield read the decision. *David Nicolau moved to approve the language as written, Tom Roberts seconded and it was so voted, 4-0.*

FY12-35 **656 Commercial Street (Residential 2 Zone), Joshua D. Rego** –
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Chair Anne Howard read a letter into the record that was in opposition to the application and had not been included in the file when the case was heard at the previous Public Hearing.
Robert Littlefield moved to not reconsider Case #FY12-35, Harriet Gordon seconded and it was so voted, 4-0.
Anne Howard read the decision. The decision was flawed so its reading was suspended before a vote was taken. The decision will need to be corrected

Chair Anne Howard postponed the Work Session at 6:55 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 two absent.

CONTINUED CASES:

- FY12-38** **21 Montello Street (*Residential 3 Zone*), Kevin Baldwin –**
The applicant seeks a Special Permit under Article 2, Section 2450 of the Zoning By-Laws to remove a 7'6" x 10' shed and replace it with an 8' x 12' shed. Anne Howard, Robert Littlefield David Nicolau, Tom Roberts and Harriet Gordon sat on the case.
Presentation: Kaye McFadden appeared to discuss the application. She submitted plans for a redesigned shed with a height that conformed to the Zoning By-Laws.
Board Discussion: The Board briefly questioned Ms. McFadden.
Tom Roberts moved to grant a Special Permit under Article 2, Section 2450 of the Zoning By-Laws to remove a 7'6" x 10' shed and replace it with an 8' x 12' shed at the property located at 21 Montello Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Harriet Gordon will write the decision.
- FY12-36** **158 Bradford Street (*Residential 3 Zone*), Lester J. Murphy, Jr., Attorney, on behalf of 158 Bradford, LLC –**
The applicant seeks a Special Permit under Article 3, Section 3115 of the Zoning By-Laws for the demolition and reconstruction of a lawful pre-existing, non-conforming structure including changes to the footprint and an increase in scale requiring relief under Article 3, Section 3110 and Article 2, Section 2550, regarding side yard and building setbacks, of the Zoning By-Laws. This case has been continued to the February 2, 2012 Public Hearing.
- FY12-37** **158 Bradford Street (*Residential 3 Zone*), Lester J. Murphy, Jr., Attorney, on behalf of 158 Bradford, LLC –**
The applicant seeks a Special Permit under Article 3, Section 3110 and Article 4, Section 4120 of the Zoning By-Laws for the extension of a pre-existing, non-conforming guesthouse/lodging house use by the addition of one guest unit. This case has been continued to the February 2, 2012 Public Hearing.

NEW CASES:

- FY12-40** **34 Hancock Street (*Residential 3 Zone*), Lester J. Murphy, Attorney, on behalf of Elaine J. Anderson and Lorraine Kujawa –**
The applicants seek a Special Permit under Article 2, Section 2560 and Article 3, Section 3110 of the Zoning By-Laws to extend the pre-existing, non-conforming structure with an addition of a dormer up and along a pre-existing, non-conforming front setback. The building was constructed in 1980 prior to the adoption of the dimensional schedule.
- FY12-41** **34 Hancock Street (*Residential 3 Zone*), Lester J. Murphy, Attorney, on behalf of Elaine J. Anderson and Lorraine Kujawa –**

The applicants seek a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to add a dormer to a pre-existing, non-conforming structure. Anne Howard and Tom Roberts recused themselves because of conflicts of interest. Vice Chair Robert Littlefield will chair. The Board will hear both cases together. Vice Chair Robert Littlefield explained to Attorney Murphy that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, he and his client had the choice of moving forward or postponing until a five-member Board could be seated. The applicant chose to move forward. Robert Littlefield, David Nicolau, Harriet Gordon and Joe Vasta sat on both cases.

Presentation: Attorney Lester J. Murphy and Lorraine Kujawa appeared to present the application. Attorney requested that Case #FY12-40 be heard under the *Goldhirsh v. McNear* ruling.

David Nicolau moved to hear Case #FY12-40 under the Goldhirsh v. McNear ruling, Robert Littlefield seconded and it was so voted, 4-0.

The requested extension involves the addition of a second floor dormer. The structure does not conform to front- and rear-yard setbacks. The proposed dormer will run for 32' along the front of the structure, which encroaches 5' into the front yard setback. Attorney Murphy explained that under *Goldhirsh*, if the Board makes a finding that the dormer encroachment does increase the non-conforming nature of the structure, then in order to grant a Special Permit, it must also make a determination that the extension will not be substantially more detrimental to the neighborhood than the existing structure. If the Board makes a finding that the dormer encroachment does not increase the non-conforming nature of the structure, then no relief is necessary. The addition of the dormer will not increase the height of the structure and no bedrooms are being added. The dormer will allow the applicants a usable second floor study area.

The scale of the existing structure is 20,776 cu. ft., the neighborhood average is 15,721 cu. ft., the dormer will add 2,510 cu. ft. for a total of 23,286 cu. ft. That is a 12.08%. Attorney Murphy argued that the neighborhood is comprised of mixed height buildings and the increase in scale will not be out of character with the neighborhood. The social benefit to the Town will be that year-round residents will be able to make a more comfortable, livable and functional residence to meet their changing needs. The economic benefit will be an increase in the tax base due to the increase in the assessment of the larger structure. These benefits outweigh any detrimental effects such as hazard, congestion or environmental degradation. The project is in compliance with Article 2, Section 2640E, sub-paragraphs 1 and 5 of the Zoning By-Laws. The project is also in keeping with the goals of the Local Comprehensive Plan according to Chapter 1, 1.2, Goal 1, Policy B, Goal 2 and Goal 3 and Chapter 4, 4.2, Goal 2 and Goal 2, Policy A.

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

Board Discussion: The Board questioned Attorney Murphy and Ms. Kujawa. ***Robert Littlefield moved to grant a Special Permit under Article 2, Section 2560 and Article 3, Section 3110 of the Zoning By-Laws to extend the pre-existing, non-conforming structure with an addition of a dormer up and along a pre-existing, non-conforming front setback at the property located at 34 Hancock***

FY12-40

Street (Res 3) under the Goldhirsh v. McNear ruling, Joe Vasta seconded and it was so voted, 4-0.

FY12-41 *Robert Littlefield moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to add a dormer to a pre-existing, non-conforming structure at the property located at 34 Hancock Street (Res 3), Harriet Gordon seconded and it was so voted, 4-0.* David Nicolau will write the decision.

FY12-42 **37 Mayflower Heights (Residential 1 Zone), Theodore Cormay –**
The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to add a roof over an existing deck at a pre-existing, non-conforming structure for the purpose of supporting photo-voltaic panels. Anne Howard, Robert Littlefield, David Nicoalu, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Ted Cormay and Jeff Wheeler appeared to present the application. The footprint will not be increased. The roof structure will not cast shade on, and will only be marginally visible from, neighboring structures. It will be architecturally integrated with the remaining building and lower the cost of the applicant's energy bill, helping him to achieve future financial stability. The existing scale of the structure is 30,320 cu. ft., the roof will add 4000 cu. ft., for a total of 34,320 cu. ft. This is a 25% increase in scale.

Public Comment: Klara Mueller had a question and a concern about the project. There were no letters in the file.

Board Discussion: The Board questioned Mr. Wheeler and Mr. Cormay. The Board was concerned about the ease with which the applicant, or a future homeowner, could potentially add walls, enclosing the roofed space and making it a room.

David Nicolau moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to add a roof over an existing deck at a pre-existing, non-conforming structure for the purpose of supporting photo-voltaic panels at the property located at 37 Mayflower Heights Road (Res 1), with the condition that the space beneath the roof remain unenclosed, Tom Roberts seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY12-45 **579 Commercial Street (Residential 3, Zone), Joseph Realmuto –**
The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to add a dormer on a pre-existing, non-conforming structure. David Nicolau recused himself because of a conflict of interest. Anne Howard, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Attorney E. James Veara, Joseph Realmuto and his partner, and April Ducott, from Cape Associates, appeared to present the application. The proposed dormer is going to be on the Commercial Street side of the structure and will allow a second floor bedroom to be extended. The ridge elevation will remain the same. The existing scale of the structure is 26,505 cu. ft., the dormer will add

1,900 cu. ft., for a total of 28,405 cu. ft. The neighborhood average is 21,370 cu. ft. and the allowable neighborhood scale is 24,575 cu. ft. This is a 15% increase in scale. According to Attorney Veara, there will be no adverse effects as a result of this project, such as hazard, congestion or environmental degradation. The benefits will include an increase in the taxable value of the structure and a renovated façade consistent with other structures in the neighborhood and Town. The project is consistent with the goals of the LCP, specifically Chapter 4, 4.2, Goal 2 and Policy A. It also meets the criteria of Article 2, Section 2640E, subparagraphs 5 and 6 of the Zoning By-Laws.

Public Comment: None. There were 2 letters in the file in favor, and 1 letter in opposition to the application.

Board Discussion: The Board questioned Attorney Murphy, Mr. Realmuto and Ms. Ducott.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale to add a dormer on a pre-existing, non-conforming structure at the property located at 579 Commercial Street (Res 3), Harriet Gordon seconded and it was so voted, 5-0. Anne Howard will write the decision.

Chair Anne Howard adjourned the Public Hearing at 8:23 P.M.

WORK SESSION

Chair Anne Howard reconvened the Work Session at 8:23 P.M.

The Board discussed whether to continue to allow more than one Special Permit request on a single application or require that separate applications be filed for each request. The Board will table the issue for a later discussion.

Maxine Notaro reminded the Board that there was a Work Session with Town Counsel on February 2, 2012, at 4:30 P.M. The Board discussed potential questions for Town Counsel. Board members were encouraged to bring additional questions to the Work Session.

PENDING DECISIONS:

FY12-35 **656 Commercial Street (Residential 2 Zone), Joshua D. Rego –**
Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case. Anne Howard read the revised decision. **Robert Littlefield moved to approve the language as revised, Tom Roberts seconded and it was so voted, 4-0.**

FY12-39 **21 Montello Street (Residential 3 Zone), Kevin Baldwin –**
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. **Robert Littlefield moved**

to approve the language as written, David Nicolau seconded and it was so voted, 4-0.

NEXT MEETING: The next meeting will take place on February 2, 2012. It will consist of a Work Session at 4:30 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *David Nicolau moved to adjourn at 9:00 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 February 2, 2012.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2012
Anne Howard, Chair