

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
November 15, 2012**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Amy Germain, David Nicolau, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist.

Members Absent: Robert Littlefield (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 6:45 P.M.

MINUTES: October 18, 2012 – *Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 6-0.*

November 1, 2012 – *Amy Germain moved to approve the language as written, Harriet Gordon seconded and it was so voted, 7-0.*

Chair Anne Howard stated that the Special Permit issued in Case #FY13-05 for 5 Harbour Drive, Sandler-Davidson Living Trust, T. Sandler and J. Davidson, Trustees, has superceded the Special Permit issued in Case # FY11-52, as it has been duly recorded by the applicant and, pursuant to its conditions, the latter has been surrendered by the applicant, automatically rescinded, of no further effect and the appeal of Case #FY11-52 has been withdrawn.

Anne Howard asked if it was the pleasure of the Board to entertain a public statement. The Board agreed to allow Rick Murray to make a statement. He asked the Board where he could find a Variance decision for the front stairs at 71 Commercial Street. Amy Germain responded that there was no Variance decision. The stairs were approved for construction based on a discretionary decision made by the Building Commissioner. However, there was a Variance granted for stairs on the east side of the structure and the decision can be found in the Building Department files at Town Hall.

Attorney Lester J. Murphy inquired about the revision of the expiration date of January 2, 2013 for a Special Permit granted to 333R Commercial Street. The Board has made an amendment to the Special Permit and the new expiration date is January 2, 2014.

David Nicolau explained that even when the Board of Selectmen allow public statements, they do not respond to those comments, and unless the Board wanted to change its policy, public

statements other than those supporting or not supporting an application should not be allowed. If information on cases is needed, an individual can contact or visit the Building Department. The Board convenes to hear and adjudicate cases, not to provide information to the public. The Board discussed the subject.

Amy Germain moved to maintain the policy of not allowing public statements during ZBA Public Hearings unless they are made in reference to an application being heard, Tom Roberts seconded and it was so voted, 7-0.

There will be a Work Session held on November 29, 2012, at 6:30 P.M., and, pursuant to an Order of Remand issued by the Barnstable Superior Court on September 13, 2012, in litigation known as 158 Bradford, LLC v. Anne Howard, et al, Barnstable Superior Court, C.A. No. BACV2012-00163, the Board will hold a Remand Public Hearing to consider applications related to requests for zoning relief at 158 Bradford Street.

Chair Anne Howard adjourned the Work Session at 6:55 P.M.

CONTINUED CASES:

- FY13-09** **71 Commercial Street (*Residential 3 Zone*), Mark Kinnane of Cape Associates, Inc. on behalf of Eleanor Pannesi** (*continued to the December 6, 2012 Public Hearing*) –
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a covered entry up and along a pre-existing, non-conforming front and side setback.
- FY13-12** **148 Commercial Street, Unit #1 (*Town Commercial Center Zone*), Debbie Nadolney of AMP/Art Market Provincetown** (*continued to the December 6, 2012 Public Hearing*) –
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to have occasional poetry readings, conceptual performances pieces, some video/film and some live acoustic music at gallery openings.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:00 P.M. There were seven members of the Zoning Board of Appeals present and one absent.

POSTPONED CASES:

- FY13-13** **32 Bradford Street (*Residential 3 Zone*), William N. Rogers, II P.E. & P.L.S. on behalf of Enco Realty, Inc. –**
The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation from building scale to re-configure main egress stairs and to construct a 10' x 24' dormer and a 10' x 11' dormer and under Article 3,

Section 3110 of the Zoning By-Laws to construct the 10' x 24' dormer up and along a pre-existing, non-conforming front yard setback. David Nicolau recused himself because of a conflict of interest. Anne Howard, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Gary Locke and Leonard Enos appeared to present the application. This application is in reference to building 1; a two unit, six bedroom dwelling. The proposal is to convert this building to a three unit, eight bedroom dwelling. The applicant is requesting relief to construct a 10' by 24' dormer on the Pleasant Street side, an 11' by 10' dormer and a new 8.8' by 24' egress deck and stair configuration in the front. A project similar to this was previously approved by the Board, but the Special Permit granted has expired. This is an updated project that will be in conformity with the current Building Code. The applicant has decided to sprinkle the building and, as a result, an unsightly circular staircase to be used as a second means of egress has been eliminated. The stair tower and two dormers will increase the scale by 4875 cu. ft. The existing scale is 22,575 cu. ft., the neighborhood average is 12,001 and the allowable scale is 13,801 cu. ft. The total proposed scale is 27,450 cu. ft, a 15% increase.

Documents Presented: An Application for a Hearing, a Non-conforming Situation Checklist, a proposed site plan by William N. Rogers, dated June, 2008, revised 10/30/12, an existing site plan by William N. Rogers, dated June, 2008, revised 10/30/12, existing and proposed elevations and existing and proposed floor plans by William N. Rogers dated July, 2012.

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

Board Discussion: The Board asked about the differences between the former and the proposed design and how that affected the scale. The proposed design makes the scale smaller. The dormers remain the same and the design is more integrated and in character with the neighborhood.

Amy Germain moved to grant a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation from building scale to re-configure main egress stairs and to construct a 10' x 24' dormer and a 10' x 11' dormer and under Article 3, Section 3110 of the Zoning By-Laws to construct the 10' x 24' dormer up and along a pre-existing, non-conforming front yard setback at the property located at 32 Bradford Street (Res 3), based on a plot plan by William N. Rogers, revised 10/30/12, and floor plans by William N. Rogers P-12-1754A, dated July, 2012, Harriet Gordon seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY13-14

5 School Street (Residential 3 Zone), Deborah Paine, Inc. on behalf of Licia Zurn-Galinsky –

The applicant seeks a Special Permit under Article 2, Section 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct an addition up and along a pre-existing, non-conforming front yard setback and for a deviation in building scale. Anne Howard and David Nicolau recused themselves because of conflicts of interest. Amy Germain chaired the hearing and Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Attorney Lester J. Murphy and Trevor Pontbriand appeared to

present the application. The applicants seek to renovate the building and construct an addition onto the main residential building on the premises, thereby increasing the number of dwelling units to three. The addition will be on the side of the structure that runs up and along a pre-existing, non-conforming front yard setback and will measure 13.7' wide and 27.7' long on the northwest, or conforming side of the structure. Attorney Murphy argued that the alteration will not be more substantially detrimental to the neighborhood than the existing structure. The existing structure is between 3' and 5.9' off the front yard setback. The addition will be between 4.9' and 6' off School Street, farther away from School Street than the existing structure. It will exceed the rear yard setback by at least .5' and average about 5'. It is 50 or 60' away from the northwest sideline and will be two stories in height, as is the rest of the building, and 26' at its highest point, 1.2" below the existing building. The addition will provide a perpendicular roof design at one end of the structure, which will complement the opposite end, for a more aesthetically pleasing effect and resulting in the building being better integrated into its surroundings. The look of the existing structure will be enhanced and upgraded by re-siding and re-roofing, as it is currently an eyesore in the neighborhood, and a new dwelling unit will be added. The existing structure has a scale of 26,180 cu. ft., the proposed addition is 9,800 cu. ft., for a total of 35,980 cu. ft. The neighborhood average is 15,748 cu. ft. and the maximum allowable is 18,110 cu. ft. The proposed addition is a 37.4% increase over the existing scale, which is already 8,000 cu. ft. over the maximum allowed scale. The social, economic and other benefits outweigh any adverse effects such as hazard, congestion or environmental degradation. There will be a new dwelling unit provided for housing, the assessed value of the structure will increase and the benefit to the neighborhood is that the structure will be enhanced and upgraded. No congestion or hazard or environmental degradation will result from the proposed project. Under Article 2, Section 2640E, the criteria of subparagraphs 1, 5 and 6 are met. The project is also in keeping with the goals and objectives of the Local Comprehensive Plan Section 1, Goal 1, Policy B, Section 4, Goal 2 and Goal 2, Policy A and Policy B.

Documents Presented: An Application for a Hearing, a Scale Calculation Request, a Non-conforming Situation Checklist, photographs of SE, SW, NE and NW elevations, photographs of the views looking north and south on School Street, a site plan by John McElwee, of Felco, Inc., existing and proposed elevations and existing first and second floor plans, dated 8/16/12, and proposed first and second floor plans, dated 8/21/12.

Public Comment: Cheryl Courville spoke in favor of the application. There were 13 letters in favor of the application.

Board Discussion: The sense of the Board was that even though the increase in scale was large, the structure, while already over scale for the neighborhood, integrated into, and was well-suited to, the size of the lot and the surrounding neighborhood.

Tom Roberts moved to grant a Special Permit under Article 2, Section 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct an addition up and along a pre-existing, non-conforming front yard setback and for a deviation in

building scale at the property located at 5 School Street (Res 3 Zone), Joe Vasta seconded and it was so voted, 5-0. Tom Roberts will write the decision.

NEW CASE:

FY13-15 698 Commercial Street (Residential 1 Zone), Christopher J. Snow, Esq. on behalf of 698 Commercial Street Realty, LLC –

The applicant seeks a renewal of a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for Entertainment and requests that it be permanent and to strike condition #7 requiring security at live events. Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Leif Hamnquist sat on the case.

Presentation: Attorney Christopher J. Snow and Barbara Komins appeared to present the application. Initially, the applicant sought to renew a Special Permit for entertainment, which was granted last year on a one-year trial basis, and strike the condition that required security to be present for live events. However, after examining the letters of complaint from abutters, Attorney Snow requested a modification of the request from an extension to a permanent state to another one-year extension in order to address the concerns of the neighbors. There have been a total of 84 entertainment events at the premises since the Special Permit was granted, and in only two instances did police come to the premises to talk about a level of noise, which was immediately ameliorated. In neither case was a police report, log report or noise complaint generated.

Documents Submitted: An Application for a Hearing, Exhibit A, the previous ZBA decision dated 8/4/11, a proposed license plan A0.3 drawn by Landworks Studio, Inc.

Public Comment: Cheryl Courville spoke in favor of the application. There were 3 letters (1 from an abutter) in support of the application and 12 letters from abutters in opposition to the application.

Board Discussion: The sense of the Board was that the applicant's modified request was not unreasonable and agreed to extend the Special Permit for one year and encouraged the applicant to be mindful of abutters' concerns and how noise can impact lives. The Board noted that there were considerably less letters of concern submitted from abutters than last year. David Nicolau suggested that a letter be sent to the Police Department to request that when the premises are visited by a police officer, that it be recorded in order that an official record is created. Chair Anne Howard encouraged neighbors to call the police if they wanted to make a noise complaint, so the Board would then have an official record to take into consideration in future deliberations in regard to this Special Permit.

Amy Germain moved to renew a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for Entertainment at the property located at 698 Commercial Street (Res 1) for a period of one year to expire on 12/31/13, Anne Howard seconded and it was so voted, 5-0. Leif Hamnquist will write the decision.

Chair Anne Howard will write a letter to the Police Department regarding visits to premises for noise complaints.

NEXT MEETING: The next meeting will take place on November 29, 2012. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn 9:00 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 November 29, 2012.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2012
Anne Howard, Chair