

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
October 4, 2012**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield, Amy Germain, David Nicolau, Joe Vasta and Leif Hamnquist.

Members Absent: Tom Roberts (excused) and Harriet Gordon (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: September 13, 2012 – *Amy Germain moved to approve the language as amended, Robert Littlefield seconded and it was so voted, 6-0.*

PENDING DECISIONS:

FY13-05 5 Harbour Drive (*Residential 1 Zone*), Sandler-Davidson Living Trust, T. Sandler and J. Davidson, Trustees –

Anne Howard, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case. Amy Germain read the decision. Chair Anne Howard asked the indulgence of the Board to hear from Attorney Reid, who was present, as to the sufficiency of the decision in terms of addressing all of his concerns. She polled the Board and all agreed to hear from Attorney Reid. He stated that he was satisfied with the decision.

Robert Littlefield moved to accept the language as written, Joe Vasta seconded and it was so voted, 4-0.

Chair Anne Howard reminded the Board that there will be a 6:00 P.M. Work Session on October 18, 2012 with the Building Commissioner. The Work Session will include discussions about the outside display by-law and clarification of general issues involved with *Ciro & Sal's* and the Harbor Hotel Special Permits.

The Board discussed some of the problems presented by zoning enforcement. DN stated that there is clearly a problem with zoning enforcement. RL suggested sending out a post-granting notification to SP owners asking if they have satisfied the conditions of those permits. DN suggested that the ZEO should keep a calendar. RL thought ZEO visits to all SP holders would be too burdensome. DN suggested when businesses renew their licenses that conformity with conditions of any SP be a requirement of renewal. AH suggested Board could set up a schedule

and if conditions of SP were not met, a letter would go to Licensing or a notification could be included on the Licensing Agent's calendar. MN said that Licensing Agent already gets notification of some SP decisions. AH thought all Departments should get notification. DN said that there used to be weekly permit review meetings in Department of Community Development where plans for projects requiring building permits were reviewed. AH said that Board and ZEO needed to work toward improving enforcement.

Chair Anne Howard adjourned the Work Session at 7:05 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:05 P.M.

NEW CASES:

FY13-07 14A Standish Street (*Residential 3 Zone*), Patrick Peterson –

The applicant seeks a Special Permit under Article 2, Sections 2450 and 2550 of the Zoning By-Laws to reconstruct an existing shed 4' 6" from a proposed addition reducing the size of the shed to 96 sq. ft. and under Article 3, Section 3110 of the Zoning By-Laws to construct a 6' by 12' kitchen addition up and along a pre-existing, non-conforming rear setback. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Joe Vasta sat on the case.

Presentation: Patrick Peterson appeared to present the application. The central issue in this project is one of safety. Putting on an addition will allow for more space around the furnace, moving the washer and dryer around and create more space in front of the stove. It will also allow more living space for his family. The addition will not increase the non-conformancy by encroaching further into the rear yard setback.

Documents Presented: Proposed and existing elevations and floor plan drawings by John Tankard III, a ZBA Special Permit application and non-conformancy checklist and a certified plot plan drawn by John McElwee of Felco Engineering dated 5/22/12.

Public Comment: None. There was 1 letter from an abutter in support of the application.

Board Discussion: The Board confirmed that the separation of buildings was sufficient. The non-conformancy in the front yard was corrected from 25' to 9' 8" on the checklist. RL saw no negatives, stated that the project is not substantially more detrimental to the neighborhood than the existing non-conformancy and that the encroachment of the addition does not increase it. He added that the safety issue is important and the requirements of Article 5, Section 5330 have been met.

David Nicolau moved to grant a Special Permit under Article 2, Sections 2450 and 2550 of the Zoning By-Laws to reconstruct an existing shed 4' 6" from a proposed addition reducing the size of the shed to 96 sq. ft. and under Article 3, Section 3110 of the Zoning By-Laws to construct a 6' by 12' kitchen addition

up and along a pre-existing, non-conforming rear setback at the property located at 14A Standish Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY13-08 188 Bradford Street (Residential 3, Zone), Amandio V. Correia and Thomas Harvey –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration to the front steps along a pre-existing, non-conforming dimension without intruding further into the front yard setback. (The applicant requests to be heard under the *Goldhirsh v. McNear* ruling). Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Leif Hamnquist sat on the case.

David Nicolau moved to hear Case #FY13-08 under the Goldhirsh v. McNear ruling, Robert Littlefield seconded and it was so voted, 5-0.

Presentation: Tom Harvey appeared to present the application. The project includes the removal of a set of non-conforming stairs on the side porch, the reconstruction of both porches and the removal of a large front deck to be replaced with access stairs up from the driveway and down to the side yard on the west side. The redesign of the front porch will reduce its size substantially, resulting in a deck structure 50% smaller than the existing one.

Documents submitted: A site plan drawn by Robert John Freeman, revised 08/28/12, a ZBA Special Permit application and non-conformancy checklist, existing and proposed elevations and floor plans drawn by Thom Thompson of Provincetown Design Group.

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

Board Discussion: The Board asked Mr. Harvey for clarification regarding the non-conforming sets of stairs on the east side of the structure.

David Nicolau moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration to the front steps along a pre-existing, non-conforming dimension without intruding further into the front yard setback at the property located at 188 Bradford Street under the Goldhirsh v. McNear ruling, Leif Hamnquist seconded and it was so voted, 5-0.

FY13-09 71 Commercial Street (Residential 3 Zone), Mark Kinnane of Cape Associates, Inc. on behalf of Eleanor Pannesi –

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. The Board received a letter, dated 10/02/12, requesting a postponement to the October 18, 2012 Public Hearing and relief from the time constraints.

Robert Littlefield moved to grant the request for a postponement of Case #FY13-09 to the October 18, 2012 Public Hearing and relief from the time constraints, Joe Vasta seconded and it was so voted, 6-0.

Rick Murray appeared to ask a question regarding Case #FY13-09. He has not received a response to his question from the last Public Hearing and is asking the Board how it proposes to

handle the issue raised in the case it will hear at its next hearing. AH responded that the case needs to be heard first and that the Board cannot discuss the case at this point. AG replied that the Board has requested that the Building Commissioner prepare a written evaluation of the facts and circumstances involved in the case. Mr. Murray asked if all cases involved a non-conformancy checklist and if it was required of all SP applicants. AH responded that the checklist had only recently become a part of the Zoning application packet. The checklist was not a part of the packet last summer when the Board heard both a SP and a Variance request from the owner of 71 Commercial Street. Mr. Murray reminded the Board that Variances needed to be exercised within one year and SPs within two years of being granted.

The Board received an application for a Board appointment from Gordon Siegel. The Board will request that Mr. Siegel appear before the Board at the October 18, 2012 Public Hearing.

DN stated that the Board could have written a more defensible decision in the *Ciro & Sal's* case. However, the Board is composed of lay people. He thinks that the ZEO should enforce decisions written by the Board to the best of his ability, despite his opinion about its enforceability. RL thinks the conditions of the SP should be enforced and that the Board writes good decisions. The Board is comprised of laymen and there was a spirit and intent in the *Ciro & Sal's* decision. AH replied that Russ should have said something at the Public Hearing when the Board was making a decision about the conditions if he didn't think they were enforceable, instead of waiting all summer to voice his opinion. DN thinks that if the ZEO feels that a word change here or there in a decision would make the decision easier to enforce, he can speak up.

DN will submit a writing of his concerns related to the Work Session topics as he will not be able to attend the Work Session or Public Hearing on October 18, 2012.

NEXT MEETING: The next meeting will take place on October 18, 2012. It will consist of a Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn 7:45 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 October 18, 2012.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2012
Anne Howard, Chair