

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

### MEETING MINUTES OF

November 1, 2007

### MEETING HELD IN TOWN HALL

**Members Present:** Patrick Eleey, Peter Page, Elisabeth Verde, Amy Germain and Keith Amato.

**Members Absent:** Robert Littlefield (excused).

**Others Present:** Russ Braun (Acting Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

### WORK SESSION

Chair Patrick Eleey called the Work Session to order at 6:35 P.M.

#### PENDING CASES:

**2007-52**      **175 Bradford Street Extension (*Residential 3 Zone*), E. James Veara, Esq. on behalf of Galeforce Village Condominium Trust -**

This case has been continued until the November 15, 2007 hearing. Attorney Veara has submitted a waiver of the time constraints in writing to the Board.

**2007-46**      **1 Tremont Street (*Town Commercial Center Zone*), Robin B. Reid, Esq. on behalf of Tremont Nominee Trust -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for an extension of a pre-existing, non-conforming structure along non-conforming dimensions. Keith Amato disclosed that he had a previous business relationship with Attorney Reid, but that it has ended. Peter Page recused himself because of a conflict of interest. Chair Patrick Eleey informed the applicant that since there were only four members seated on the case and a unanimous vote would be needed to grant a Special Permit, the applicant could choose to continue until a five member Board was seated or proceed with four. The applicant chose to proceed. Patrick Eleey, Elisabeth Verde, Amy Germain and Keith Amato sat on the case. Patrick Eleey informed the applicant that he had consulted with Town Counsel that day and learned that the Board can issue a 'finding', as opposed to a Special Permit, in this case.

**Presentation:** Attorney Robin B. Reid, Thomas Fielding and Scott O'Connor appeared to discuss the application. The applicant has submitted revised plans, as requested by the Board, showing a second means of egress from the building.

**Public Comment:** Cilla Lyon spoke in opposition to the application. There was one letter in opposition to the application in the file. There was a letter from the former Building Commissioner, Matt Mulvey, indicating that he approved of the revised plans.

**Board Discussion:** The Board questioned Attorney Reid.

*Keith Amato moved to issue a finding under Article 3, Section 3110 of the Zoning By-Laws for an extension of a pre-existing, non-conforming structure along non-conforming dimensions at the property located at 1 Tremont Street, Elisabeth Verde seconded and it was so voted, 4-0.* Patrick Eleey will write the decision.

**2007-52**      **175 Bradford Street Extension (*Residential 3 Zone*), E. James Veara, Esq. on behalf of Galeforce Village Condominium Trust -**

Attorney Reid reported to the Board that she was authorized to make the representation that the enforcement action brought by the applicant is going to be withdrawn because an agreement has been reached between the applicant and her client, Victor DePoalo, regarding the height of the dwelling units at the property.

Chair Patrick Eeley postponed the Work Session at 7:10 P.M.

## PUBLIC HEARING

Chair Patrick Eeley called the Public Hearing to order at 7:10 P.M. There were 5 members of the Zoning Board of Appeals present and 1 absent.

### NEW CASES:

**2007-63 543-545 Commercial Street (Residential 3 Zone), Attorney Lester J. Murphy on behalf of Provincetown Hospitality, LLC -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure and use by an alteration of a first floor layout to include three suite-type motel units. The number of units will increase from 42-45, the number of bedrooms will decrease from 46-45 and the number of kitchens will remain at three. The applicant has requested a continuance until the November 15, 2007 hearing.

**2007-64 175 Bradford Street Extension (Residential 3 Zone), Attorney Robin B. Reid on behalf of Victor DePoalo -**

The applicant seeks a Variance under Article w, Section 2471 of the Zoning By-Laws to amend the parking Variance granted in Case #2007-04 to permit the three residential buildings as built. Patrick Eeley, Peter Page, Elisabeth Verde, Amy Germain and Keith Amato. Keith Amato disclosed that he had a previous business relationship with Attorney Reid, but that it has ended.

**Presentation:** Attorney Robin B. Reid and Victor DePoalo appeared to present the application. Only the three residential structures on site are being discussed. A copy of the parking Variance decision in Case #2007-04, copies of the plans for the dwelling units and, as requested by the Board, a letter from Mr. DePoalo's engineers certifying the height measurements of those buildings were submitted. Attorney Reid informed the Board that the dispute between Mr. DePoalo and his abutters has been settled. The abutters have withdrawn their opposition to an amendment to Addendum A of the parking Variance decision and have also withdrawn their application for an enforcement action regarding the height of the residential structures on site. Thus, the applicant would like an amendment to Addendum A reflecting the resolution of the issues with the abutters, stating that the three residential dwellings on site will be permitted to remain as built.

**Public Comment:** Philip Mossy spoke in favor of the application. There were three letters in support of the application and one in opposition. A trustee of the Galeforce Condominium Association informed the Board that there had been a settlement with Mr. DePoalo and that the settlement supercedes any letters in the file written in opposition by any unit owner. Carol Carlson questioned the Board as to whether their action on this application had any effect on the parking Variance. She claimed that not all of the letters in opposition to the parking Variance were rescinded and that the Board had not read them into the record that evening. Mr. Eeley said that he had read all of the letters pertaining to the application before the Board that evening.

**Board Discussion:** The Board questioned Attorney Reid and Mr. DePoalo.

*Elisabeth Verde moved to approve the amendment of the parking Variance in Case #2007-04 to change Addendum A, at the line starting with #2, to reflect that the buildings may be permitted 'as built', reflecting the measurements from the surveyors Holmes & McGrath, in a letter dated 10/01/07 to the Town of Provincetown Building Inspector, Peter Page seconded and it was so voted, 4-1 (Amy Germain opposed).*

Attorney Reid submitted a written decision to the Board.

Chair Patrick Eeley read the decision. *Peter Page moved to approve the language as written, Keith Amato seconded and it was so voted, 4-0-1 (Amy Germain abstaining).*

Chair Patrick Eeley adjourned the Public Hearing at 7:55 P.M.



## WORK SESSION

Chair Patrick Eeley reconvened the Work Session at 7:55 P.M. He informed the Board that all of the applicants for positions, both permanent and alternate, on the Board will be invited to the next hearing on November 15, 2007.

### **PENDING DECISIONS:**

- 2007-59**      **73 Shank Painter Road (General Commercial Zone), Viola Briseno -**  
Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case. Peter Page read the decision. *Elisabeth Verde moved to approve the language as amended, Amy Germain seconded and it was so voted, 4-0.*
- 2007-60**      **328 Commercial Street (Town Commercial Center Zone), Christopher J. Snow, Esq., SNOW & SNOW on behalf of 328 Commercial Street, Inc. d/b/a Patio -**  
Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case. Peter Page read the decision. *Elisabeth Verde moved to approve the language as amended, Amy Germain seconded and it was so voted, 4-0.*
- 2007-61**      **3 Bayberry Avenue (Residential 1 Zone), William N. Rogers, II, P.E., P.L.S. on behalf of Michael Fernon -**  
Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case. This decision has not yet been written.

**MINUTES: October 18, 2007 – Amy Germain moved to approve the language as written, Patrick Eeley seconded and it was so voted, 5-0.**

Acting Building Commissioner Russ Braun introduced himself to the Board and talked about his work experience. He is looking forward to working with the Board and facilitating the Board's job whenever possible.

Assistant Town Manager David Gardner introduced himself to the Board and briefly discussed ethics issues, reminding the Board that the State Ethics Commission is available to answer any questions related to conflicts of interest.

### **NEXT MEETING:**

The next meeting will be on November 15, 2007 and will be held in the Judge Welsh Hearing Room. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

### **ADJOURNMENT:**

*Keith Amato moved to adjourn at 8:30 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 November 15, 2007.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

Ellen C. Battaglini