

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
April 3, 2008

MEETING HELD IN TOWN HALL

Members Present: Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain, Keith Amato and Anne Howard.

Members Absent: None.

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 6:48 P.M.

PENDING DECISIONS:

2008-21 **254-258 Commercial Street (Town Commercial Center) Steven Schnitzer -**
Patrick Eleey, Elisabeth Verde, Amy Germain and Anne Howard sat on the case. Amy Germain read the decision. *Anne Howard moved to approve the language as written, Patrick Eleey seconded and it was so voted, 4-0.*

2008-20 **22 Commercial Street (Residential 1 Zone), Michael McIntyre on behalf of Land's End at Gull Hill, Inc. -**
Patrick Eleey, Elisabeth Verde, Keith Amato and Anne Howard sat on the case. Patrick Eleey read the decision. *Anne Howard moved to approve the language as written, Keith Amato seconded and it was so voted, 4-0.*

MINUTES: March 20, 2007 – Amy Germain moved to approve the language as amended, Anne Howard seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining).

Chair Patrick Eleey adjourned the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair Patrick Eleey called the Public Hearing to order at 7:00 P.M. There were 6 members of the Zoning Board of Appeals present and none absent.

NEW CASES:

2006-42 **852 Commercial Street (Residential 1 Zone), John Reis on behalf of Michael Lynch and Gordon D. Ernst (Order of Remand) -**
The applicant seeks a Special Permit under Article 4, Section 4800 and Article 5, Section 5120 of the Zoning By-Laws to add an affordable dwelling unit. Patrick Eleey, Elisabeth Verde, Amy Germain, Keith Amato and Anne Howard sat on the case.
Presentation: Attorney E. James Veara and John Reis appeared to present the application. This is an application under the version of Article 4, Section 4800, also known as the amnesty by-law, that was in

effect when this case was heard by the Board on May 4 and May 18, 2006. At those hearings, the applicant argued that the unit in question was a habitable dwelling unit and, pursuant to the by-law, eligible to become a legal one with the issuance of a Special Permit. It was stated that the owners of the unit had agreed to permanently deed-restrict it as an affordable housing unit, also pursuant to the by-law. The application was denied by the Board, who based their decision on their interpretation of the amnesty by-law, which was to legalize existing, habitable dwelling units. They were not convinced by the applicants' evidence that the unit had previously been occupied. The owners of the unit were aggrieved by that decision and appealed. The Superior Court remanded the matter to the Board. At the present hearing, the Board again heard evidence that the unit was an existing dwelling unit, which was previously occupied, and thus eligible for a Special Permit under the amnesty by-law. Attorney Veara argued that, according to the Master Deed of the Mayflower Heights Condominium Trust, the unit in question, which started out as vacant storage space in the basement, would eventually become a dwelling unit in a subsequent Condominium building phase. He also pointed out that there is currently evidence, including rough plumbing and electrical boxes, at the premises that it had once been a dwelling unit. The unit, according to Attorney Veara, was previously inhabited, but as a result of water damage several years ago, the unit owners had to undertake some repairs and the unit was vacated. A stop-work order was then put on the project by a previous Building Commissioner, due to a density issue and the owners were unable to finish the repairs. When the amnesty by-law was passed, they decided to apply for a Special Permit in order to legalize the unit, deed-restrict it as an affordable unit and finish the repairs. Attorney Veara also submitted two sworn affidavits; one from a long-time (since 1986) unit owner in the condominium, who claims that the unit had always been a residential dwelling unit and was previously occupied, and one from a former unit owner claiming that the unit was occupied when he lived at the premises.

Public Comment: Jeannette Belben and Kristen Russell, unit owners in the condominium, spoke against the application. Kevin Ainsworth, an abutter, also spoke against the application. There was 1 letter in opposition to the application and 4 letters in support of the application.

Board Discussion: The Board questioned Attorney Veara and Mr. Reis. The Board consulted the present Acting Building Commissioner about the unit in question based on his examination of the unit.

Patrick Eleey moved to deny the Special Permit under Article 4, Section 4800, Anne Howard seconded and it was so voted, 4-1 (Keith Amato opposed). Patrick Eleey will write the decision.

Chair Patrick Eleey postponed the Public Hearing at 8:18 P.M.

Chair Patrick Eleey reconvened the Public Hearing at 8:22 P.M.

2008-19 379 Commercial Street (Town Commercial Center), Robin B. Reid, Esq. on behalf of Vaillancourt Properties -

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the addition of seats. Elisabeth Verde disclosed that she has previously had a business relationship with Attorney Reid, but feels she can render a fair decision, and that she has no financial stake in the outcome of the matter. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Attorney Robin B. Reid, Donna Vaillancourt and David Mazochi appeared to present the application. The gallons for these seats for Wired Puppy have already been granted by the Board of Selectmen pursuant to an Economic Development grant.

Public Comment: Pip Quillin spoke in favor of the application. There were 5 letters in opposition to the application and 124 letters in support of the application.

Board Discussion: The Board questioned Attorney Reid, Ms. Vaillancourt and Mr. Mazochi.

Anne Howard moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the addition of seats at the property located at 379 Commercial Street (TCC), Patrick Eleey seconded and it was so voted, 5-0. Anne Howard will write the decision.

2008-22 212-214 Commercial Street (Town Commercial Center), Robin B. Reid, Esq. on behalf of New Art Realty Corp. -

The applicant seeks approval to amend Special Permit #2007-065 under Article 2, Section 2460 of the Zoning By-Laws with respect to the area of alcohol service. Elisabeth Verde recused herself because of a conflict of interest. Patrick Eleey, Robert Littlefield, Amy Germain, Keith Amato and Anne Howard

sat on the case.

Presentation: Attorney Robin B. Reid and Ben deRuyter appeared to present the application. The applicant seeks to serve alcohol, which is already being served at the premises, outside and in front of the premises.

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

Board Discussion: The Board questioned Attorney Reid and Mr. deRuyter.

Patrick Eleey moved to amend Special Permit #2007-065 under Article 2, Section 2460 of the Zoning By-Laws with respect to the area of alcohol service at the property located at 212-214 Commercial Street (TCC), Amy Germain seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

2008-23 **293 Commercial Street (Town Commercial Center), Paige Mansfield on behalf of Steven Boggess -**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the placement of 8 outdoor seats. Elisabeth Verde disclosed that she is an abutter to an abutter, but feels she can render a fair decision, and that she has no financial stake in the outcome of the matter. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Paige Mansfield appeared to present the application. The business at the property, Twisted Sister, seeks to place 8 seats in the alleyway next to the restaurant.

Public Comment: None. There were 4 letters in the file in support of the application.

Board Discussion: The Board questioned Ms. Mansfield.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the placement of 8 outdoor seats at the property located at 293 Commercial Street (TCC), Anne Howard seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

The Board briefly discussed 'conflict of interest' protocol.

NEXT MEETING:

The next meeting will be on April 17, 2008 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:

Amy Germain moved to adjourn at 9:15 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 April 17, 2008.

Respectfully submitted,

Ellen C. Battaglini

Zoning Board of Appeals Signature