

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
February 17, 2011

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Anne Howard, Robert Littlefield (arrived at 6:30 P.M.), Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon.

Members Absent: Elisabeth Verde (excused).

Others Present: Sharon Lynn (Town Manager – left at 6:35 P.M.), Russell Braun (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Anne Howard called the Work Session to order at 6:06 P.M.

The Board discussed with Russ the content of his opinions of pending zoning cases.

90 Shank Painter Road – Sharon Lynn reviewed the current status of the project at 90 Shank Painter Road and that this acceptance of the Surety Bond is one of the last steps in the process of getting the project started. Both she and Town Counsel have vetted the conditions of the Surety Bond. According to Michael Lozano, of The Community Builders, one of the requirements of the Comprehensive Permit is that the Board accepts the amount and the conditions of the Surety Bond and that it get approved by the Board of Selectmen. The Board questioned Mr. Lozano about the project and the Surety Bond.

David Nicolau moved to accept the conditions and the amount of the Surety Bond as written and to forward the recommendation to the Board of Selectmen for their approval, Robert Littlefield seconded and it was so voted, 6-0.

The Board reviewed and discussed the revisions to the Zoning application.

MINUTES: February 3, 2010 – *Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 6-0.*

PENDING DECISIONS:

FY11-52 **5 Harbour Drive (Residential 1 Zone), William N. Rogers, II, P.E., P.L.S., on behalf of Bay Harbour LLC II** –
Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Tom Roberts read the decision. *Robert Littlefield moved to accept*

the language as written, David Nicolau seconded and it was so voted, 4-0-1 (Amy Germain abstaining).

Chair Anne Howard adjourned the Work Session at 6:57 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:02 P.M. There were six members of the Zoning Board of Appeals present and one absent.

NEW CASES:

- FY11-56** **315 Commercial Street (Town Commercial Center Zone), Linda and Nelson Vital of the Coffee Pot –**
The applicants seek a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of wine and malt to patrons. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.
Presentation: Linda and Nelson Vital appeared to present the application. The applicants seek to sell beer and wine in the interior of the premises. The proposed hours of beer and wine service would be from 11:00 A.M. to 11:00 P.M. Posted signage and a regularly circulating busperson will discourage patrons from taking drinks outside.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board questioned Mr. and Ms. Vital. The Board requested that the applicants correct the floor plan to indicate the number of seats on the premises.
Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of wine and malt to patrons at the property located at 315 Commercial Street (TCC), David Nicolau seconded and it was so voted, 5-0. Robert Littlefield will write the decision.
- FY11-57** **336 Commercial Street (Town Commercial Center Zone), Kristyn Samok on behalf of the Governor Bradford Realty Trust –**
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of wine and malt to patrons. Anne Howard recused herself because of a conflict of interest. Robert Littlefield chaired the hearing. Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon also sat on the case.
Presentation: Kristyn Samok appeared to present the application. She seeks to serve beer and wine at a 28 seat, take-out only, outdoor restaurant. The restaurant is located on a deck above the street level.
Public Comment: None. There were 2 letters in the file in favor of the application.

Board Discussion: The Board questioned Ms. Samok. The hours of operation of the restaurant are from 8:00 A.M. to 3:00 P.M. and 6:00 P.M. to 10:00 P.M. The proposed hours for the service of beer and wine would be from 11:00 A.M to 3:00 P.M. and from 6:00 P.M. to 10:00 P.M. Breakfast and lunch are served between May 15th and October 15th and dinner is served from June 15th to September 15th. Ms. Samok assured the Board that she will erect signage concerning the consumption of alcohol only on the deck area and instruct her staff to be aware of patrons with drinks so as to prevent them from leaving that area. The Board requested that the total number of seats be shown clearly on the floor plan. *Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of wine and malt to patrons at the property located at 336 Commercial Street, Unit 6, (TCC) with the condition that the floor plan be revised to reflect the total number of seats at the premises and that alcohol be consumed on the premises, David Nicolau seconded and it was so voted, 5-0.* Robert Littlefield will write the decision.

- FY11-58** **247 Commercial Street (Town Commercial Center Zone), Richard J. Murray, DMD on behalf of the Crown and Anchor, Inc. –**
The applicant seeks to amend Special Permit 2006-049 under Article 2, Section 2460 of the Zoning By-Laws to include a gas grill in the courtyard and to extend the hours of food service form 10:00 P.M. to 2:00 A.M. for the entire property. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.
Presentation: Richard J. Murray appeared to present the application. The proposed amendment is to a Special Permit for flex-seating at the premises. During various times of the year, seats are taken out of the cabaret and a covered patio and are moved to the courtyard. This Special Permit did not account for the fact that breakfast had also been served at the premises pursuant to the applicant's Inn Holder's license. Mr. Murray is seeking to correct and modify the Special Permit in order to serve food from 7:00 A.M. to 2:00 A.M. No noise complaints have been recorded against the premises regarding the exterior service of food. Mr. Murray argued that the benefit to the Town, including an increase in meals taxes and the creation of one and a half part-time positions, outweighed any potential detrimental effects of the increase in hours.
Public Comment: None. There were 3 letters from direct abutters in the file in favor and 2 letters, one from an abutter, in opposition to the application. There were 4 letters from non-abutters in favor of the application.
Board Discussion: The Board questioned Mr. Murray.
Amy Germain moved to amend Special Permit #2006-049 under Article 2, Section 2460 of the Zoning By-Laws to include a gas grill in the courtyard and to extend the hours of food service form 10:00 P.M. to 2:00 A.M. for the entire property located at 247 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

- FY11-59** **247 Commercial Street (Town Commercial Center Zone), Richard J. Murray, DMD on behalf of the Crown and Anchor, Inc. –**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of caricatures, and the like, to provide and advertise entertainment options. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

Presentation: Richard J. Murray appeared to present the application. Mr. Murray submitted photos of the eight signs he is seeking to display at the premises. He has many entertainers at various venues at the Crown and Anchor and wants to assure that each show is advertised.

Public Comment: None. There were 7 letters in favor of the application in the file.

Board Discussion: The Board questioned Mr. Murray.

David Nicolau moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of caricatures, and the like, to provide and advertise entertainment options at the property located at 247 Commercial Street (TCC) with the conditions that the Special Permit is good for only one year, that a maximum of eight signs only shall be posted from the third week in June until after the Labor Day weekend, that the signs measure no larger than 2' by 3', that the signs be situated 20' from the street, or as indicated on the site plan as presented, and that the signs are securely fastened and stabilized to the satisfaction of the Building Commissioner, Robert Littlefield seconded and it was so voted, 4-1 (Amy Germain opposed). Tom Roberts will write the decision.

FY11-60

15 Commercial Street (Residential 1 Zone), David L. Silva of the Red Inn –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in restaurant seating from 54 to 74 (increase of 20 seats). Amy Germain and David Nicolau recused themselves because of conflicts of interest. As there were only 4 members of the Board remaining to sit on the case and a unanimous vote is needed to grant a Special Permit, Chair Anne Howard gave the applicant the choice of proceeding with 4 members or postponing the case until 5 members could be seated. The applicant chose to proceed. Anne Howard, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case.

Presentation: David L. Silva, Sean Burke and Phillip Mossy appeared to present the application. The Red Inn seeks to expand their business by adding 10 seats, which will benefit the Town by adding 8 to 10 employment positions, increasing meal tax revenues and will benefit other businesses in Town. The size of the dining room will not increase.

Public Comment: Dan Mullin, a direct abutter, and Sandy Steele, speaking on behalf of an abutter, both spoke against the application. There were 21 letters, 3 from direct abutters, in the file in favor of the application.

Board Discussion: The Board questioned Mr. Silva, Mr. Burke and Mr. Mossy. *Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an increase in restaurant seating from 54 to 74 (increase of 20 seats) at the property located at 15 Commercial Street (Res 1), Anne Howard seconded.*

There was a request from Harriet Gordon that Mr. Mullin be allowed to ask

questions even though the public portion of the case had been closed. Anne Howard polled the Board and the Board allowed him to speak to the application. *The motion was so voted, 4-0.* Tom Roberts will write the decision.

FY11-61 67 Bradford Street (Residential 3 Zone), Eliot F. Parkhurst on behalf of Brass Key Hospitality Group, LLC –

The applicant seeks a Special Permit under Article 2, Section 2460 and Article 5, Section 5300 of the Zoning By-Laws to increase the permitted seating at 67 Bradford Street from 30 to 50 (increase of 20 seats), to permit, on a seasonal basis, the service area to include the outdoor patio immediately adjacent to the dining room and/or to permit, on a seasonal basis, an outside service bar. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Attorney Eliot F. Parkhurst and Tom Walter appeared to present the application. The applicant seeks to expand the food service aspect of his business at 67 Bradford Street. The current permitted seating is 30 and, for the service of food and alcohol to the public, is limited to the first floor of the premises. The applicant seeks to provide outdoor service to the public on a seasonal (May 15th – October 31st) basis and to install an outdoor service-only (no seating) bar in a fenced-in courtyard behind 67 Bradford Street. Attorney Parkhurst argued that the social, economic and other benefits for the neighborhood and Town outweigh any detrimental effect such as hazard, congestion or environmental degradation. Any possible impact on the neighborhood would be limited to noise, parking and vehicular traffic. He stated that the increase in seating will not create more vehicular traffic or congestion. Most of the Inn's customers arrive by plane or boat and the combination of an abutting public parking lot and parking spaces leased by the owners in the vicinity, is more than ample to fulfill the demand to parking. In regard to noise, the applicant submitted a study by an acoustical engineering firm that evaluated the sound levels in the immediate vicinity of the premises in Jul of 2010, with particular focus on sound transmitted to residences on Court Street. The study concluded that the level of noise emanating from the activities occurring at the premises was not significant and that the only noise of any significance was from a room on the backend of the property when people were on the balcony engaged in conversation.

Public Comment: None. There were 24 letters, 6 from abutters (3 of whom are direct abutters) in the file in favor of the application. There was 1 letter, from an abutter in opposition to the application and 1 letter of concern from a direct abutter about the trash area.

Board Discussion: The Board questioned Attorney Parkhurst and Mr. Walter. The trash issue was discussed and the applicant agreed to correct the problem. The Board discussed the Special Permit currently held by the applicant and whether it should be amended or superseded.

Robert Littlefield moved to supercede Special Permit #2010-41 and to grant a Special Permit under Article 2, Section 2460 and Article 5, Section 5300 of the Zoning By-Laws to increase the permitted seating at 67 Bradford Street from 30

to 50 (increase of 20 seats), to permit, on a seasonal basis, the service area to include the outdoor patio immediately adjacent to the dining room and to permit, on a seasonal basis, an outside service bar with the condition that the hours of operation for the service of food and alcohol shall be 7:00 A.M. to 12:45 A.M., Amy Germain seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY11-62 67 Bradford Street (Residential 3 Zone), Eliot F. Parkhurst on behalf of Brass Key Hospitality Group, LLC –

The applicant seeks a Variance under Article 2, Section 2470 of the Zoning By-Laws from the parking requirements of a hotel with restaurant seating. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

Presentation: Attorney Eliot F. Parkhurst and Tom Walter appeared to present the application. Attorney Parkhurst calculated that with the addition of 20 seats and the addition of an outdoor patio area of 700 sq. ft., the number of parking spaces required for the premises would total 85. The parking plan for the property shows 47 spaces on site and a previous Parking Variance granted 30 spaces, therefore the relief sought is for 8 parking spaces. There is a large municipal parking lot in the vicinity and there are 15 spaces leased at St. Peter's Church for use by Crowne Pointe and the Brass Key. Attorney Parkhurst reiterated that most customers of both establishments arrive by plane or boat. He also submitted a list of additional arguments for the Board's consideration.

Public Comment: None. There was a petition with 24 signatures in the file in support of the application and 1 letter in opposition.

Board Discussion: The Board questioned Attorney Parkhurst and Mr. Walter. *Amy Germain moved to supercede Parking Variance #2008-018 and to grant a Variance under Article 2, Section 2470 of the Zoning By-Laws from the parking requirements of a hotel with restaurant seating at the property located at 67 Bradford Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Amy Germain will write the decision.*

NEXT MEETING: The next meeting will take place on March 3, 2011. 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 10:45 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 March 3, 2011.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2011
Anne Howard, Chair