

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS**

**MEETING MINUTES OF  
June 16, 2011**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Elisabeth Verde (arrived at 7:01 P.M.).

**Members Absent:** Tom Roberts (excused) and Harriet Gordon (excused).

**Others Present:** Russ 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 6:45 P.M.

**MINUTES: June 2, 2010** – *David Nicolau moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

**PENDING DECISIONS:**

**FY11-85 Shank Painter Road (GC Zone), Richard Clifford of Stop & Shop** – Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. David Nicolau read the decision. *Robert Littlefield moved to approve the language as written Anne Howard seconded and it was so voted, 3-0.*

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

**PUBLIC HEARING**

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

## **PENDING CASES:**

**FY11-91**     **322 Commercial Street (Town Commercial Center Zone), Carol Silvestri** – The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for an outside display rack. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Elisabeth Verde sat on the case.  
**Presentation:** Carol Silvestri appeared to present the application. The applicant would like to display necklaces, key chains and umbrellas outside her shop.  
**Public Comment:** Cynthia Gast and Elizabeth Debella spoke in favor of the application. Hank Keenan, who owns the business abutting Ms. Silvestri, spoke against the application. There were no letters in the file.  
**Board Discussion:** The Board questioned Ms. Silvestri. She agreed to secure her display racks and remove the statute outside the store.  
*David Nicolau moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for an outside display rack at the property located at 322 Commercial Street (TCC) with the condition that a 2' by 2' by 4.5' tall display of key chains, necklaces and umbrellas be associated with that display, Elisabeth Verde seconded and it was so voted, 5-0.* Robert Littlefield will write the decision.

**FY11-88**     **71 Commercial Street (Residential 2 Zone), Mark Kinnane of Cape Associates, Inc. on behalf of Eleanor Pannesi** – The applicant seeks a Special Permit under Article 2, Section 2540, Harbor Setback, and Article 3, Section 3110 to raise the existing structure up and along pre-existing, non-conforming setbacks. The renovation is 50% greater than the existing value of the structure creating the need to be flood plain code compliant by raising the structure to construct entrance stairs. David Nicolau recused himself because of a conflict of interest. Chair Anne Howard explained that since there were only four Board members seated on the case, requiring a unanimous decision in order for a Special Permit to be granted, the applicant had a choice to postpone the case until five Board members could be seated or proceed with four. The applicant chose to proceed. Anne Howard, Robert Littlefield, Amy Germain and Elisabeth Verde sat on the case.  
**Presentation:** Mark Kinnane appeared to present the application. The structure is being raised by 4'. The base flood elevation in the velocity zone where the structure is located is 13', and FEMA requires that the elevation of the lowest structural member be 2' above that. The current elevation of the lowest structural member in the structure is 11'. The increase will be up and along the west side and street-side pre-existing, non-conforming setbacks.  
**Public Comment:** None. There was 1 letter in the file in support of the application.  
**Board Discussion:** The Board questioned Mr. Kinanne.  
*Amy Germain moved to grant a Special Permit under Article 2, Section 2540, Harbor Setback, and Article 3, Section 3110 to raise the existing structure up and along pre-existing, non-conforming setbacks. The renovation is 50% greater than the existing value of the structure creating the need to be flood plain code compliant by raising the structure to construct entrance stairs at the*

*property located at 71 Commercial Street (Res 2), Robert Littlefield seconded and it was so voted, 4-0.* Anne Howard will write the decision.

**FY11-92**

**698 Commercial Street (Residential 1 Zone), Attorney Christopher J. Snow on behalf of 698 Commercial Street Realty Trust, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide the following forms of entertainment: Movies, pool tables, karaoke, dancing by patrons and live entertainment, including amplified music and theatrical shows. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Elisabeth Verde sat on the case.

**Presentation:** Attorney Christopher J. Snow, Bob Thomas and Nicolas Mitchell appeared to present the application. The applicant seeks to accommodate visitors to the Town and entertain its guests. This is a pre-existing, non-conforming use at the property and previous owners of the premises have had entertainment of the sort being requested. According to Attorney Snow, the hotel does not intend to become an entertainment complex. There will be no change in the decibel capacity or output of the amplification equipment at the premises and the same decibel level will be maintained and monitored. The noise level will be self-patrolled as management has an interest in their guests' comfort as well as not disturbing the neighbors. Door panels and walls have been reinforced to contain noise, resulting in the structure being more sound-proof than in the past. The entertainment will be contained in the interior of the hotel and will primarily be used in conjunction with the shoulder and winter season in order to attract and entertain guests during those periods. Attorney Snow proposed a one-year probationary period for the Special Permit. He argued that the social and economic benefits to the Town would outweigh any adverse effects such as hazard, congestion or environmental degradation. Employment will be provided and maintained on a year round basis. The revenue from room taxes are a benefit to the Town and creating the hotel as a tourist destination will bring more guests who will then presumably spend money in Town.

**Public Comment:** Roberta Romano, Trustee/Manager of the Bay Colony Condominiums, spoke of concerns about noise from amplified music, but expressed her opinion that management would work with neighbors to address issues that might arise. Peter Page, Char Priolo, Melissa Croad, Louise Bruen, Barbara Prato, Frank Matteotti, Dana McCannel, Jane Guy, Gerry Brennan and John Veiga all raised concerns, including loud noise coming from the hotel, clarification of the Town noise regulations, security and public safety issues, the location of the flex-seating, the lack of police availability during the early morning hours, an increase in traffic in the area, the parking situation at the premises and the ambiguity of site plans for the premises. There were 41 letters; 39 from abutters and 2 from non-abutters. Attorney Snow suggested that the Board take the letters under advisement and read each letter before deliberations were closed. He waived the reading on behalf of his client. Bonnie Ierardi said she thought that the issues raised in the letters have all been aired by speakers. Chair Anne Howard informed those present that if they had a letter in the file that they would like read aloud, she would do so. At the behest of the non-abutters, Dana

McCannel asked that their letters be read aloud. Brian Carreiro requested that his letter be read.

**Board Discussion:** The Board questioned Attorney Snow, Mr. Thomas and Mr. Mitchell. The Board discussed conditions that would be considered as part of the Special Permit, such as its expiration on September 30, 2012, that there be no outdoor entertainment, such as dancing or karaoke, that no windows or doors be open during the hours of entertainment, that the parking plan as approved by the Planning Board be incorporated by reference in the decision, the 257 person licensed capacity, the entertainment hours being until 1:00 A.M. and the scheduling of a security person on site to monitor people during live entertainment and theatrical shows. The Board would like to continue the case until the July 7, 2011 Public Hearing in order to give Board members the opportunity to read all the letters in the file.

***David Nicolau moved to continue Case #FY11-92 to the July 7, 2011 Public Hearing, Robert Littlefield seconded and it was so voted, 5-0.***

Elisabeth Verde left at 9:45 P.M.

**FY11-93      131A Commercial Street (*Town Commercial Center Zone*), Attorney E. James Veara on behalf of Jay Charles Anderson –**

The applicant seeks an Appeal of the Building Commissioner's decision under Article 5, Section 5330. The Board did not have enough members to hear the case. It will be continued to the June 30, 2011 Public Hearing and Attorney Veara requested that it be heard first on the agenda.

**FY11-86      49 Harry Kemp Way (*Residential B Zone*), Alan Ball, Director of Facilities and Purchasing, on behalf of Outer Cape Health Services (*continued to June 30, 2011*) –**

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation of building scale for a proposed addition. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

**FY11-87      4 Race Road (*Residential 3 Zone*), Gary Reinhardt on behalf of Baldwin Realty Trust, Vernon Brown, Trustee (*continued to July 7, 2011*) –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to enlarge a dormer on the west elevation, increase roof pitch and to remove a section of the south side roof and replace it with a roof deck up and along pre-existing, non-conforming setbacks. The applicant requests being heard under the *Goldhirsh v. McNear* ruling. David Nicolau recused himself because of a conflict of interest. Anne Howard, Robert Littlefield, Amy Germain, Tom Roberts and Harriet Gordon sat on the case.

**FY11-89      19-35 Race Point Road (*Residential 3 Zone*), Edward Malone of Community Housing Resource, Inc. (*continued to June 30, 2011*) –**

The applicant seeks a Special Permit under Article 2, Section 2440, A1, footnote

8, of the Zoning By-Laws for more than six dwelling units on contiguous parcels to be constructed in a tow phase project (6 units to be constructed in Phase I on Lot #10 and 23 units to be constructed in Phase II on Lot #8 for a total of 29 units). Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case.

**FY11-90      19-35 Race Point Road (*Residential 3 Zone*), Edward Malone of Community Housing Resource, Inc. (continued to June 30, 2011) -**

The applicant seeks a Special Permit under Article 2, Section 2640 of the Zoning By-Laws for a deviation in Building Scale for Building 6-8-10 located on Lot #8 (Building 6-8-10 is one of eleven structures on two lots in a two-phase development).

**NEXT MEETING:** The next meeting will take place on June 30, 2011. It will consist of a Public Hearing at 5:30 P.M.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 10:00 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 June 30, 2011.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2011  
Anne Howard, Chair