

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
October 18, 2007

MEETING HELD IN TOWN HALL

Members Present: Peter Page, Elisabeth Verde, Robert Littlefield Amy Germain and Keith Amato.

Members Absent: Patrick Eleey (excused).

Others Present: Matt Mulvey (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Vice Chair Peter Page called the Work Session to order at 6:31 P.M.

PENDING DECISIONS:

- 2007-58** **89 Franklin Street Extension (*Residential 3 Zone*), Doug Dolezal and Greg Welch -**
Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case. Ginny Binder, representing Doug Dolezal and Greg Welch, addressed the Board, requesting that they postpone filing the written decision for this case as the applicants have filed two applications for Special Permits that will be heard on November 15, 2007. She informed the Board that they would still be within the requisite time constraints, as the Board has 100 days in which to file the decision. The applicants seek to delay the filing of the decision until after their Special Permit applications have been heard.
Robert Littlefield moved to delay the filing of the written decision on Case #2007-58, Elisabeth Verde seconded and it was so voted, 4-0.
- 2007-57** **21 Bradford Street Extension (*Residential 1 Zone*), WK Red Clay, LLC -**
Patrick Eleey, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case. Peter Page read the decision. *Robert Littlefield moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0.*

2007-45 **2 Harbour Drive, Lot 9 (*Residential 1 Zone*), Attorney Brian J. Wall on behalf of The Applicants (27 abutters) -**
Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case. Peter Page read the decision. *Elisabeth Verde moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.*

2007-54 **206-208 Commercial Street (*Town Commercial Center Zone*), Hal Winard -**
Patrick Eeley, Peter Page, Elisabeth Verde, Robert Littlefield and Keith Amato sat on the case. Robert Littlefield read the decision. *Elisabeth Verde moved to approve the language as amended, Keith Amato seconded and it was so voted, 4-0.*

MINUTES: October 4, 2007 – Robert Littlefield moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 4-0.

2007-5315 Conant Street, Unit #3 (*Residential 3 Zone*), Jerome Carlson -
The applicant seeks to postpone the case and waive the time constraints for the hearing of this application. The applicant is waiting for revised plans at the behest of the Historic District Commission. *Elisabeth Verde moved to grant the request to postpone Case #2007-53 indefinitely, Robert Littlefield seconded and it was so voted, 5-0.*

2007-46 **1 Tremont Street (*Town Commercial Center Zone*), Robin B. Reid, Esq. on behalf of Tremont Nominee Trust -**
. This case has been continued until the November 1, 2007 hearing.

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 1, 2007 hearing.

Vice Chair Peter Page adjourned the Work Session at 7:07 P.M.

PUBLIC HEARING

Vice Chair Peter Page called the Public Hearing to order at 7:07 P.M. There were 5 members of the Zoning Board of Appeals present and 1 absent.

NEW CASES:

2007-59 **73 Shank Painter Road (General Commercial Zone), Viola Briseno -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a change in hours of operation for the service of alcoholic beverage from 7:00 A.M. to 3:00 P.M. to 7:00 A.M. to 1:00 A.M. Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Viola Briseno and Sharon Bowes appeared to present the application. The applicant seeks to expand the hours of her restaurant 'Chach' in order to serve dinner and include the service of alcoholic beverages during those hours.

Public Comment: Charles Silva, an abutter, spoke against the application. There were no letters in the file.

Board Discussion: The Board questioned Ms. Briseno and Ms. Bowes.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a change in hours of operation for the service of alcoholic beverage from 7:00 A.M. to 3:00 P.M. to 7:00 A.M. to 11:00 P.M. at the property located at 73 Shank Painter Road (GC), Elisabeth Verde seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

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 -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the renewal of entertainment Special Permit dated August 3, 2006, No. 2006-068, and that the same be modified by striking Condition No. 3 and making the Special Permit permanent. Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Attorney Christopher J. Snow appeared to present the application. The applicant seeks the renewal of an existing Special Permit for entertainment and to request that the Board allow amplified music to be played on the premises. The current Special Permit was specifically conditioned on the prohibition of amplified music. The applicant also requests that the Board grant the Special Permit on a one-year trial basis. According to Attorney Snow, the applicant has had no prior complaints related to the playing of live music since the existing Special Permit was granted. He argued that there is a discrepancy in where amplified music is allowed to be played in Town that places his client at a distinct disadvantage. Whereas amplified music can be played on the street next door to the Patio, that same music cannot be played at the Patio because of the prohibition in the existing Special Permit.

Public Comment: Jeffrey Turkel, an abutter spoke against the application. There is a letter that has been posted by the owner of the property, but has not yet reached the Board, and Attorney Snow requested that the record be kept open until that letter is received. There was one letter in support and two letters in opposition to the application in the file.

Board Discussion: The Board questioned Attorney Snow.

Robert Littlefield moved to grant a Special Permit Article 2, Section 2460 of the Zoning By-Laws for entertainment for a period of three years to commence on January 1, 2008 and allow amplified music for a period of one year to commence on January 1, 2008, subject to the following conditions:

- **amplified music can be played between the hours of 7:00 P.M. and 11:00 P.M., and as under the terms of the previous Special Permit #2006-068, dated August 3, 2006, un-amplified music can be played between the hours of 7:00 P.M. and 12:00 A.M.;**
- **the sound system cannot be extended to the exterior;**
- **the musicians are limited to the interior stage; and**
- **the perimeter doors remain closed when amplified music is played except for their use by normal restaurant traffic.**

Keith Amato seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

Vice Chair Peter Page adjourned the Public Hearing at 8:45 P.M. for a five minute break.

2007-61 3 Bayberry Avenue (Residential 1 Zone), William N. Rogers, II, P.E., P.L.S. on behalf of Michael Fernon -

The applicant seeks a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an in-ground swimming pool in the back yard lawn area. Peter Page, Elisabeth Verde, Robert Littlefield, Amy Germain and Keith Amato sat on the case.

Presentation: Gary Locke and Michael Fernon appeared to present the application.

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

Board Discussion: The Board questioned Mr. Locke and Mr. Fernon.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an in-ground swimming pool in the back yard lawn area at the property located at 3 Bayberry Avenue (Res 1), Keith Amato seconded and it was so voted, 5-0. Peter Page will write the decision.

The Board discussed new guidelines for the recording of written decisions and plans recently issued by the Barnstable County Registry of Deeds and the topic of Board positions, including the need for one alternate member to apply for a permanent seat and several new applications received for alternate positions.

Amy Germain commended Matt on his outstanding work for the Town and for the Board, as this is his last Board hearing.

NEXT MEETING:

The next meeting will be on November 1, 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 8:45 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 November 1, 2007.
Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini