

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**

**MEETING MINUTES OF**  
**April 16, 2009**

**MEETING HELD IN THE GRACE GOUVEIA BUILDING**

**Members Present:** Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez.

**Members Absent:** Robert Littlefield.

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

**WORK SESSION**

Chair Patrick Eleey called the Work Session to order at 6:50 P.M.

**PENDING DECISIONS:**

- 2009-12**      **306 Commercial Street, Unit #3, (Town Commercial Center Zone), Elisabeth and Carlos Verde, Tails in the Air, LLC –**  
Patrick Eleey, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez sat on the case. Elisabeth Verde left the room for the reading of the decision. Patrick Eleey read the decision. *Anne Howard moved to approve the language as written, Amy Germain seconded.* The Board discussed the decision and the language was amended. *Anne Howard moved to approve the language as amended, Peter Bez seconded and it was so voted, 4-0.*
- 2009-13**      **306 Commercial Street, Unit #3, (Town Commercial Center Zone), Elisabeth and Carlos Verde, Tails in the Air, LLC –**  
Patrick Eleey, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez sat on the case. The reading of the decision was postponed until the April 30, 2009 hearing.
- 2009-14**      **The Pavilion located at the end of MacMillan Pier (Harborfront Overlay/Town Commercial Center Zone), Town of Provincetown, d/b/a Provincetown Public Pier Corp. –**  
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. The reading of the decision was postponed until the April 30, 2009 hearing.

Chair Patrick Eleey postponed the Work Session at 7:02 P.M.

**PUBLIC MEETING**

Chair Patrick Eleey called the Public Meeting to order at 7:02 P.M. There were five members of the Zoning Board of Appeals present and one absent.

**NEW CASES:**

- 2009-15**      **277A Commercial Street (Town Commercial Center), Lucy Butler, Kite Store, Inc. –**  
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the display of outdoor merchandise such as windsocks, kites and water tubs. Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case.  
**Presentation:** Lucy Butler appeared to present the application. She seeks an outdoor display of the 12 windsocks, some tall banners and about a dozen windmills, similar to the outdoor displays at the premises for the previous three years.

**Public Comment:** None. There was a letter from the applicant's landlord, the Knights of Columbus, giving the applicant permission to apply for a Special Permit.

**Board Discussion:** The Board questioned Ms. Butler.

**Anne Howard moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the display of outdoor merchandise such as windsocks, kites and water tubs at the property located at 277A Commercial Street (TCC), Elisabeth Verde seconded and it was so voted, 5-0.** Anne Howard will write the decision.

**2009-16**

**31 Duncan Lane (Residential 1 Zone), Daniel J. Silva on behalf of Chris**

**Enos -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale to construct an addition to an existing horse barn. Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case.

**Presentation:** Daniel J. Silva and Alan Cabral appeared to present the application. The applicant has no abutters within 500 feet of the premises. The ridge of the proposed addition will match the height of the existing structure. The addition is in keeping with the character of the neighborhood.

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

**Discussion:** The Board briefly questioned Mr. Cabral and Mr. Silva.

**Anne Howard moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale to construct an addition to an existing horse barn at the property located at 31 Duncan Lane (Res 1), Patrick Eleey seconded and it was so voted, 5-0.** Anne Howard will write the decision.

**2009-17**

**359 Commercial Street (Town Commercial Center), Lester J. Murphy, Attorney on behalf of ATL Holdings, LLC, Todd W. Colpitts, Senior Vice-President -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the re-establishment of a 100-seat restaurant at the site of a former 156-seat restaurant and to seek permission to increase the seating by 40 seats pending the approval of an Economic Development Permit for the addition 20 seats. Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case.

**Presentation:** Attorney Lester J. Murphy and David Nicolau appeared to present the application. The applicant seeks to re-establish a restaurant at the premises. A restaurant use is allowed in the TCC Zone by Special Permit. Units G and H, the former Mews Restaurant and part of the Mews Condominium, has maintained a sewer allocation, an assessment based on a 156-seat restaurant, for a 100-seat restaurant and seeks to apply for gallonage for an additional 40 seats. A Special Permit is needed in order to apply for an Economic Development Permit. Attorney Murphy then addressed many of the issues of concern to the other condominium unit owners and stated that his client is willing to work with them to address any problems that may arise from the operation of a restaurant. And he added, the applicant will seek to take any reasonable steps in order to minimize its impact on the neighborhood. The applicant proposes to mitigate interior noise from the restaurant by installing air-conditioning and keeping the doors closed in the summer. The kitchen exhaust fan will be housed in a cupola, in order to conceal the fan, on the roof of the restaurant so all odors will be funneled upward and vented away from the residential units. The refrigeration compressors will be located in the basement of the premises. An enclosed trash area is being proposed in order to mitigate odor from trash. Attorney Murphy argued that the social and economic benefit to the Town, including the creation of 30-40 jobs, outweigh any adverse effects of this project. He asserted that many of the goals of the Local Comprehensive Plan will be met by this project, including the re-development of an existing structure as an alternative to new construction and the promotion of a business that is compatible with the Town's environmental, cultural and economic strength.

**Public Comment:** Meg Stuart, a direct abutter, speaking on behalf of herself and her partner, Maureen Wilson, supported the application, but had some reservations. Bianca Cody Murphy spoke in favor of the application. Joseph Zaloom and Leslie Hand, trustees of the Mews Condominium, spoke against the application. Cherie Mittenenthal, Laura Thornton and T and Celine Gandolfo, all direct abutters, spoke against the application. There was a petition in support of the application signed by 72 people. There were also 6 letters in favor of and 9 in opposition to the application in the file.

**Board Discussion:** The Board questioned Attorney Murphy and Mr. Nicolau. Attorney Murphy

informed the Board that in light of many of the public statements concerning the project, and in an act of good faith, his client would be willing to withdraw the request for 40 additional seats until the restaurant has been up and running and can prove that it will not be a detriment to the neighborhood. The Board discussed how the application was noticed out and suggested that the applicant re-notice the application as a Special Permit under Article 2, Section 2440, B5 of the Zoning By-Laws.

*Amy Germain moved to continue Case #2009-17 until the May 21, 2009 hearing, and that the applicant re-notice the application as a Special Permit under Article 2, Section 2440, B5, of the Zoning By-Laws, Patrick Eleey seconded and it was so voted, 5-0.*

**2009-18**      **15 Montello Street (Residential 3 Zone), Christine Dipree –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure along the non-conforming side yard dimension to construct a dormer to access a second means of egress.

**2009-19**      **15 Montello Street (Residential 3 Zone), Christine Dipree –**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale to construct a dormer to access a second means of egress. The Board heard the two applications together. Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the cases.

**Presentation:** Kaye McFadden appeared to present the applications. The applicant seeks to construct a 7' dormer to increase head room in order to allow access to an interior staircase, which will serve the top floor unit as a second means of egress.

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

**Board Discussion:** The Board questioned Ms. McFadden. The Board informed Ms. McFadden that the applicant did not need to apply for a deviation in building scale as the building scale increase was within the allowable range.

*Peter Bez moved to allow the applicant to withdraw Case #2009-19 without prejudice, Anne Howard seconded and it was so voted, 5-0.*

*Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure along the non-conforming side yard dimension to construct a dormer to access a second means of egress at the property located at 15 Montello Street (Res 3), Patrick Eleey seconded and it was so voted, 5-0. Peter Bez will write the decision.*

Chair Patrick Eleey adjourned the Public Hearing at 10:05 P.M.

## WORK SESSION

Chair Patrick Eleey reconvened the Work Session at 10:05 P.M.

**MINUTES: April 2, 2009 – Patrick Eleey moved to approve the language as written, Amy Germain seconded and it was so voted, 5-0.**

**NEXT MEETING:** The next meeting will take place on April 30, 2009. It will consist of Public Hearing at 6:00 P.M. and a Work Session to follow.

**ADJOURNMENT:** *Amy Germain moved to adjourn at 10:10 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 30, 2009.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2009  
Patrick Eleey, Chair