

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

**MEETING MINUTES OF**  
**May 21, 2009**

**MEETING HELD IN THE GRACE GOUVEIA BUILDING**

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

**Members Absent:** None.

**Others Present:** David Gardner (Assistant Town Manager), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Patrick Eleey called the Work Session to order at 6:32 P.M.

**PENDING DECISIONS:**

- 2009-18**     **15 Montello Street (Residential 3 Zone), Christine Dipree** –  
Patrick Eleey, Robert Littlefield, Amy Germain, Anne Howard and Peter Bez sat on the case. Patrick Eleey read the decision. *Anne Howard moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 5-0.*
- 2009-21**     **212E Commercial Street (Town Commercial Center), Lydia Hamnquist** –  
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Elisabeth Verde read the decision. *Patrick Eleey moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0.*
- 2009-22**     **173 Commercial Street (Town Commercial Center), William Todd Dever, on behalf of J.E.T. Enterprises, Inc.** –  
Patrick Eleey, Elisabeth Verde, Robert Littlefield, 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, 5-0.*
- 2009-23**     **265-267 Commercial Street (Town Commercial Center), Geraldine Boccio, on behalf of Way Down Town** –  
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case. Robert Littlefield read the decision. *Patrick Eleey moved to approve the language as written, Elisabeth Verde seconded and it was so voted, 5-0.*
- 2009-24**     **32 Bradford Street (Residential 3 Zone), Robert Valois, on behalf of Enco Realty, Inc.** –  
**2009-25**     **32 Bradford Street (Residential 3 Zone), Robert Valois, on behalf of Enco Realty, Inc.** –  
Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases. The reading of the decision is postponed as the applicant has not yet submitted an engineer-stamped plot plan to the Board as requested.

**MINUTES: May 7, 2009** – *Patrick Eleey moved to approve the language as written, Anne Howard seconded and it was so voted, 5-0-1 (Peter Bez abstaining).*

**CONTINUED CASES:**

- 2009-20**     **90 Shank Painter Road (General Commercial Zone), The Community Builders, Inc. on behalf of the Town of Provincetown** –

The applicant under M.G.L. c. 40B, section 21, seeks the approval of a Comprehensive Permit to construct six buildings on a vacant 2.5 acre site for the development of a 50-unit, mixed-income, residential rental complex to consist of twenty-five one-bedroom units, twenty-one two-bedroom units and four three-bedroom units and approximately 2500 square feet of commercial/retail usage. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

**Presentation:** David Gardner appeared to present a follow-up report concerning the Board's requests from the previous hearing. The Board had requested that the applicant direct Environmental Partners Group, Inc. to prepare a site monitoring plan for long-term monitoring and testing and had directed Mr. Gardner to obtain a third party professional review of the environmental remediation that occurred at the site, including a review of EPG's proposed long-term monitoring plan. The Board had suggested that Mr. Gardner contact Bennett Environmental Associates, Inc. to undertake this job. As a result of speaking with Mr. Bennett, the Town entered into a contract with Bennett Environmental to review the Site Development Plan, Notice of Activity and Use Limitations and Environmental Partners Group, Inc. proposed long-term environmental monitoring protocols and prepare a letter of findings and opinions and/or identification of potential issues subject to the Massachusetts Department of Environmental Protection audit. Mr. Bennett will appear at the Board's June 4, 2009 hearing to answer Board questions and may have a preliminary report at that time, but will also provide a full, written report for the Board. The Board's final request was that the applicant escrow the sum of \$2,500.00 to pay for the third party review. Mr. Gardner also presented the Board with a letter from the Community Housing Council approving the report of TCB, and a report from the Planning Board, including its recommendations concerning the waivers that TCB is requesting in regard to the project. The Building Commissioner intends to draft a recommendation and report prior to the Board's next hearing. The DPW Director's report and the Fire Department Chief's report on the project are pending. The report of the Cape Cod Commission and its review of the traffic, by its Traffic Engineers, and stormwater issues, by its Water Resources Program Manager, will be available to the Board before its next hearing, as well as a report from Metcalf & Eddy and Woodward & Curran on the proposed infrastructure plan and the ability of the Town to provide the necessary service to the site.

Attorney Kate Mitchell, on behalf of the applicants, also appeared to answer any questions of the Board and to request that the Board schedule another meeting between its June 4 and its June 18 hearings in order to accommodate the developer in its effort to meet DHCD's funding submittal deadline of June 24, 2009.

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

**Board Discussion:** The Board agreed to schedule a hearing on June 11, 2009 at 6:45 P.M. in order to discuss the project. Patrick Eeley read the letters from the Community Housing Council and the Planning Board into the record. The Board briefly discussed the latter and the Board of Selectmen's policy of waiving fees for 40B applicants.

*Amy Germain moved to submit a letter to the Board of Selectmen requesting that they reconsider their policy of waiving fees for Chapter 40B applications, Anne Howard seconded and it was so voted, 4-1 (Robert Littlefield opposed).* Patrick Eeley will write the letter.

*Patrick Eeley moved to continue Case #2009-20, Anne Howard seconded and it was so voted, 5-0.*

**2009-11**

**83 Shank Painter Road (GC Zone), CHR 83 SPR, LLC -**

The applicant seeks a Comprehensive Permit under M.G.L. c. 40B, s. 21 to renovate an existing structure on a 14,000 square foot lot to reconfigure its floor plans to convert its existing fifteen bedrooms to twelve efficiency apartment, including two handicapped-accessible units, and three one-bedroom apartments, including one handicapped-accessible apartment, all to be operated as permanently affordable rental housing. The structure presently includes a commercial use as a portion of the first floor and basement, which will be separated through condominium conversion, designated as Unit A of the condominium as a separately-owned space with commercial use. The rest of the structure will be designated as Unit B of the condominium, consisting of all of the fifteen affordable units. This case is continued until the June 4, 2009 hearing.

Patrick Eeley adjourned the Work Session at 7:35 P.M.

## PUBLIC HEARING

Chair Patrick Eleey called the Public Hearing to order at 7:35 P.M. There were six members of the Zoning Board of Appeals present and none absent.

### CONTINUED CASES:

**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 of 40 seats. Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case. Elisabeth Verde submitted a form disclosing an appearance of a conflict of interest to the Board, as she has a business relationship with David Nicolau, however, she feels that she can render a fair and impartial decision in this case.

**2009-26**      **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 2440 B5 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 of 40 seats. Patrick Eleey, Elisabeth Verde, Amy Germain, Anne Howard and Peter Bez sat on the case. Elisabeth Verde submitted a form disclosing an appearance of a conflict of interest to the Board, as she has a business relationship with David Nicolau, however, she feels that she can render a fair and impartial decision in this case.

*Amy Germain moved that the Board hear Case #2009-26 before Case #2009-17, Peter Bez seconded and it was so voted, 5-0.*

**Presentation:** Attorney Lester J. Murphy, David Nicolau and Todd W. Colpitts appeared to discuss the application. Attorney Murphy gave a brief summary of his previous presentation, on the applicant's behalf, and his arguments supporting the request for Special Permits. He particularly emphasized the commercial nature of the neighborhood, the fact that a restaurant had operated at the site for a number of years and the willingness of the applicant to work with the other condominium unit owners to mitigate any problems that might arise as a result of his operation of a restaurant, including the implementation of a strict management protocol. Attorney Murphy also stressed that in his opinion, the benefits to the neighborhood and Town of having a restaurant in operation at the site outweighed any adverse effects. Todd W. Colpitts then spoke to the Board about the project and gave a brief history of his ownership of the property.

**Public Comment:** Mark Leach, an abutter, Lindsay Aloway, a unit owner in the Mews Condominium, and Todd Dever spoke in favor of the application. Joseph Zaloom, a Trustee of the Mews Condominium, read two letters in opposition to the application: one from the Trustees of the Condominium requesting a site visit by the Board and a request that the applicant submit a Developmental Impact study pursuant to Article 5, Section 5331 of the Zoning By-Laws to the Board as part of their application, and one from Walter Neiman, a unit owner, in opposition to the application. Patrick Devine, another unit owner, read a letter in opposition. David Hand and Leslie Stutsman, also unit owners, spoke in opposition. Ann Thomas, Victoria Yenadios and T Gandolfo, all abutters, spoke in opposition to the application. There were 5 letters in support, a letter from DPW Director, David Guertin, confirming that there is an adequately-sized discharge pipe, measuring 6", serving the entire property, and 6 letters in opposition to the application.

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

**2009-26**      *Peter Bez moved to deny the Special Permit under Article 2, Section 2440 B5 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 of 40 seats at the property located at 359 Commercial Street (TCC), Anne Howard seconded and it was so voted, 3-2. (Amy Germain and Elisabeth Verde opposed). The request for a Special Permit is denied. Patrick Eeley will write the decision.*

**2009-17** *Amy Germain moved to deny 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 of 40 seats at the property located at 369 Commercial Street (TCC), Anne Howard seconded and it was so voted, 5-0. Patrick Eeley will write the decision.*

## **NEW CASES:**

**2009-27** **364 Commercial Street (Town Commercial Center), Jill Vaughn –**  
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the display of outdoor merchandise (newspapers – two-tier rack). Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.  
**Presentation:** Jill Vaughn appeared to present the application.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board briefly questioned Ms. Vaughn.  
*Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the display of outdoor merchandise (newspapers – two-tier rack) at the property located at 364 Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0. Elisabeth Verde will write the decision.*

**2009-28** **284 Commercial Street (Town Commercial Center), Edward Fallas –**  
The applicant seeks a Special Permit under Article 3, Section 3420 for the display of outdoor merchandise (clothing on 2 doors, 15 items on each door). Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.  
**Presentation:** Edward Fallas appeared to present the application.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board briefly questioned Mr. Fallas.  
*Anne Howard moved to grant a Special Permit under Article 3, Section 3420 for the display of outdoor merchandise (clothing on 2 doors, 15 items on each door) at the property located at 284 Commercial Street (TCC), Patrick Eeley seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**2009-29** **329 Commercial Street (Town Commercial Center), Edward Fallas –**  
The applicant seeks a Special Permit under Article 3, Section 3420 for the display of outdoor merchandise (penny press, raincoats and t-shirts). Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.  
**Presentation:** Edward Fallas appeared to present the application.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board briefly questioned Mr. Fallas.  
*Anne Howard moved to grant a Special Permit under Article 3, Section 3420 for the display of outdoor merchandise (penny press, raincoats and t-shirts) at the property located at 329 Commercial Street (TCC), Patrick Eeley seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**2009-30** **50 Bradford Street (General Commercial Zone), Evangelos Lambrou –**  
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to request an increase in seating (13 indoor seats existing and 90 outdoor seats proposed) pending the approval of an Economic Development Permit for additional seating. Amy Germain disclosed that she is an abutter to an abutter, but says she is able to render a fair and impartial decision in this case. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.  
**Presentation:** Evangelos Lambrou appeared to present the application. He seeks additional seating in order to accommodate more customers at the Provincetown House of Pizza.  
**Public Comment:** Tom Powers, a direct abutter, spoke in opposition to the application. Attorney Gwen Hughes, representing the unit owners of Summer Winds Condominium, located across the street from

Provincetown House of Pizza, spoke on behalf of her clients in opposition to the application. She submitted a report to the Board outlining her clients' arguments. Nancy Whiteside, an abutter, spoke of her concerns regarding an increase in traffic in the area. Susan Lao, a direct abutter, and Yasmin Marinaro and Carol Lyons, both unit owners at the Summer Winds Condominium, also spoke against the application. There were 2 letters opposed to the application and a letter from Dana Faris, of DPW, stating that there are enough gallons available for the increase in seating, in the file.

**Board Discussion:** The Board closed the public portion of the hearing. The Board questioned Mr. Lambrou. The Board informed the applicant that he needs to apply for a Parking Variance because he does not have enough parking spaces at the site to accommodate more seats.

***Patrick Eeley moved to continue the case until the June 18, 2009 hearing when the applicant's request for a Parking Variance will be heard, Robert Littlefield seconded and it was so voted, 5-0.***

**2009-31**      **141 Bradford Street (Town Commercial Center), James J. Sheehan and Rodney Johnson –**  
The applicants seek a Special Permit under Article 2, Section 2450, G11 and Article 2, Section 2460 of the Zoning By-Laws for the placement of 6 stools to be located at an existing inside counter. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

**Presentation:** James J. Sheehan and Rodney Johnson appeared to present the application.

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

**Board Discussion:** The Board questioned Mr. Sheehan and Mr. Johnson.

***Patrick Eeley moved to grant a Special Permit under Article 2, Section 2450, G11 and Article 2, Section 2460 of the Zoning By-Laws for the placement of 6 stools to be located at an existing inside counter at the property located at 141 Bradford Street (TCC), Elisabeth Verde seconded and it was so voted, 5-0.*** Anne Howard will write the decision.

Chair Patrick Eeley adjourned the Public Hearing at 10:15 P.M.

**NEXT MEETING:** The next meeting will take place on June 4, 2009. It will consist of Work Session at 6:00 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Amy Germain 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 June 4, 2009.

Respectfully submitted,

Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2009

Patrick Eeley, Chair