

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
July 1, 2010

MEETING HELD IN THE GRACE GOUVEIA BUILDING

Members Present: Anne Howard, Robert Littlefield, Elisabeth Verde, Amy Germain and Tom Roberts.

Members Absent: David Nicolau (excused).

Others Present: 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.

PENDING DECISIONS:

- 2010-36 307 Commercial Street (*Town Commercial Center Zone*), Douglas E. Smart – Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Tom Roberts sat on the case. Anne Howard read the decision. *Amy Germain moved to accept the language as written, Elisabeth Verde seconded and it was so voted, 4-0.*
- 2010-37 70-74 Shank Painter Road (*General Commerc Zone*), Gallery Ehva, Ewa Nogiec – Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case. Elisabeth Verde read the decision. *Amy Germain moved to accept the language as written, Robert Littlefield seconded and it was so voted, 5-0.*
- 2010-38 29R-31 Court Street (*Residential 3 Zone*), William N. Rogers, II, P.E. & P.L.S. on behalf of Stephen P. Johnson – Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case. Tom Roberts read the decision. *Amy Germain moved to accept the language as written, Robert Littlefield seconded and it was so voted, 5-0.*

ADMINISTRATIVE AMENDMENT:

- 2010-11 3 Duncan Lane (*Residential 3 Zone*), Robert Dello Russo and Tom McCarthy –

The applicants were granted a Special Permit under Article 2, Section 2450, G12, of the Zoning By-Laws to install an in-ground swimming pool. Patrick Eeley, Elisabeth Verde, Anne Howard, David Nicolau and Tom Roberts sat on the case. The applicants are seeking to revise the dimensions of the pool, as the model that was described in the initial application is no longer available. The proposed pool is smaller by about 8 square feet and is in the shape of a pond.

Board Discussion: The Board was uncertain whether the members who sat on the original application were required to be seated in order to hear the Administrative Amendment or if any Board member could be seated. The issue was postponed until the July 15, 2010 Public Hearing.

Chair Anne Howard adjourned the Work Session at 7:08 P.M.

PUBLIC HEARING

Chair Anne Howard called the Public Hearing to order at 7:08 P.M. There were five members of the Zoning Board of Appeals present and one absent.

NEW CASES:

2010-39 1 MacMillan Wharf (*Town Commercial Center Zone*), Provincetown Public Pier Corporation –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of arts and crafts at the Trap Sheds located on MacMillan Wharf. Ellen C. Battaglini disclosed that she is an employee of the PPPC, but stated that she can take minutes in a fair and balanced manner.

Elisabeth Verde disclosed that she is an abutter but stated that she is able to render an unbiased decision. Anne Howard, Elisabeth Verde, Robert Littlefield, Amy Germain and Tom Roberts sat on the case.

Presentation: Rex McKinsey, Provincetown Harbormaster, representing the PPPC, appeared to present the application. The applicant seeks to allow outdoor display at the four Trap Sheds owned by the PPPC and located on MacMillan Pier. The Trap Sheds are rented both on a seasonal and weekly basis by artists and craftspeople. The PPPC submitted a letter outlining their proposed parameters related to what, where and how many pieces of art or craft will be displayed in that area of the Pier.

Public Comment: David Cohen, an artist who rents a seasonal Trap Shed, spoke in favor of the application. There were no letters in the file.

Board Discussion: The Board questioned Mr. McKinsey.

Elisabeth Verde moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of arts and crafts at the Trap Sheds located on MacMillan Wharf at the property located at 1 MacMillan Wharf (TCC) in the designated Trap Shed area, which starts at the planter on the north starting point of Lopes Square running to 50' south of the bulkhead and bordered by the extreme west and east side of the pedestrian walkway located on the west side of

MacMillan Wharf and with the following conditions, as stated in the letter submitted by the applicant:

- *no tables or shelves shall be greater than 18” deep;*
- *displays, pieces of artwork or crafts shall not project more than 18” beyond the exterior walls of the Trap Sheds;*
- *no more than 12 pieces of art or craft shall be displayed on each exterior wall or shelving unit;*
- *no outdoor display shall restrict movement of pedestrians on the walkway;*
- *all outdoor displays and associated fixtures shall be removed at the close of each business day; and*
- *each artist’s display space shall not be larger than the front or side exterior wall of the Trap Shed.*

Amy Germain seconded and it was so voted, 5-0. Amy Germain will write the decision.

2010-40 **306 Commercial Street (Town Commercial Center Zone), Douglas Edwin Walker on behalf of Blu Day Spa –**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws to do outdoor chair massage on the sidewalk area (private property) and for the placement of a small table to display Blu Day Spa brochures. Elisabeth Verde recused herself because of a conflict of interest and left the room. Chair Anne Howard explained to the applicant that since four votes were needed to grant a Special Permit, the applicant had the choice of proceeding with four members of the Board seated or postponing until a five-member Board was seated. The applicant chose to proceed. Anne Howard, Robert Littlefield, Amy Germain and Tom Roberts sat on the case.

Presentation: Douglas Edwin Walker appeared to present the application. The applicant seeks to place up to 3 massage chairs on the side of the building on a 7-foot wide walkway and a sandwich-style display board, measuring 24” by 24” by 24”, advertising the business. There will be no interference with either the pedestrian or vehicular traffic on Small’s Court and the walkway from Commercial Street.

Public Comment: Licia Zurn-Galinsky, the owner of a business that occupies the same building, had a concern about the location of the massage chairs and the maintaining free access to the storage area in the basement where her inventory is located. Kathleen Wood, Mr. Walker’s partner, stated that they bought the unit from a business that displayed objects along the walkway and were under the impression that they could continue that practice. There was 1 letter in the file stating a concern for cluttering the pedestrian walkway and blocking vehicular traffic on Small’s Court.

Board Discussion: The Board questioned Mr. Walker. The Board advised the applicant and Ms. Wood to speak with Ms. Zurn-Galinsky and work out a compromise for the location of the massage chairs and the sandwich board.

Amy Germain moved to table the discussion until the end of the meeting while the applicant negotiated with the other unit owners about the proposed location of

the massage chairs and the sandwich board, Robert Littlefield seconded and it was so voted, 4-0.

2010-41

67 Bradford Street (Residential 3 Zone), Eliot Parkhurst, Esq. –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to extend the permitted hours of service of food and alcoholic beverages to those allowed by Section 3.01 (c) of the Provincetown Licensing Board Rules and Regulations.

Presentation: Attorney Eliot Parkhurst and Tom Walter appeared to present the application. The Brass Key would like to extend the hours of food and alcoholic beverages service at the premises. In 2008, the guesthouse was allowed to serve food and alcohol on a trial basis with limited hours. They are now requesting an extension of those hours based on what the applicant alleges is a history of no complaints to the Police Department for excessive noise or other disruptions to the neighborhood.

Public Comment: Deiby Reece, Katherine Fair and Tom Provost, all abutters, spoke against the application, citing an increase in noise issues in their residential neighborhood. There were 16 letters in favor of the application, 2 letters in favor of extending their hours until 1:00 A.M., 1 letter of concern and 2 letters in opposition to the application.

Board Discussion: The Board questioned Attorney Parkhurst and Mr. Walter. They were agreed with the Board that all conditions of the previous Special Permit would be carried forward.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to extend the permitted hours of service of food and alcoholic beverages at the property located at 67 Bradford Street (Res 3) with the following conditions:

- *the service of food and alcoholic beverages and dining for the public shall be limited to the first floor of the gatehouse located at 67 Bradford Street;*
- *there shall be no outdoor service except to guests of the inn for breakfast and for guests attending special events such as weddings;*
- *the Special Permit is immediately and conditionally granted for 30 seats, which increase from the current 12 seats is contingent upon the issuance of an Economic Development Permit or by reassigning existing Title V flow;*
- *the hours of operation for the service of food and alcoholic beverages to the public shall be from 7:00 A.M. to 12:45 A.M.*

Robert Littlefield seconded and it was so voted, 4-1 (Anne Howard opposed).

Tom Roberts will write the decision.

Robert Littlefield moved to take Case #2010-40 off the table, Amy Germain seconded and it was so voted, 4-0.

2010-40

306 Commercial Street (Town Commercial Center Zone), Douglas Edwin Walker on behalf of Blu Day Spa –

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws to do outdoor chair massage on the sidewalk area (private property) and for the placement of a small table to display Blu Day Spa brochures.

Presentation: Douglas Edwin Walker re-appeared with a revised site plan for the location of the massage chairs and the sandwich board. There will be 1 massage chair in the sidewalk area during all business hours (9:00 A.M. until closing) and 1 massage chair to be located between the two doors on the walkway from 3:00 P.M. until closing. The sandwich board will occupy the space where the second massage chair will be located before 3:00 P.M. The applicant will submit a revised site plan showing the location of the massage chairs and the sandwich board.

Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for two outdoor massage chairs and one sandwich-style display board on the sidewalk area (private property) at the property located at 306 Commercial Street (TCC) with the condition that these are located pursuant to a new photograph to be submitted by the applicant, Robert Littlefield seconded and it was so voted, 5-0. Anne Howard will write the decision.

NEXT MEETING: The next meeting will take place on July 15, 2010. It will consist of a Work Session at 6:45 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 9:30 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 July 15, 2010.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2010
Anne Howard, Chair