

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
March 28, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon, Joe Vasta (left at 8:37 P.M.) and Leif Hamnquist

Members Absent: None.

Others Present: Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair David Nicolau called the Work Session to order at 6:45 P.M.

PENDING DECISIONS:

FY13-34 **269 Commercial Street (Town Commercial Center Zone), Benjamin E. Zehnder, Attorney, on behalf of El Mundo, LLC –**
Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case. Robert Littlefield read the decision. *Tom Roberts moved to approve the language as written, Harriet Gordon seconded and it was so voted, 4-0.*

MINUTES: March 21, 2013 – Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 5-0.

Chair David Nicolau adjourned the Work Session at 6:58 P.M.

PUBLIC HEARING

Chair David Nicolau called the Public Hearing to order at 7:01 P.M. There were seven members of the Zoning Board of Appeals present and none absent.

POSTPONED CASES:

FY13-40 **44-48 Winslow Street (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S. on behalf of Winslow Trading Company –**
The applicant seeks a Special Permit under Article 2, Section 2440 of the Zoning By-Laws to construct six buildings with eleven two-bedroom dwelling units. David Nicolau read a letter from William N. Rogers requesting a postponement

until the April 18, 2013 Public Hearing. David Nicolau then recused himself from further discussion of the case because of a conflict of interest. The Board discussed making a site visit to the property.

Amy Germain moved to accept the request to postpone until the April 18, 2013 Public Hearing, Tom Roberts seconded and it was so voted, 5-0.

FY13-33 **174 Commercial Street (Town Commercial Center Zone), Steven D. Lyons –**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of art contained in a cabinet. This case is postponed until the April 4, 2013 Public Hearing.

FY13-35 **359 Commercial Street, Unit H (Town Commercial Center Zone), Cassandra Benson of Harbor Lounge, Inc., on behalf of 3 Old Dogs, Inc. –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the rearrangement of seating and to extend the hours of operation from 10:00 P.M. to 11:00 P.M. Leif Hamnquist recused himself because of a conflict of interest. David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.

Presentation: Cass Benson appeared to present the application. Ms. Benson is requesting to be open an additional hour and for a minor change in the seating plan of the premises. The lounge provides public access restrooms pursuant to the property's Chapter 91 license, as well as providing pedestrian access to the beach. This is in keeping with the Local Comprehensive Plan Chapter 1, Section 1.2, Goal A. The lounge is in the Town Commercial Center Zone, surrounded by mixed use buildings and businesses that are open later than 10:00 P.M. There are two art galleries and a retail store in the same complex that are open until 11:00 P.M. Adding an extra hour of service would help these businesses by drawing more patrons to the complex. The lounge has never had a noise or license complaint lodged against it. Ms. Benson employs 5 people during 9 months of the year. Since it began operations, the door and slider to the west have been closed at 9:00 P.M. and private parties at night have been eliminated during the summer season in deference to the abutting neighbors. There is no exterior lighting and interior lighting is kept to a minimum. Only background music is played and during the summer, the TV is off and during the fall, if the TV is on, the sound is off. All the doors and windows are closed at last call and the music is turned down and the front lights are turned off. The condominium, of which the lounge is a part, is in support of the application. In addition, pursuant to Chapter 7, Section 7.4, Goal 1 of the LCP, the lounge strives to minimize its energy consumption and would like not to have to use fans or air conditioners, as it has since opening.

Public Comment: David McGlothlin and Meg Stewart spoke in support of the application. Cherie Mittenthal, an abutter, spoke in opposition to the application. There were 14 letters from abutters, 12 from non-abutters and a petition signed by 85 people in support of the application and 12 letters, all from abutters, in opposition to the application.

Board Discussion: The Board asked for a seating plan that was dated and signed. The Board discussed ways to minimize noise after 10:00 P.M., such as closing

windows and doors along the west side and the door to the pier on the south side of the premises.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the rearrangement of seating and to extend the hours of operation from 10:00 P.M. to 11:00 P.M. at the property located at 359 Commercial Street, Unit H (TCC,) with the conditions that the Special Permit run with the current owner only, that all south- and west-facing doors and windows be closed at 10:00 P.M. and that there be no live music played in the lounge, Robert Littlefield seconded.

The motion was discussed.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the rearrangement of seating and to extend the hours of operation from 10:00 P.M. to 11:00 P.M. at the property located at 359 Commercial Street, Unit H (TCC,) with the conditions that the Special Permit run with 3 Old Dogs, LLC, that all south- and west-facing doors and windows be closed at 10:00 P.M., that no live music be played in the lounge and that the Special Permit expire on January 2, 2016, Tom Roberts seconded and it was so voted, 5-0. Tom Roberts will write the decision.

FY13-41 15 Commercial Street (Residential 1 Zone), David L. Silva on behalf of the Red Inn –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for indoor entertainment primarily for a Sunday Jazz Brunch from Memorial Day weekend to Columbus Day weekend, approximately between the hours of 11 A.M and 2 P.M. Amy Germain and Leif Hamnquist recused themselves because of conflicts of interest. David Nicolau, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta.

Presentation: David Silva and Sean Burke appeared to present the application. Mr. Silva stated that there would be no detrimental effects such as hazard, congestion or environmental degradation as a result of the request. He contends that adding the jazz brunch will bring more people to Town, as it is something unique in Provincetown. He said that over the last ten years, the restaurant has been getting stronger and has made a positive impact on the community and he would like to continue that trend by adding this event. The jazz brunch will also provide a forum for local musicians.

Public Comment: None. There were 4 letters, 3 from abutters and 1 from a non-abutter, in support of the application and 3 letters from abutters in opposition of the application.

Commission Discussion: The Board discussed ways to minimize any music being heard outside of the restaurant. The music will be located in the middle of the building, in the lobby area. Mr. Silva stated that the music cannot be too loud as it would disrupt the diners in the restaurant.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for indoor entertainment specifically for a Sunday Jazz Brunch from Memorial Day weekend to Columbus Day weekend, approximately between the hours of 11 A.M and 2 P.M. at the property located

at 15 Commercial Street (Res 1) with the conditions that the Special Permit run with the owners and will expire on January 2, 2014, Tom Roberts seconded and it was so voted, 5-0.

Joe Vasta will write the decision.

FY13-42 133 Commercial Street (Town Commercial Center Zone), Audrey L.

Mostaghim on behalf of Lorraine Najar and Diarmuid O'Neil –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a reduction in seating from 87 seats to 74 seats. David Nicolau, Amy Germain, Robert Littlefield, Tom Roberts and Harriet Gordon sat on the case. The file contained a letter from Diarmuid O'Neil authorizing Ms. Mostaghim to represent him.

Presentation: Audrey Mostaghim appeared to present the application. She seeks to retain 87 seats and not reduce the seating capacity. After examining the seating plans submitted by the applicant, the Board could not determine how many seats currently exist in the restaurant and suggested that a staff member go to the premises and count seats. The Board also requested that the seating plan be signed and dated by the preparer and that a small spreadsheet be included with the plan that indicates the number of seats located at each table. The Board continued the case to the April 4, 2013 Public Hearing in order to clarify the seating issue.

Amy Germain moved to continue Case #FY13-42 to the April 4, 2013 Public Hearing, Harriet Gordon seconded and it was so voted, 5-0.

FY13-43 50 Commercial Street (Residential 2 Zone), Ethan Poulin on behalf of Richard H. Maniace, Jr. –

The applicant seeks a Special Permit under Article 2, Section 2450, G12, of the Zoning By-Laws for the installation of an in-ground salt-water swimming pool 14'6" by 9'6". Joe Vasta and Tom Roberts recused themselves because of conflicts of interest. David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case.

Presentation: Ethan Poulin appeared to present the application. The pool will not be visible from the street. The pool equipment, which is quiet, will be located in a shed behind the house. The gas tank that provides the fuel to heat the pool will be located underground.

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

Board Discussion: The Board informed Mr. Poulin that the pool would need to be fenced and the water trucked in from out of town. No amplified music would be allowed and only low, downward-facing lighting could be installed around the pool. Mr. Poulin was asked about the social and economic benefits outweighing any detrimental effects that the pool will have, such as hazard, congestion and environmental degradation. David Nicolau suggested that there were no detrimental effects of a pool to outweigh any social or economic benefits. The Board discussed the plot plan that showed the proposed shed being located in the setback area. Mr. Poulin was asked whether the applicant would consider moving the pool and shed to conform to the setback requirement. Otherwise he would have to apply for a Special Permit in order to locate the pool and the shed as

shown on the plot plan. Mr. Poulin informed the Board that the shed will be moved by 3' to meet the 6' setback.

Robert Littlefield moved to grant a Special Permit under Article 2, Section 2450, G12, of the Zoning By-Laws for the installation of an in-ground salt-water swimming pool 14'6" by 9'6" at the property located at 50 Commercial Street, #3 (Res 2), with the condition that new plans be submitted to indicate the revised location of the shed and the pool conforming with all setbacks, Harriet Gordon seconded and it was so voted, 5-0. Harriet Gordon will write the decision.

NEXT MEETING: The next meeting will take place on April 4, 2013. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Amy Germain moved to adjourn at 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on April 4, 2013
David Nicolau, Chair