

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 4, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Robert Littlefield Amy Germain, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist

Members Absent: David Nicolau (excused).

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

WORK SESSION

Vice Chair Robert Littlefield called the Work Session to order at 6:30 P.M.

Ted Malone – ZBA approval of As-Built Plans as per approved Comprehensive Permit for 83 Shank Painter Road.

Ted Malone appeared and submitted documents related to the project at 83 Shank Painter Road, including as-built floor plans dated 9-20-12, drawn by Spring Hill Design, as-built elevation plans dated 9-20-12, drawn by Spring Hill Design, an as-built basement plan dated 9-20-12, a site plan dated April 28, 2008, drawn by East Cape Engineering, an as-built site plan dated January 16, 2013, drawn by East Cape Engineering and a sheet indicating a trans globe exterior lighting fixture from lightingdirect.com. He reviewed the differences between the original plans and the as-builts. The original access to the roadway has been modified. The driveway has been pushed northward towards the abutting driveway, a change based on a recommendation from the Cape Cod Commission after it conducted a traffic study of the area. The green area and permeable areas were increased. A couple of trellises were added on the north side and a garbage gazebo was added on the south side. Low wattage lighting, shaded downward, was added to the exterior areas. Fencing running north-south was added to the rear of the building to separate the building from the parking area and the abutting business. As for the floor plans, the layout of the storage area needed to be reconfigured because of the location of the fire sprinkler system. A washer and dryer were also added in the building.

Amy Germain moved to approve the as-built plans for the Comprehensive Permit at 83 Shank Painter Road, Leif Hamnquist seconded and it was so voted, 6-0. The Board signed the as-built plans.

MINUTES: March 28, 2013 – Amy Germain moved to approve the language as written, Tom Roberts seconded and it was so voted, 6-0.

Vice Chair Robert Littlefield postponed the Work Session at 6:55 P.M.

PUBLIC HEARING

Vice Chair Robert Littlefield called the Public Hearing to order at 7:00 P.M. There were six members of the Zoning Board of Appeals present and none absent.

POSTPONED CASES:

- 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. Joe Vasta recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Leif Hamnquist sat on the case.
Presentation: Peter Demers appeared to present the application. The applicant rented the gazebo at 174 Commercial Street to sell his artwork. A case to display the art will be located 9.5' away from the sidewalk, next to the gazebo, and will be closed and locked at night. Art work will be shown inside the gazebo as well as in the display case.
Public Comment: None. There were 2 letters in support of the application.
Board Discussion: The Board questioned Mr. Demers about the cabinet. He indicated that it would be secured to the side of the gazebo. The Board requested that the location of the cabinet be marked precisely on the site plan and that the number of objects to be displayed be noted. Mr. Demers replied that there will be 31 pieces of art displayed in the cabinet. The Board was concerned about the potential safety hazard posed by the cabinet blocking the sightlines of bicyclists, pedestrians and vehicles, both on Commercial and Winthrop Streets. The Board discussed the safety issue related to mounting the cabinet to the gazebo due to high winds. The Building Commissioner said that he could look at the cabinet if the Board requested, although that is something he would not normally do for outside displays.
Tom Roberts moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of art contained in a cabinet at the property located at 174 Commercial Street (TCC), Harriet Gordon seconded and it was so voted, 4-1 (Amy Germain opposed).

- 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. This case is postponed until the April 18, 2013 Public Hearing.

CONTINUED CASES:

- FY13-42** **133 Commercial Street (Town Commercial Center Zone), Audrey L. Mostaghim on behalf of Lorraine Najjar 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. There was a request to continue this case until the May 2, 2013 Public Hearing. *Amy Germain moved*

to grant the request to continue Case #FY13-42 to the May 2, 2013 Public Hearing, Tom Roberts seconded and it was so voted, 6-0.

NEW CASES:

FY 13-44 540-542 Commercial Street (Residential 3 Zone), Lester J. Murphy, Attorney, on behalf of Provincetown Hospitality, LLC –

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for flex-seating to allow 30 outdoor seats for service at the pool from 12:00 to 4:00 P.M. and the courtyard from 4:00 P.M. to 10:00 P.M. and in the lounge during inclement weather. Leif Hamnquist recused himself because of a conflict of interest. Robert Littlefield, Amy Germain, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case.

Presentation: Attorney Lester J. Murphy and Elaine Quigley appeared to present the application. Attorney Murphy gave a brief history of the permitting of the property. A 15-seat lounge was granted a Special Permit to serve alcohol and food in 2002. The hours of operation for food were from 7:00 A.M. to 11:00 P.M. and 12:00 P.M. to 1:00 A.M. for alcohol. In 2003, a Special Permit was granted allowing the outdoor service of food and beverages in the pool area and on the patio on a flex-seating basis with 15 seats. Last year, the Board granted a Special Permit to increase the number of seats to 30, based upon an Economic Development grant issued to the applicant. The 30 seats were located in the patio/courtyard area or lounge with outdoor service ending at 10:00 P.M. in the courtyard. The current proposal is to include the pool in the outdoor service area from 12:00 P.M. to 4:00 P.M. The courtyard area would be available for service from 4:00 P.M. to 10:00 P.M. During all other times and inclement weather the service would be within the lounge area. No police reports have been filed regarding the property. The applicant is not looking for an entertainment license. Attorney Murphy argued that the social, economic or other benefits for the neighborhood or Town outweigh any adverse effects such as hazard, congestion or environmental degradation. The operators will be able to offer enhanced amenities to their guests by allowing service in the pool area and continue to ensure employment opportunities, both of which are in keeping with the Local Comprehensive Plan. He does not see any adverse effects as a result of this proposal. The fact that the service areas are immediately adjacent to guest rooms will be a deterrent to noise. The courtyard area has 6 four-tops with an additional 6 chairs and the pool area will have 22 lounge chairs and 2 four-tops.

Public Comment: David Maril, an abutter, spoke in support of the application. Brian O'Malley, an abutter, was in support of the application as long as only hotel guests were extended the service of food and alcohol. John Livingstone had no issues with the proposal, but asked a question about the number of seats. Joan Gaffney had a concern about the establishment turning into a bar if the current owners sold the property. There were 7 letters from abutters in support and 2 letters, 1 from an abutter, in opposition to the application.

Board Discussion: The Board questioned the applicant about service to the general public. Attorney Murphy explained that as a condition of the applicant's innholder's license, a member of the public cannot be denied food and beverage if

requested, however the service of food and alcohol are not advertised to the public. The Board discussed conditions and requested that the seating plan be dated and signed by the preparer.

Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for flex-seating to allow 30 outdoor seats for service at the pool from 12:00 to 4:00 P.M. and the courtyard from 4:00 P.M. to 10:00 P.M. and in the lounge during inclement weather at the property located at 540-544 Commercial Street (Res 3) with the conditions that the Special Permit will run with the applicant only and will expire on January 2, 2016, there shall be no entertainment or amplified music, the service of alcohol shall cease at 10:00 P.M. in the courtyard, at 4:00 P.M. at the pool and at 1:00 A.M. in the lounge, there shall be no food service in the courtyard or poolside, there shall be no public advertisement specific to the lounge, courtyard or pool and no signs advertising same and signage will be placed on menus stating that no alcohol shall leave the designated service areas, Harriet Gordon seconded and it was so voted, 5-0. Amy Germain will write the decision.

FY13-45

50 Commodore Avenue (Residential 1 Zone), Marcey Oil Company, Inc. –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration and extension of a pre-existing, non-conforming oil storage facility use by removal of one oil storage tank and installation of a propane storage tank. Joe Vasta disclosed that he is a customer of the applicant, however the latter did not object to his being seated on the case. Robert Littlefield, Amy Germain, Tom Roberts, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Attorney Lester J. Murphy, Jon Salvador and Jodie Ameden appeared to present the application. The applicant seeks to alter a pre-existing, non-conforming use of a property. An oil storage tank will be removed from the site and replaced with a propane storage tank. The use of the property will remain as a petroleum product storage facility. This site has been used for that purpose since the 1950s. The proposed storage tank has a capacity of 18,000 gallons, but will only hold 14,000 gallons of propane gas. The applicant's customers have increasingly converted to propane use so the demand for this product has increased. The nearest propane storage facility is in Orleans. There is a need for this type of storage facility as the Town's water distribution and sewer systems generators are both powered by propane gas. If there were a sustained power outage, the Town would have to procure propane from Orleans. Installing the proposed propane tank would be safer and a less problematic issue for the Town. Attorney Murphy argued that the proposed project is less substantially detrimental to the Town and the neighborhood than what exists and will be of great benefit to the Town. The tank will be placed on a concrete pad and the property is enclosed by a chain-link fence. Ms. Ameden explained how the tank will be set up and enumerated the added safety features of the facility.

Public Comment: Lee Kelly spoke in support of the application. There was 1 letter in favor of the application, a letter requesting vegetative cover for the new tank, a letter from DPW director, David Guertin, in support of the application and

explaining its benefits to the Town and a letter from the Fire Chief, Mike Trovato, confirming the need for the facility, pointing out the safety issues involved and how they will be addressed by the applicant, including the installation of deluge piping and a venting system.

Board Discussion: The Board questioned the applicant about the possible use of vegetation around the tank, applauded the applicant for the safety features associated with the propane storage tank and found that the installation of the tank would not be substantially more detrimental to the Town or the neighborhood than the existing use of the property.

Amy Germain moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the alteration and extension of a pre-existing, non-conforming oil storage facility use by removal of one oil storage tank and installation of a propane storage tank at the property located at 50 Commodore Avenue (Res 1), Tom Roberts seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY13-46 5 Atlantic Avenue (Residential 3 Zone), Chris Beasley on behalf of Jay Zimmerman –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer and roof deck up and along a pre-existing, non-conforming side yard setback. Amy Germain recused herself because of a conflict of interest. Robert Littlefield, Tom Roberts, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Chris Beasley and Jay Zimmerman appeared to present the application. The applicant seeks to construct a dormer measuring 6' by 15' on the north side of the structure and a roof deck. The non-conformancy is the north side yard setback on the property. According to Mr. Beasley, the dormer is a practical addition and in keeping with other structures in the neighborhood. The project will provide work for local carpenters who, along with the applicant, support the local community and its businesses.

Public Comment: Dan McCurdy spoke in support of the application. There were 3 letters in support of the application.

Board Discussion: The Board questioned Mr. Beasley the project, including the nature of the non-conformancy and the location of the dormer and deck. The Board determined that the proposed changes were not substantially more detrimental to the neighborhood or Town than the non-conformancy that exists.

Tom Roberts moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer and roof deck up and along a pre-existing, non-conforming side yard setback at the property located at 5 Atlantic Avenue (Res 3), Leif Hamnquist seconded and it was so voted, 5-0. Leif Hamnquist will write the decision.

FY13-47 5 Ryder Street (Town Commercial Center Zone), Andrew Pollock -

The applicant seeks a Special Permit under Article 2, Section 2440, E3f and Article 3, Section 3420 of the Zoning By-laws to operate a seasonal outdoor farmer's market at the Ryder Street parking lot, subject to dates approved by the

Board of Selectmen. Robert Littlefield, Amy Germain, Harriet Gordon, Joe Vasta and Leif Hamnquist sat on the case.

Presentation: Andrew Pollock appeared to present the application. The farmer's market has operated at the site for six years and endeavors to keep the property clean and congestion-free. It is a benefit to the Town as it attracts both tourists and residents of the Cape alike.

Public Comment: Brian O'Malley spoke in support of the application. John Cicero spoke in opposition to the application. There were no letters in the file.

Board Discussion: The Board asked if any police reports existed for incidents or complaints related to the property. There were none. The Board discussed how Mr. Cicero might deal with his allegations that the market is disruptive to his tenants and business.

Amy Germain moved to grant a Special Permit under Article 2, Section 2440, E3f and Article 3, Section 3420 of the Zoning By-laws to operate a seasonal outdoor farmer's market at the Ryder Street parking lot, subject to dates approved by the Board of Selectmen at the property located at 5 Ryder Street (TCC) with the condition that the Special Permit run with the applicant, Harriet Gordon seconded and it was so voted, 4-0-1 (Robert Littlefield abstaining). Joe Vasta will write the decision.

Vice Chair Robert Littlefield adjourned the Public Hearing at 9:38 P.M.

WORK SESSION

Vice Chair Robert Littlefield reconvened the Work Session at 9:38 P.M.

PENDING DECISIONS:

FY13-35 **359 Commercial Street, Unit H (Town Commercial Center Zone), Cassandra Benson of Harbor Lounge, Inc., on behalf of 3 Old Dogs, Inc. –**
David Nicolau, Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case. Tom Roberts read the decision. *Robert Littlefield moved to approve the language as amended, Leif Hamnquist seconded and it was so voted, 4-0.*

FY13-41 **15 Commercial Street (Residential 1 Zone), David L. Silva on behalf of the Red Inn –**
David Nicolau, Robert Littlefield, Tom Roberts, Harriet Gordon and Joe Vasta sat on the case. Joe Vasta read the decision. No action was taken.

FY13-43 **50 Commercial Street (Residential 2 Zone), Ethan Poulin on behalf of Richard H. Maniace, Jr. –**
David Nicolau, Robert Littlefield, Amy Germain, Harriet Gordon and Leif Hamnquist sat on the case. Harriet Gordon read the decision. No action was taken and no revised plans had been submitted by the applicant.

NEXT MEETING: The next meeting will take place on April 18, 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 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on April 18, 2013
David Nicolau, Chair