

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 24, 2013**

MEETING HELD IN THE JUDGE WELSH ROOM

Members Present: Robert Littlefield, Amy Germain, Tom Roberts (left at 8:30 P.M.) and Joe Vasta.

Members Absent: David Nicolau (excused), Harriet Gordon (excused) and Leif Hamnquist (excused).

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

PUBLIC HEARING

Vice Chair Robert Littlefield called the Public Hearing to order at 7:03 P.M. There were four members of the Zoning Board of Appeals present and three absent.

CONTINUED CASES:

FY13-16 **7 Conant Street (*Residential 3 Zone*), Conant West End, LLC –**
The applicant seeks a Special Permit under Article 2, Section 2550 and Article 3, Section 3110 of the Zoning By-Laws to renovate two pre-existing, non-conforming cottages. The non-conformity consists of the maximum number of principal buildings on the lot. The Historic District Commission approved a design that does not require zoning relief. The applicant requested to withdraw the application. *Tom Roberts moved to grant the request to withdraw Case #FY13-16, Joe Vasta seconded and it was so voted, 3-0-1 (Amy Germain abstaining).*

FY13-22 **303 Commercial Street (*Town Commercial Center Zone*), John Drago of Timtanman Corp. d/b/a Post Office Café -**
The applicant seeks a Special Permit under Article 2, Sections 2440 and 2460 of the Zoning By-Laws for the outdoor service of food and alcoholic beverages on the patio area at 307 Commercial Street to be operated by the Post Office Café. Vice Chair Robert Littlefield explained to the applicant that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, he had the choice of moving forward or postponing until a five-member Board could be seated. The applicant chose to proceed. Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case. David Gardner, Assistant Town Manager, explained that, according to Town Counsel, a signed lease between the two parties should not be a requirement of the Special Permit. However, Town Counsel recommends that the Special Permit include a letter from the owner of 307 Commercial Street granting permission for

the use of the premises and evidence of a lease between the parties.

Presentation: John Drago, Candice Bowden and Mick Rudd appeared to discuss the application. Mr. Drago and the Board reviewed the proposed conditions of the Special Permit as discussed at a previous hearing. The applicant submitted a picture of the fence and planter and a plot plan showing the location of the seating on the premises.

Documents Submitted: Plot plan, picture of the fence and planter and a sample of signage to be installed in the patio area.

Board Discussion: The Board discussed additional recommendations by Town Counsel, including an express condition that the holder have, and continue to have, control over the entire premises that is the subject of the Special Permit and an express condition regarding the continued control by the lessee over the leased premises. This condition should also make it clear that a lapse or termination of the lease would require that the owner of 307 Commercial Street to seek a new Special Permit.

Robert Littlefield moved to grant a Special Permit under Article 2, Sections 2440 and 2460 of the Zoning By-Laws for the outdoor service of food and alcoholic beverages on the patio area at 307 Commercial Street to be operated by the Post Office Café at the property located at 303 Commercial Street (TCC) with the following conditions:

- *the hours of operation for the Post Office Café are 9:00 A.M. to 11:00 P.M., except in the high season (June 1st to September 30th) when the hours of operation are 8:00 A.M. to 12:00 A.M.;*
- *the season for the usage of the patio located at 307 Commercial Street shall be from April 1st to November 1st;*
- *the posting of appropriate signage outside stating that no alcohol will be removed from the premises;*
- *the Special Permit for the leased portion of the premises located at 307 Commercial Street shall be terminated if the lease between the parties lapses or is otherwise terminated, in which case the owner of 307 Commercial Street will be required to seek a new Special Permit, one that defines the new Special Permit premises, including any new kitchen area;*
- *the Special Permit shall expire on 01/02/14;*
- *table service only will be allowed on the leased premises;*
- *a fence and planter will be used as a barrier to block off the leased area from Commercial Street; and*
- *the holder of the Special Permit shall have sole control over the leased area that is the subject of the Special Permit.*

Amy Germain seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY13-27

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 re-arrangement of the existing seating plan and to extend the

hours of operation from 10:00 P.M. to 11:00 P.M. Vice Chair Robert Littlefield explained to the applicant that since there were only four members of the Board seated on the case and the granting of a Special Permit required four assenting votes, she had the choice of moving forward or postponing until a five-member Board could be seated. The applicant chose to proceed. Robert Littlefield, Amy Germain, Tom Roberts and Joe Vasta sat on the case.

Documents Submitted: Application for Hearing, floor plan, pictures of the bar from the east and west, a lease and letters of support.

Presentation: Cass Benson appeared to present the application. Ms. Benson is requesting to extend the hours of operation to 11:00 P.M. She gave a brief history of the premises, noting that most of the commercial establishments in the neighborhood stayed open until 11:00 P.M. The Harbor Lounge provides access to the beach, in keeping with the requirements of the Chapter 91 license for the property, and provides ADA-accessible public restrooms. The bar is non-smoking and smoking is not allowed on the porch or on the deck, both of which, according to Ms. Benson, are monitored by staff. People go outside and down to the beach to smoke and she has put an ashtray down there for cigarette butts in an effort to keep the beach clean and not to encourage smoking. The bar has only two 8" speakers located on the beach wall. These were moved from a previous location on a wall behind the bar. Ms. Benson's closest abutter, who lives upstairs, is supportive of her request. She is open for 9 months of the year and provides employment for five people. She stated that her request was in keeping with the goals of the Local Comprehensive Plan, Chapter 5, Section 5.2, Policy C and Goal 5.

Public Statements: Meg Stewart and Liam McDonigle spoke in favor of the application. Cherie Mittenthal spoke in opposition to the application. There were 6 letters from abutters, 1 letter from the condominium association in which the unit is located and a petition signed by 86 people, 56 from the East End, in favor of the application. There were 10 letters from abutters in opposition to the application.

Commission Discussion: The Board questioned Ms. Benson about the changes in the seating plan and the issues of noise and smoke raised by the abutters. The Board noted that there had been no noise complaints reported to the police even though many of the letters from the abutters complained about that issue. In response to a request to not allow smoking on the beach, but to tell people to smoke on the street in front of the establishment instead, Ms. Benson stated that she cannot prohibit people from smoking on the beach, as it is a public area. However, she did say that she would be willing to put a up a sign that asked smokers to be respectful of the neighbors and move away from the beach in front of the abutting condominium. Amy Germain asked Ms. Benson if she would consider closing her windows and doors and installing air conditioning. She stated that she was not willing to consider that option. After an informal poll of the Board by the Vice Chair, the applicant requested to withdraw without prejudice. *Tom Roberts moved to grant the request to withdraw Case # FY13-27 without prejudice, Joe Vasta seconded and it was so voted, 4-0.*

POSTPONED CASES:

- FY13-23** **7 Browne Street (*Residential 3 Zone*), Joseph Freitas –**
 The applicant seeks a Special Permit under Article 2, Section 2640 and Article 3, Section 3110 of the Zoning By-Laws to construct a second floor deck addition up and along pre-existing, non-conforming setbacks on a single family dwelling and for a deviation in building scale. This case is postponed until the February 7, 2013 Public Hearing.
- FY13-25** **32 Ship’s Way Road (*Residential 1 Zone*), Pavel Fiodarau on behalf of Paul Gable and Tony Lopez –**
 The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and/or a Variance under Article 5, Section 5222 of the Zoning By-Laws to construct an attached farmer’s porch and an attached garage.
- FY13-26** **32 Ship’s Way Road (*Residential 1 Zone*), Pavel Fiodarau on behalf of Paul Gable and Tony Lopez –**
 The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along pre-existing, non-conforming lot lines and for a Variance under Article 5, Section 5222 of the Zoning By-Laws to construct a farmer’s porch and a detached garage within existing setbacks. These cases are postponed until the February 7, 2013 Public Hearing.
- FY13-28** **141 Bradford Street, *Town Commercial Center Zone*, Joseph Freitas on behalf of 141 Bradford Natural Market –**
 The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the increase in interior non-service seating from six seats to eighteen seats. This case is postponed to the February 7, 2013 Public Hearing.

Vice Chair Robert Littlefield adjourned the Public Hearing at 8:30 P.M.

WORK SESSION

Vice Chair Robert Littlefield called the Work Session to order at 8:30 P.M.

MINUTES: January 10, 2013 – Amy Germain moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.

January 17, 2013 – Amy Germain moved to approve the language as written, Joe Vasta seconded and it was so voted, 3-0.

NEXT MEETING: The next meeting will take place on February 7, 2013. It will consist of a Work Session at 6:45 P.M. followed by a Public Hearing at 7:00 P.M. in the Judge Welsh Room.

ADJOURNMENT: *Amy Germain moved to adjourn at 8:34 P.M. and it was so voted unanimously.*

These minutes were approved by a vote of the Zoning Board of Appeals at its meeting on February 7, 2013.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on February 7, 2013
David Nicolau, Chair