

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
October 15, 2009

MEETING HELD IN THE GRACE GOUVEIA BUILDING

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

Members Absent: None.

Others Present: Russell Braun (Building Commissioner), 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 6:45 P.M

MINUTES: October 1, 2009 – *Anne Howard moved to approve the language as written, Amy Germain seconded and it was so voted, 5-0.*

The Board decided to cancel the November 19, 2009 hearing, but discussed the possibility of scheduling a hearing on November 12, 2009. Maxine will contact Board members if that hearing is scheduled.

The Board reviewed and discussed the revised ZBA application. Several changes were made.

Patrick Eleey moved to accept the revised “Application for a Hearing” as amended, Anne Howard seconded and it was so voted, 5-0.

Chair Patrick Eleey postponed the Work Session at 7:04 P.M.

PUBLIC HEARING

Chair Patrick Eleey called the Public Hearing to order at 7:04 P.M. There were five members of the Zoning Board of Appeals present and none absent.

NEW CASES:

- 2009-51** **157 Commercial Street (*Town Commercial Center Zone*), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –**
The applicant seeks a Special Permit under Article 2, Section 2440-B5, Permitted Principal Uses, and Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to re-establish the use of the property as a restaurant/bar allowing outdoor seating for not more than 22 persons with full service between the hours of 9:00 A.M. and 11:00 P.M. and to re-establish the full alcohol license.
- 2009-52** **157 Commercial Street (*Town Commercial Center Zone*), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –**
The applicant seeks a Special Permit under Article 4, Section 4170 of the Zoning By-Laws to request conversion of the second floor restaurant dining area to a one-bedroom residential dwelling unit to serve as owner housing.
- 2009-53** **157 Commercial Street (*Town Commercial Center Zone*), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –**
The applicant seeks a Special Permit under Article 3, Section 3110, Non-Conformancy, and Article 3, Section 3340, Building Scale, of the Zoning By-Laws to extend the front right portion of the structure into the footprint of the non-conforming shed additions (side yard setbacks), with the sheds to be removed, and to request a deviation from the maximum allowed scale units with the addition of two shed dormers and a covered porch.
- 2009-54** **157 Commercial Street (*Town Commercial Center Zone*), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –**
The applicant seeks a Special Permit under Article 2 Section 2560, Dimensional Schedule, and Article 4, Section 4140, Lot Coverage, of the Zoning By-Laws to further increase the pre-existing, non-conforming maximum allowed lot coverage, from 49% to 52%, with the addition of a covered porch on the south side of the building.
- 2009-55** **157 Commercial Street (*Town Commercial Center Zone*), Neal Kimball and Kevin J. Redmond, Esq. on behalf of the Martin Family Realty Trust, Virginia Martin, Trustee –**
The applicant seeks a Parking Variance under Article 2, Section 2471 of the Zoning By-Laws to provide off-street parking for the addition of a residential unit. Amy Germain disclosed that she is an abutter to an abutter of this property, but is confident that she can render a fair and impartial decision in these cases. The applicant has no objection to her being seated. Patrick Eleey, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on all of the cases.

Presentation: Kevin J. Redmond, Esq., representing Nick Accardi, the potential buyer of the property, and Neal Kimball appeared to present the applications. The applicant seeks to maintain the premises as a restaurant/bar and to convert the second floor, previously a dining area, into a one-bedroom residential unit in order to make the property economic viable for an owner to operate the business. The total number of seats for the restaurant/bar would remain the same. The applicant would like to extend the hours of service, to 11:00 P.M., for an existing Special Permit that allows for patio dining service until 8:00 P.M., consistent with other restaurant/bar establishments in Town.

Mr. Kimball explained the proposed plans to the Board. The entryway on the east side of the building will remain the same and a deck on the south side of the building will be removed. A shed located on the west side of the property will also be removed. The building will be extended by 3' 4" to the west side. The addition of the proposed shed dormers will allow for more living space on the second floor. There will only be a slight increase in scale units. The proposed scale will be 115.19 scale units and the maximum allowed scale is 111.06 s.u.

The applicant also seeks a Parking Variance, as there is no way to incorporate parking on the lot itself. There are metered parking spaces in the vicinity and a public lot at School and Tremont Streets. The proposed covered porch on the south side of the building was denied by the Historic District Commission, consequently the applicant would like to withdraw the application for Case #2009-54 because, with the elimination of the porch and the removal of one of the sheds on the west side, the lot coverage will essentially remain the same.

Public Comment: Barry Martin and Charles Lawton spoke in favor of the applications. Attorney Christopher J. Snow, representing an abutter, submitted a memorandum in outlining his client's opposition to the project. Patricia Rieker, speaking for the 5 units of an abutting condominium association, spoke against the applications. There were 2 letters in opposition and 3 letters of concern about past instances of loud music emanating from the premises as well as other activities disruptive to the neighborhood. The public portion of the hearing of these applications remains open because of the late submittal of new plans.

Board Discussion: The Board questioned Mr. Kimball, Mr. Accardi and Attorney Redmond. Mr. Kimball added that a 6' high sound fencing would be installed to diminish the sound emanating from the patio and more green space would be created. In addition, most outdoor tables would be situated close to the building. After deliberating, the Board asked the applicant for more information, including a plan for where the 56 seats would be located, both inside and outside of the building, clarification about how this proposal is in keeping with the LCP, a plan for garbage pest control at the premises, a plan for how and where food and alcohol deliveries will be made. The Board also requested that new plans, after HDC approval, and packets be delivered on the Monday after the next HDC hearing. Mr. Kimball informed the Board that alternate parking arrangements in the neighborhood will be explored. The Board will also endeavor to obtain any police reports, received by the Licensing Board, pertaining to noise complaints at the premises before the next hearing.

Patrick Eeley moved to grant the request to withdraw Case #2009-54, Elisabeth Verde seconded and it was so voted, 5-0.

Patrick Eeley moved to continue Cases # 2009-51, 2009-52, 2009-53 and 2009-55 to November 12, 2009, Robert Littlefield seconded and it was so voted, 5-0. If the November 12, 2009 hearing is not scheduled, Maxine will contact the parties in interest.

2009-56 359 Commercial Street, Units #G and H (Town Commercial Center Zone), 3 Old Dogs, LLC, Meg A. Stewart, Manager –

The applicant would like consideration pursuant to M.G. L. c. 40A, Section 16 for a determination of specific and material changes in the conditions upon which the previous unfavorable action was based. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on the case.

Presentation: Attorney Kevin J. Redmond, Cass Benson, Jerry Anathan, Meg Stewart and Maureen Wilson appeared to present the application. The proposal presented by the applicant is for a mixed use of the property to include a lounge, with the service of alcoholic and non-alcoholic beverages, comprising 30% of the area and five retail shops, open to the public, an interior green courtyard and public restrooms, comprising 70% of the premises. The proposed closing time for the lounge would be no later than 10:00 P.M., no food would be cooked at the premises and the applicants will be the operators of the lounge.

Public Comment: Joseph Zaloom, trustee for the Mews Condominium, Lindsay Alloway and Mark Leach, Francine D'Olimpio and Lynn Gentemann spoke in favor of the application. Heather Bruce was looking for more information about the project and T Gandolfo, an abutter, had concerns about the potential for noise coming from the lounge. There was 1 letter from the Planning Board expressing its opinion that the petition was not repetitive, 1 letter in opposition to the proposal and 43 form letters, 34 from direct abutters, in support of the proposal.

Board Discussion: The Board deliberated on the matter.

Robert Littlefield moved to determine that there were specific and material changes in the conditions upon which the previous unfavorable action related to 359 Commercial Street, Units G and H, was based and sufficient to meet the standard pursuant to M.G.L. c.40A, Section 16, Elisabeth Verde seconded and it was so voted, 5-0. Patrick Eeley will write the decision. Attorney Redmond submitted a written decision which will be taken under advisement.

2009-57 359 Commercial Street (Town Commercial Center Zone), 3 Old Dogs, LLC –

The applicant requests a Special Permit under Article 2, Section 2440-B5, Permitted Principal Uses, of the Zoning By-Laws to operate a 52-seat (total 85 persons) lounge serving alcoholic and non-alcoholic beverages pursuant to a general on-site pouring license.

2009-58 359 Commercial Street (Town Commercial Center Zone), 3 Old Dogs, LLC –

The applicant requests a Special Permit under Article 2, Section 2460, Special Permit Requirements, to operate a 52 seat (total 85 persons) lounge serving alcoholic and non-alcoholic beverages pursuant to a

general on-site pouring license. Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases.

Presentation: Attorney Kevin J. Redmond, Cass Benson, Jerry Anathan, Meg Stewart and Maureen Wilson appeared to present the applications. Ms. Stewart briefly reviewed the project and presented the operating plan. The applicant seeks to open a lounge serving alcoholic and non-alcoholic beverages. No food will be served and no live entertainment or dancing will be allowed. The plan will be to be open from April to January and the closing time will be 10:00 P.M. Trash will be stored in the basement until it can be removed from the property. In addition, the proposal includes 5 retail shops, one of which will sell pre-prepared foods and groceries for boaters, beach chair and umbrella rentals, a strolling courtyard open to the public, a shelter from inclement weather, public information displays and a view of the Harbor. An on-site office will provide management services.

Public Comment: None. The letters in support of the project include Mr. Zaloom's letter, 2 letters from unit owners of the Mews Condominium, 6 letters from the abutting condominium and 21 form letters from residents within a 300' radius of the premises.

Board Discussion: The Board questioned Attorney Redmond, Ms. Stewart, Ms. Wilson, Ms. Anathan and Ms. Benson.

2009-57 *Elisabeth Verde moved to grant a Special Permit under Article 2, Section 2440-B5, Permitted Principal Uses, of the Zoning By-Laws to operate a 52-seat (total 85 persons) lounge serving alcoholic and non-alcoholic beverages pursuant to a general on-site pouring license, with the conditions that the hours of operation for the lounge will be between 11:00 A.M. and 10:00 P.M. and that no live music be allowed in the lounge, and contingent upon the successful title transfer to 3 Old Dogs, LLC, at the property located at 359 Commercial Street, Units G and H (TCC), Robert Littlefield seconded and it was so voted, 5-0.* Anne Howard will write the decision.

2009-58 *Elisabeth Verde moved to grant a Special Permit under Article 2, Section 2460, Special Permit Requirements, to operate a 52 seat (total 85 persons) lounge serving alcoholic and non-alcoholic beverages pursuant to a general on-site pouring license, with the conditions that the hours of operation for the lounge will be between 11:00 A.M. and 10:00 P.M. and that no live music be allowed in the lounge, and contingent upon the successful title transfer to 3 Old Dogs, LLC, at the property located at 359 Commercial Street, Units G and H (TCC), Robert Littlefield seconded and it was so voted, 5-0.* Anne Howard will write the decision.

Chair Patrick Eeley adjourned the Public Hearing at 10:55 P.M.

WORK SESSION

Chair Patrick Eeley reconvened the Work Session at 10:55 P.M.

PENDING DECISIONS:

2009-49 **101 Bradford Street (Residential 3 Zone), Keith Gilmore on behalf of Tim Barry –** Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases. Robert Littlefield read the decision. *Anne Howard moved to approve the language as written, Patrick Eeley seconded and it was so voted, 5-0.*

2009-50 **101 Bradford Street (Residential 3 Zone), Keith Gilmore on behalf of Tim Barry –** Patrick Eeley, Elisabeth Verde, Robert Littlefield, Amy Germain and Anne Howard sat on both cases. Robert Littlefield read the decision. *Anne Howard moved to approve the language as written, Patrick Eeley seconded and it was so voted, 5-0.*

NEXT MEETING: The next meeting will take place on November 12, 2009. It will consist of a Work Session at 6:45 P.M. followed by a Public Hearing at 7:00 P.M. If this meeting is canceled, the next meeting will take place on December 3, 2009. It will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

The Board briefly discussed an application submitted for an alternate position.

Patrick Eeley moved to deny the application, Robert Littlefield seconded and it was so voted, 4-0-1 (Amy Germain abstaining).

ADJOURNMENT: *Amy Germain moved to adjourn at 11:15 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 December 3, 2009.

Respectfully submitted,

Ellen C. Battaglini
Approved by _____ on _____, 2009
Patrick Eeley, Chair