

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
May 3, 2012**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Anne Howard, Robert Littlefield, Amy Germain, David Nicolau, Harriet Gordon and Joe Vasta (arrived at 6:50 P.M.).

**Members Absent:** Tom Roberts and Elisabeth Verde (both excused).

**Others Present:** Ilana M. Quirk, Esq. (Town Counsel), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Anne Howard called the Work Session to order at 6:00 P.M. She then called for a motion to go into Executive Session pursuant to M.G.L. c. 30A, s.21, Clause 3 for the purpose of discussing strategy relating to pending litigation.

*Robert Littlefield moved to go into Executive Session pursuant to M.G.L. c. 30A, s.21, Clause 3, for the purpose of discussion strategy relating to pending litigation, Amy Germain seconded and it was so voted by a roll call, 5-0. Robert Littlefield: Yes; Amy Germain: Yes; David Nicolau: Yes; Harriet Gordon: Yes; and Anne Howard: Yes.*

**PUBLIC HEARING**

Chair Anne Howard called the Public Hearing to order at 7:09 P.M. There were five members of the Zoning Board of Appeals present and two absent. She inquired of the applicant of Case # FY12-63, Lucy Butler, if she would consent to the Board's hearing of Case #FY12-65 before her matter due to a previous commitment of counsel for El Mundo, LLC. Ms. Butler assented.

**NEW CASES:**

**FY12-65**      **269 Commercial Street (Town Commercial Center Zone), Benjamin E. Zehnder, LLC on behalf of El Mundo, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the outdoor seating for 20 patrons in the rear (waterfront) portion of the property on a flex basis. David Nicolau recused himself because of a conflict of interest. Anne Howard, Robert Littlefield, Amy Germain, Harriet Gordon and Joe Vasta sat on the case.

**Presentation:** Attorney Ben Zehnder and Bea Chamberlain appeared to present the application. The applicant seeks to add 20 seats to a small, semi-enclosed

patio area in the rear of the premises. The patio area is 23' by 17'. Several establishments in the near vicinity offer patrons outdoor seating. The rear seating area of the restaurant is fairly dense so the applicant is proposing to move 10 of those seats outside and then utilize 10 additional seats that she is permitted for, but has not been using. Attorney Zehnder argued that the social, economic and other benefits to the neighborhood or Town outweigh any adverse effects such as hazard, congestion and environmental degradation. Dining is essentially a social experience and one of the reasons why tourists come to Town. A social benefit to the Town is that the applicant will be providing a small, beautiful outdoor dining area to broaden that experience. He added that the economic benefits are that the change will broaden the appeal of the restaurant and provide a better dining experience for patrons and will provide the applicant with an ability to make the business a viable economic endeavor. Additional outdoor seating will increase the number of wait staff working, the number of patrons, the products being sold, the meals taxes being generated. The adverse effects of the proposal are the same as for any other outdoor restaurant environment; noise, litter, lighting, smells and congestion. Attorney Zehnder spoke to the effect these would have on abutting properties. The residences that abut the property and other properties in the TCC zone have to expect some reasonable inconveniences with respect to this type of activity. He argued that the economic benefits outweigh the adverse effects. The hours of operation will remain 11:30 A.M. to 10:00 P.M.

**Public Comment:** Judy Cicero, who owns the property, spoke in favor of the application. Attorney Christopher Snow, representing Phyllis Schlosberg, an abutter to the property, and Paul Schlosberg spoke against the proposal. There were 4 letters in the file in support of the application and none in opposition.

**Board Discussion:** The Board questioned Attorney Zehnder and Ms. Chamberlain. Attorney Zehnder suggested that the Board consider granting the Special Permit to the applicant and not to the property. The Board discussed potential conditions if a Special Permit were granted.

***Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the outdoor seating for 16 patrons in the rear (waterfront) portion of the property on a flex basis for the property located at 269 Commercial Street (TCC) with the following conditions:***

- ***The Special Permit shall expire on January 2, 2013;***
- ***The restaurant is open from May 1<sup>st</sup> to October 25<sup>th</sup>;***
- ***No amplified music shall be allowed outdoors;***
- ***No music or entertainment shall be allowed outdoors;***
- ***Outdoor seating shall be limited to 16;***
- ***The last patio seating shall be at 9:00 P.M. and the patio shall be vacated at 10:00 P.M.;***
- ***The bus station serving the patio shall be located inside the building;***  
***and***
- ***The Special Permit shall run with the applicant.***

***Anne Howard seconded and it was so voted, 5-0.*** Harriet Gordon will write the decision.

## **POSTPONED CASE:**

- FY12-63**     **277A Commercial Street (Town Commercial Center Zone), Lucy Butler –**  
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of flags, windsocks, kites and water toys. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Harriet Gordon sat on the case.  
**Presentation:** Lucy Butler appeared to present the application.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board briefly questioned Ms. Butler.  
*Amy Germain moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outside display of flags, windsocks, kites and water toys at the property located at 277A Commercial Street (TCC), Robert Littlefield seconded and it was so voted, 5-0.*

## **NEW CASES:**

- FY12-66**     **24 Pleasant Street, Unit U-B3 (Residential 3, Zone), Sharon Louise Bunn and Cynthia Lou Gilman –**  
The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along a pre-existing, non-conforming side yard setback. Anne Howard, Robert Littlefield, Amy Germain, David Nicolau and Joe Vasta sat on the case.  
**Presentation:** Sharon Louise Bunn and Cynthia Lou Gilman appeared to present the application. The applicants seek to build a dormer in the loft bedroom in order to gain more head room.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board questioned Ms. Bunn and Ms. Gilman. The Board determined that the project was not substantially more detrimental to the neighborhood or Town than what exists.  
*David Nicolau moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer up and along a pre-existing, non-conforming side yard setback at the property located at 24 Pleasant Street (Res 3), Joe Vasta seconded and it was so voted, 5-0.* David Nicolau will write the decision.
- FY 12-67**     **28 Nickerson Street (Residential 3 Zone), Mark P. Kinnane of Cape Associates, Inc. on behalf of Patty Rogers –**  
The applicant seeks a Special Permit under Article 3, Section 3110 and Section 3115 of the Zoning By-Laws to demolish and reconstruct the larger unit of a two-unit, one-story structure (approximately two-thirds of the existing structure to be demolished) and under Article 2, Section 2640 of the Zoning By-Laws for a deviation in building scale. There was a request to postpone this case until the May 17, 2012 Public Hearing. *David Nicolau moved to accept the request for a postponement of Case No. FY12-67 to the May 17, 2012 Public Hearing, Amy Germain seconded and it was so voted, 6-0.*
- FY12-68**     **401 ½ Commercial Street (Town Commercial Center Zone), Steven H. Cook of**

**Cotuit Design, Inc. on behalf of Juliet Gluck –**

The applicant seeks a Special Permit under Article 2, Section 2540 of the Zoning By-Laws to demolish an existing 12' by 24' cottage with a deck and reconstruct a new one and a half story cottage and deck in the existing footprint. The case was withdrawn.

The Board interviewed Leif Hamnquist for an alternate position on the Zoning Board. *Amy Germain moved to appoint Leif Hamnquist to an alternate position on the Zoning Board of Appeals, Robert Littlefield seconded and it was so voted, 6-0.*

Chair Anne Howard adjourned the Public Hearing at 8:26 P.M.

## WORK SESSION

Chair Anne Howard called the Work Session to order at 8:26 P.M.

### PENDING DECISIONS:

**FY12-55**      **99 Commercial Street (Residential 3 Zone), Lora Papetsas of Sal's Place, Inc. –**  
Robert Littlefield, Amy Germain, David Nicolau and Joe Vasta sat on the case. Robert Littlefield read the decision. *David Nicolau moved to accept the language as written, Amy Germain seconded and it was so voted, 4-0.*

**FY12-64**      **474 Commercial Street (Residential 3 Zone), A.J. Santos Construction, Inc. on behalf of Debi Sanders –**  
Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Harriet Gordon sat on the case. Anne Howard read the decision. *Robert Littlefield moved to approve the language as written, Amy Germain seconded and it was so voted, 4-0.*

**NEXT MEETING:** The next meeting will take place on May 17, 2012. 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 May 17, 2012.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2012  
Anne Howard, Chair