

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
December 20, 2012**

**MEETING HELD IN THE JUDGE WELSH ROOM**

**Members Present:** Anne Howard, Amy Germain, David Nicolau, Tom Roberts (left at 7:50 P.M.), Joe Vasta and Leif Hamnquist.

**Members Absent:** Harriet Gordon (excused) and Robert Littlefield (excused).

**Others Present:** Russ Braun (Building Commissioner) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Anne Howard called the Work Session to order at 6:45 P.M.

**MINUTES: November 29, 2012 – *David Nicolau moved to approve the language as amended, Amy Germain seconded and it was so voted, 6-0.***

**December 6, 2012 – *Tom Roberts moved to approve the language as written, David Nicolau seconded and it was so voted, 4-0.***

Chair Anne Howard announced that Board re-organization will be placed on the agenda for the January 3, 2013 Public Hearing.

Chair Anne Howard adjourned the Work Session at 6:54 P.M.

**PUBLIC HEARING**

Chair Anne Howard called the Public Hearing to order at 7:00 P.M. There were six members of the Zoning Board of Appeals present and two 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 principle buildings on the lot. This case is continued to the January 17, 2013 Public Hearing.

## NEW CASES:

### **FY13-17      211½ Bradford Street (*Residential 3 Zone*), Brandon Motta, Recreation Director –**

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws to remove and replace, in the existing footprint, the pre-existing, non-conforming 12' chain link fence with a new 12' chain link fence that encloses the Greenfelder Playground basketball court. Tom Roberts recused himself because of a conflict of interest. Anne Howard, Amy Germain, David Nicolau, Joe Vasta and Leif Hamnquist sat on the case.

**Presentation:** Brandon Motta appeared to present the application. He is requesting approval to remove the chain link fence around the basketball court at the Greenfelder Playground and replace it with a vinyl coated chain link fence in the same footprint. The existing fence is in disrepair and contains holes.

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

**Board Discussion:** The applicant stated that the color has not yet been determined, but was willing to take suggestions from the Board. The Board agreed that the color of the fence was not within its purview.

*Amy Germain moved to grant a Special Permit under Article 3, Sections 3110 and 3115 of the Zoning By-Laws to remove and replace, in the existing footprint, the pre-existing, non-conforming 12' chain link fence with a new 12' chain link fence that encloses the Greenfelder Playground basketball court at the property located at 211½ Bradford Street (Res 3) as delineated on Plan P-79-0367, drawn by William N. Rogers, II, dated July, 1979, Joe Vasta seconded and it was so voted, 5-0.* David Nicolau will write the decision.

### **FY13-18      225 Commercial Street (*Town Commercial Center Zone*), Robin Reid, Esq., on behalf of The Galley Catering, LLC –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcohol. Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case.

**Presentation:** Attorney Robin B. Reid and Robert Anderson appeared to present the application. Earlier in the year, the Board approved a Special Permit to allow the service of food and alcohol at the premises for a total of 44 seats, 30 of which were contingent upon approval of an Economic Development Council permit. The applicant now seeks to delay the commencement of the use of that Special Permit and instead is requesting to open the existing restaurant for the 2013 season with less seating in a different configuration. The applicant is awaiting approval of the Chapter 91 license for the property and doesn't want to leave the premises closed until the license is granted. The interim plan is to add only 10 of the 30 seats granted by the EDC permit to the existing 14 seats. The applicant also seeks a seasonal beer and wine license. Attorney Reid stated that the operation of the restaurant in the summer of 2013 is good for the Town as it will offer another food option for that part of Commercial Street, will provide employment, using the existing equipment and facilities at the premises. Until the Chapter 91 license is granted, the owners will continue to clean-up and improve the property. There

will be no adverse effects as a result of the project. That part of Town is already congested and there no hazard or environmental degradation will result from the project.

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

**Board Discussion:** The Board clarified that there are 14 existing seats and 30 seats were granted by an EDC permit. The Building Commissioner was concerned that what was being discussed was not what was noticed and that the plans were not available to be reviewed by the public. Attorney Reid made it clear that the applicant did not want to give up the EDC seats already granted and approved by the Board. The Board requested a copy of the previous Special Permit decision to review and decided to continue the discussion until after the next case while copies of those documents were procured.

*David Nicolau moved to continue the discussion of Case #FY13-18 until after Case #FY13-19, Tom Roberts seconded and it was so voted, 5-0.* Tom Roberts will write the decision.

**FY13-19      186 Commercial Street (Town Commercial Center Zone), John Yingling on behalf of Enzo –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the re-arrangement of their existing seating plan (no increase in seating). Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Leif Hamnquist sat on the case.

**Presentation:** Jennifer White appeared to present the application. This request is just a re-arrangement of seats and no additional seats are being added to the covered porch area of the premises.

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

**Board Discussion:** The Board clarified that one seat from the inside is moving to the outside of the restaurant.

*David Nicolau moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the re-arrangement of their existing seating plan (no increase in seating) at the property located at 186 Commercial Street (TCC), Amy Germain seconded and it was so voted, 5-0.* Amy Germain will write the decision.

*Amy Germain moved to continue the discussion of Case #FY13-18 until after Case #FY13-20, Tom Roberts seconded and it was so voted, 5-0.*

**FY13-20      85-87 Shank Painter Road (General Commercial Zone), Mac Hay on behalf of Mac's Seafood –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the reconfiguration of seating, relocation of the bar area and to re-establish the use of the market/deli area. Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case.

**Presentation:** Mac Hay and Sam Bradford appeared to present the application. The applicant seeks to reconfigure the seating, relocate the bar and re-establish the use of the deli/market area on the premises. The configuration will be based

upon what existed at the premises when it was Clem & Ursie's. The number of seats will remain the same and the applicant seeks to re-establish the use of an existing office space as a market.

**Public Comment:** Custodio Silva spoke in favor of the application. There was 1 letter in support of the application, but with a concern about potential noise.

**Board Discussion:** The Board had no concerns about the project and is supportive of the plans to use the whole building and preventing its falling into disrepair from non-use. The applicant intends to open the premises as soon as is feasible and not before, so as to insure that everything is ready.

*Tom Roberts moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the reconfiguration of seating, relocation of the bar area and to re-establish the use of the market/deli area at the property located at 85-87 Shank Painter Road (GC), Amy Germain seconded and it was so voted, 5-0. Joe Vasta will write the decision.*

**FY13-18      225 Commercial Street (Town Commercial Center Zone), Robin Reid, Esq., on behalf of The Galley Catering, LLC (continued) –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcohol. Anne Howard, Amy Germain, David Nicolau, Tom Roberts and Joe Vasta sat on the case.

**Board Discussion (cont):** The Board received a copy of the plans and the previous Special Permit decision for review. Attorney Reid stressed that the premises will not be strictly a bar, but the alcohol will be an adjunct to the service of food and that there are other premises in the neighborhood that serve alcohol.

*Amy Germain moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcohol at the property located at 225 Commercial Street (TCC) with the conditions that signage be located at the front door and at the service counter stating that no alcohol is to leave the premises, the hours of operation will be from 11:00 A.M. to 2:00 A.M., with alcohol service to end at 1:00 A.M., the restaurant will be open from May 1<sup>st</sup> to November 1<sup>st</sup>, 2013 and pending ABCC approval of a beer and wine license, David Nicolau seconded and it was so voted, 5-0. Amy Germain will write the decision.*

**FY13-21      356 Commercial Street (Town Commercial Center Zone), The Town of Provincetown/Provincetown Public Library –**

The applicant seeks the renewal of Special Permit #FY12-06 under Article 2, Section 2460 for the Public Library to be designated as an entertainment venue. Anne Howard, Amy Germain, David Nicolau, Joe Vasta and Leif Hamnquist sat on the case.

**Presentation:** Robin Reid, Cheryl Napsha, Library Director, and Donna Vaillancourt, Library Trustee, appeared to present the application. The applicant seeks to renew Special Permit #FY12-06 for entertainment and the service of alcohol and requests that any events held inside or outside end at 10:00 P.M., regardless of the Library's hours of operation. The Library's events policy has been revised and the applicant also requests that it not be attached to the Special

Permit, as the policy is updated from time to time. The Library would like to update its policy without having to come back to amend the Special Permit.

**Public Comment:** None. There was 1 letter in support of the application.

**Board Discussion:** The Board was concerned about the request to change the hour that events will end to 10:00 P.M. as the previous Special Permit had the time of events tied to the hours of operation of the Library. This was of concern as the notice for the renewal did not state that change and abutters who received those notices may have had concerns about that change. The applicant decided to withdraw the request for a change in the hours of entertainment.

**David Nicolau moved to grant the renewal of Special Permit #FY12-06 under Article 2, Section 2460 for the Public Library to be designated as an entertainment venue at the property located at 356 Commercial Street (TCC), Amy Germain seconded and it was so voted, 5-0.** Amy Germain will write the decision.

**NEXT MEETING:** The next meeting will take place on January 3, 2013. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *David Nicolau moved to adjourn at 8:10 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 January 3, 2013.

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2013  
\_\_\_\_\_, Chair