

Orleans Zoning Board of Appeals  
Minutes  
December 15, 2010

A meeting of the Orleans Zoning Board of Appeals was held in the Skaket Meeting Room at Town Hall. Present were Robert Osterberg, William Piersol, D. Beth McCartney, Matthew Cole, and Michael Marnik. Rolf Soderstrom and Greg DeLory were absent. Building Commissioner Brian Harrison and Board Secretary Sandy Stewart were also present.

Chairman Osterberg called the meeting to order at 7:00 p.m.

Case #1922

Ray and Joanne Dobson have applied for a Special Permit as set forth in MGL Chapter 40A, Section 9, under Orleans Zoning Bylaw Sections 164-31B, 164-31E, and Section 164-18 to convert existing office space to a dwelling unit in violation of minimum lot area, density, and Shoreline District requirements, and, in the alternative, seeks a Variance. The property is located at 49 South Orleans Road, Orleans Map #34, Parcel #17.

By Applicants' letter request of November 30, 2010, on motion by Mr. Osterberg and seconded by Mr. Piersol, the Applicants were unanimously granted leave to withdraw the application without prejudice. Voting were Mr. Osterberg, Mr. Piersol, Ms. McCartney, and Mr. Cole.

Case #1923

Miriam Kravitz has applied for a Special Permit as set forth in MGL Chapter 40A, Section 9, under Orleans Zoning Bylaw Section 164-4 to operate a sporadic use customary home occupation medical laser treatment office. The property is located at 25 Monument Road, Orleans Map #42, Parcel #71.

Special Permit granted. See attached Decision. Documents reviewed include the original application and the Special Permit granted in Case No. 1885, dated July 1, 2009. Documents are held in the permanent Zoning Board of Appeals case file located at Town Hall.

In other business, the Board discussed a Planning Board request for Zoning Board of Appeals comment regarding the existing use variance bylaw. On motion by Mr. Piersol and seconded by Ms. McCartney, the Board recommended the Planning Board explore options for revising the existing use variance bylaw. The vote was 4-1-0, with Mr. Osterberg in opposition.

On remand from Land Court, the Board considered a Settlement Agreement and Release and revisions to the Special Permit granted to Whitford Boyd for property located at 219 Main Street, Orleans Map #36, Parcel #153.

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On motion by Mr. Osterberg and seconded by Mr. Marnik, the Board granted authorization for the Chairman to sign the Settlement Agreement and Release. A Revised Decision after Remand is attached.

In other business, on motion by Mr. Osterberg and seconded by Ms. McCartney, the Board voted 5-0-1 to approve minutes of the November 3, 2010 meeting as drafted.

On motion by Mr. Osterberg and seconded by Ms. McCartney, the meeting was adjourned at 8:03 p.m.

Sandy Stewart  
Board Secretary

**CASE NO. 1922**

APPLICATION OF  
RAY AND JOANNE DOBSON

BOARD OF ZONING APPEALS

NO. 49 SOUTH ORLEANS ROAD  
ORLEANS, MA

TOWN OF ORLEANS, MA

**ORDER ACCEPTING APPLICANT'S  
REQUEST TO WITHDRAW APPLICATION WITHOUT PREJUDICE**

On December 15, 2010, the above numbered and styled case came on for hearing before the Orleans Zoning Board of Appeals, wherein Ray and Joanne Dobson were Applicants.

The Board heard the case in a duly advertised and scheduled public hearing. Mr. Robert Osterberg, Chairman, presided.

A quorum of Board members was present.

At the Applicants' request, on motion made and seconded, the Board granted the Applicant leave to withdraw the application in Case No. 1922 without prejudice to again re-file the same.

**Voting in Favor of Order of Withdrawal**

**December 15, 2010**

Mr. William Piersol  
Mr. Michael Marnik  
Ms. D. Beth McCartney  
Mr. Matthew Cole  
Mr. Robert Osterberg

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Robert Osterberg, Chairman

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Matthew Cole, Clerk

**CASE NO. 1923**

APPLICATION OF:  
MIRIAM KRAVITZ  
NO. 25 MONUMENT ROAD  
ORLEANS, MA

ZONING BOARD OF APPEALS  
BOOK 20811, PAGE 329  
MAP # 42, PARCEL #71  
TOWN OF ORLEANS, MA

**AMENDMENT TO SPECIAL PERMIT ISSUED IN CASE #1885**

**THE HEARING**

On December 15, 2010, Case No. 1923 came for hearing before the Orleans Zoning Board of Appeals wherein Miriam Kravitz applied for a Special Permit as set forth in MGL Chapter 40A, Section 9, under Orleans Zoning Bylaw Section 164-4 to operate a sporadic use customary home occupation medical laser treatment office. The property is located at 25 Monument Road, Orleans Map #42, Parcel #71. The hearing was duly advertised and scheduled.

Mr. Robert Osterberg, Chairman of the Orleans Zoning Board of Appeals, chaired the hearing. Also in attendance were Mr. William Piersol, Ms. D. Beth McCartney, and Mr. Matthew Cole, regular Board members; Mr. Michael Marnik, associate Board member; Mr. Brian Harrison, Building Commissioner; and Ms. Sandy Stewart, Board Secretary. The Chairman announced that all members present would vote on the application.

Ms. Kravitz presented the details of the application. No person appeared either in favor of, or in opposition to, the application. The Chairman announced that no letters were received by the Town with regard to this application. The Chairman then closed the hearing for the taking of further testimony.

Based upon the application, including the Special Permit granted in Case No. 1885, dated July 1, 2009, a copy of which is attached to this decision, Mr. Osterberg moved that the Board adopt the following FINDINGS OF FACT:

1. The subject property, known as 25 Monument Road, shown as Parcel #71 on Orleans Map #42 is in a Residential (R) District
2. There have been no material changes to the site since the Special Permit in Case No. 1885 was issued.
3. The applicant has been in compliance with the conditions imposed on the conduct of the home occupation specified in the decision issued in Case No. 1885.
4. The proposed change in the hours of operation is consistent with the determination of this Board and the Special Permit issued in Case No. 1885.
5. The proposed change in the hours of operation will not be detrimental to the established and future character of the neighborhood and will be in harmony with the general intent and purpose of the Zoning Bylaw.

The Motion was duly seconded by Mr. Piersol and unanimously approved by the Board.

Based on the FINDINGS OF FACT, on motion by Mr. Osterberg and seconded by Mr. Piersol, the Board grants, pursuant to Sections 164-4 and 164-44 of the Orleans Zoning Bylaw, an amendment to the Special permit issued in Case #1885, to run with the land, for a change in the hours of operation from “sporadically over weekends” to “during no more than six days in any calendar month” to service not more than six patients daily by appointment only. No appointment shall start after 7:00 p.m. on any day. All other terms and conditions of the Special Permit issued in Case No. 1885 shall remain in full force and effect.

VOTING IN FAVOR:

Mr. Robert Osterberg  
Mr. William Piersol  
Ms. D. Beth McCartney  
Mr. Matthew Cole  
Mr. Michael Marnik

Dated: December 15, 2010

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Robert Osterberg, Chairman

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Matthew Cole, Clerk

**CASE NO. 1901**

APPLICATION OF:  
WHITFORD BOYD  
NO. 219 MAIN STREET  
ORLEANS, MA

ZONING BOARD OF APPEALS  
BOOK 13984, PAGE 123  
MAP # 36, PARCEL # 153  
TOWN OF ORLEANS, MA

**DECISION AFTER REMAND**  
**SUPERCEDING THE DECISION DATED FEBRUARY 17, 2010**

**THE HEARING**

On December 15, 2010, Case No. 1901 came for hearing before the Orleans Zoning Board after remand pursuant to Order of the Land Court dated September 8, 2010. Whitford Boyd applied for a Special Permit as set forth in MGL Chapter 40A, Sections 6 and 9, under Orleans Zoning Bylaw Section 164-3C(2) for alteration, reconstruction, or structural change to a nonconforming structure other than a single or two-family structure. The property is located at 219 Main Street, Orleans Map # 36, Parcel # 153. The hearing after remand was duly advertised and scheduled.

Mr. Robert Osterberg, Chairman of the Orleans Zoning Board of Appeals, chaired the hearing. Also in attendance were Mr. William Piersol, Ms. D. Beth McCartney, and Mr. Matthew Cole, regular Board members; Mr. Michael Marnik, associate Board member; Mr. Brian Harrison, Building Commissioner; and Ms. Sandy Stewart, Board Secretary. The Chairman announced that all members present would vote on the application.

The Board discussed the fact that this hearing is upon remand by the Land Court due to an appeal by abutters Mr. David Abel, Mr. Richard Bessom, and Ms. Anne K. Wardrop of the Board's February 17, 2010 Decision in this matter.

Attorney Jeffrey Bellas was present and represented Applicant Whitford Boyd. Attorney Benjamin E. Zehnder was present and represented abutters Mr. David Abel, Mr. Richard Bessom, and Ms. Anne K. Wardrop. No other persons spoke either for or against the application. At the hearing of February 17, 2010 a letter from a potential lessee was received in favor of the application.

The Board reviewed and approved conditions on the grant of a special permit prepared by the Applicant in consultation with said abutters, as set forth in their Settlement and Release Agreement.

Based upon the application, including the site plan dated 10/28/2003, prepared by Schofield Brothers of Cape Cod, Job # 0-10013, the undated sketches of the garage consisting of three pages, and the Orleans Planning Department Site Plan Review Comments dated June 4, 2003, Mr. Osterberg moved that the Board adopt the following FINDINGS OF FACT:

6. The subject property, known as 219 Main Street, shown as Parcel #153 on Orleans Map #36, is in a Rural Business (RB) District.
7. A three-apartment residence and a detached garage are located on the site.

8. The apartment use of the site is a legally pre-existing, nonconforming use because the size of the lot is only approximately .50 acre.
9. The garage was built in 2005 and consists of a ground level containing two parking bays and an office, and an upper level consisting of additional office space.
10. The Site Plan Review Comments contemplate the potential use of the garage for commercial purposes stating in paragraph 4, "Garage will require a Special Permit from the Zoning Board of Appeals if it is to be used for commercial purposes."
11. Although the garage previously has been used for commercial purposes without a Special Permit, those uses have ceased and the garage currently is vacant.
12. The site abuts a commercial establishment and other commercial establishments are in the immediate vicinity.
13. The site is suitable and adequate for the proposed change because the Rural Business District is zoned to accommodate various commercial uses including office uses as a matter of right.
14. The proposed change will have no impact on traffic flow or safety because the garage is only a short distance off Main Street, which is adequate to accommodate commercial traffic in that area.
15. The proposed change will have no negative impact on the visual character of the neighborhood because the garage is centrally located on the site.
16. The proposed change is isolated from, and will have no impact on, the method of sewage disposal, source of water, drainage, or water resources.
17. Utilities and public services will be unaffected by the proposed change.
18. Noise and litter will not be increased after the change is made because the use will be restricted to office use and related storage in the garage.
19. The proposed change will not be detrimental to the established and future character of the neighborhood and will be in harmony with the general intent and purpose of the Zoning Bylaw.

The Motion was duly seconded by Mr. Piersol and unanimously approved by the Board.

Based on the FINDINGS OF FACT, on motion by Mr. Osterberg and seconded by Mr. Piersol, the Board grants a Special Permit pursuant to Sections 164-3C(2) and 164-44 of the Orleans Zoning Bylaw to run with the land, for commercial use of the garage as a ground level office with storage space, conditioned as follows:

- a. The 150 square foot ground level office space within the "Garage Structure" shall be used for purposes of business office use only.
- b. The garage bay adjacent to the ground level office space of the business occupying the Garage Structure shall be used for storage purposes in connection with the ground level office space only.
- c. The square footage of the ground level office space and adjacent garage

bay shall be limited to its current square footage and configuration and shall not later be combined or reconfigured.

- d. No retail, wholesale, or any business which shall result in general public access to the structure shall be permitted.
- e. No machinery use other than office equipment or machinery work shall be conducted on the premises.
- f. The number of vehicles on the premises associated with the ground level office shall be limited to two.
- g. The number of persons on the premises associated with the ground level office use shall be limited to two persons and no customers.
- h. The hours of operation of the ground level office space shall be limited to the hours of 7:00 A.M. to 10:00 P.M.
- i. The hours of access to the garage bay for storage shall be limited to the hours of 7:00 A.M. to 7:00 P.M.
- j. The use of the remaining garage bay shall be limited to storage of the property owner's personal property and/or for storage of the apartment tenants' property or vehicles.
- k. Except as set forth in section j above, no residential or commercial use shall be permitted within the remaining garage bay.
- l. The use of the second floor office space shall be limited to the property owner's personal use.
- m. Except as set forth in section l. above, no residential or commercial use shall be permitted within the second floor office space.

This Special Permit supersedes in all respects the Special Permit granted February 17, 2010.

VOTING IN FAVOR:

Mr. Robert Osterberg  
Mr. William Piersol  
Ms. D. Beth McCartney  
Mr. Matthew Cole  
Mr. Michael Marnik

Dated: December 15, 2010

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Robert Osterberg, Chairman

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Matthew Cole, Clerk