

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
December 3, 2015**

Members Present: David M. Nicolau (left at 7:10 P.M.), Robert Littlefield, Jeffrey Haley, Joe Vasta, Peter Page, Bryan Armstrong, Rob Anderson and Jeffrey Gould.

Members Absent: Amy Germain (excused).

Others Present: Gloria McPherson (Town Planner) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:45 P.M.

PENDING DECISIONS:

None.

MINUTES: November 19, 2015 – *Robert Littlefield moved to approve the language as written, Bryan Armstrong seconded and it was so voted, 5-0.*

The Board reviewed the 2016 meeting calendar and reviewed Board members' winter vacation schedules.

Chair David M. Nicolau adjourned the Work Session at 6:50 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:01 P.M. There were eight members of the Zoning Board present and one absent. He asked for a motion to take Case #FY16-15 out of order. ***Robert Littlefield moved to take Case #FY16-15 out of order, Jeffrey Haley seconded and it was so voted, 8-0.***

PUBLIC HEARINGS:

FY16-15 85-87 Shank Painter Road (GC Zone), Bay Ocean Properties, LLC, dba Mac's Provincetown –
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to allow the continued use of the 260-seat restaurant with a full liquor license, live entertainment and outdoor seating. David M. Nicolau,

Robert Littlefield, Joe Vasta, Jeffrey Haley and Peter Page sat on the case.

Presentation: Mac Hay appeared to present the application. There are no changes to the operation of the restaurant and he is requesting that the current Special Permit be renewed with the same conditions and that it be in effect for a longer period of time.

Public Comment: None. There was 1 letter from the Provincetown Police Dept. stating that there had been no noise complaints related to the property and 1 letter in support of the application.

Board Discussion: The Board briefly discussed the matter.

Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to allow the continued use of the 260-seat restaurant with a full liquor license, live entertainment and outdoor seating at the property located at 85-87 Shank Painter Road (GC), with the condition that the Special Permit run with the applicant unless there is a change in ownership, Jeffrey Haley seconded and it was so voted, 5-0. David M. Nicolau will write the decision.

FY16-10 52 Creek Road (Residential 3 Zone), Lester J. Murphy, Esq. on behalf of 3 Cottages, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2550, Multiple Buildings Per Lot, and Article 3, Section 3110, Change, Extension or Alteration, of the Zoning By-Laws to demolish three existing single-family structures and construct two duplex structures. This case has been continued to the December 17, 2015 Public Hearing at 7:00 P.M.

FY16-16 334 Commercial Street (Town Commercial Center Zone), Broken Wheel Farm, LLC, dba Purple Feather –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements to allow the continued use of the 32-seat restaurant with outdoor seating with a full liquor license. The applicant requested a withdrawal without prejudice. *Bryan Armstrong moved to grant the request to withdraw Case #FY16-16 without prejudice, Jeffrey Haley seconded and it was so voted, 5-0.*

FY16-12 99 Commercial Street (Residential 3 Zone), Siobhan Carew (continued from November 19) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to allow the continued use of the existing restaurant with a full liquor license but under new management and with no change to seating layout or increase in seating. Bryan Armstrong invoked the Mullin Rule and certified that pursuant to M.G.L., c. 39, section 23D, he reviewed the evidence and testimony presented at the previous hearing by watching a videotape of the hearing and is qualified to sit on the case. Robert Littlefield, Jeffrey Haley, Peter Page, Bryan Armstrong and Rob Anderson sat on the case.

Presentation: Attorney Christopher J. Snow, Siobhan Carew and Lora Papetsas

appeared to discuss the application. The applicant had submitted an architectural drawing of the seating plan and a certified plot plan as requested by the Board. Attorney Snow reviewed the parking easement for the abutting property. He reiterated the benefits that his client will bring to the neighborhood and the Town if the Board granted the Special Permit to allow the continued use of the restaurant under new ownership.

Public Comment: Marcene Marcoux made a comment about a previous Special Permit for a reduction in seating at the property. Attorney Lester J. Murphy, on behalf of an abutter, spoke in opposition to the application and argued about the safety issue and the ability of first responders to access the restaurant in the event of an emergency. He stated that his client is only interested in working out an arrangement with the new owner of the restaurant to make the restaurant safe. There were 11 letters commenting on the safety issue regarding the use of the east side parking area for access to the restaurant and 1 letter clarifying some misinformation that was given by a speaker at the last hearing. There was also an email from the Fire Chief Mike Trovato and a letter from Acting Building Commissioner Anne Howard.

Jeffrey Haley moved to close the public portion of the hearing, Rob Anderson seconded and it was so voted, 5-0.

Board Discussion: The Board discussed the new use of the property related to the new easement, and whether the change would be substantially more detrimental to the neighborhood or Town. Upon request from the Board, Chet Lay, a surveyor with Slade Associates, clarified the plot plan showing the easement boundaries and the access area to the restaurant. The Board discussed the size and adequacy of the access area.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to allow the continued use of the existing restaurant with a full liquor license but under new management and with no change to seating layout or increase in seating at the property located at 99 Commercial Street (Res 3), Rob Anderson seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

FY16-13

401½ Commercial Street (Town Commercial Center Zone), Kevin Bazarian on behalf of Zoltan's Landing, LLC (continued from November 19) –

The applicant seeks a Special Permit pursuant to Article 2, Section 2550, Multiple Buildings Per Lot, Article 3, section 3110, Change, Extension or Alteration and Section 3115, Demolition and Reconstruction, to demolish an existing single-story building and reconstruct a two-story building within the existing footprint and to preserve the two principle structures on the lot without the required square footage. Bryan Armstrong invoked the Mullin Rule and certified that pursuant to M.G.L., c. 39, section 23D, he reviewed the evidence and testimony presented at the previous hearing by watching a videotape of the hearing and is qualified to sit on the case. Robert Littlefield, Jeffrey Haley, Peter Page, Bryan Armstrong and Rob Anderson sat on the case.

Presentation: Attorney Christopher J. Snow, Kevin Bazarian, Lyn Plummer and

David Gluck appeared to discuss the application. The applicant submitted a valid deed and the Chapter 91 license with a certified plot plan.

Public Comment: Elena Hall, an abutter, had a question about the requirement for the height of the second floor of the proposed structure and about the deed for the property. Mark Levin, an abutter, spoke against the application. There were 6 new letters in support of the application and 3 new letters in opposition to the application.

Board Discussion: The Board questioned Attorney Snow and discussed whether the change was substantially more detrimental to the neighborhood and the Town than the existing structure. Attorney Snow reviewed the deed for the property.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2550, Multiple Buildings Per Lot, Article 3, section 3110, Change, Extension or Alteration and Section 3115, Demolition and Reconstruction, to demolish an existing single-story building and reconstruct a two-story building within the existing footprint and to preserve the two principle structures on the lot without the required square footage at the property located at 401½ Commercial Street (TCC), Rob Anderson seconded and it was so voted, 4-1 (Bryan Armstrong opposed). Robert Littlefield will write the decision.

NEXT MEETING: The next meeting will take place on Thursday, December 17, 2015. It will consist of a Work Session at 6:00 P.M followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: *Jeffrey Haley moved to adjourn at 9:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2015
David M. Nicolau, Chair