

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
January 21, 2016**

Members Present: David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould.

Members Absent: Amy Germain (excused), Jeffrey Haley (excused) and Bryan Armstrong (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 6:36 P.M.

PENDING DECISIONS:

FY16-20 8 Young's Court, Unit 5 (*Residential 3 Zone*), Richard Flores on behalf of John Krajovic –

David M. Nicolau, Jeffrey Haley, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case. The decision was not ready.

FY16-17 34 Commercial Street (*Residential 2 Zone*), Don Di Rocco of Hammer Associates on behalf of Kevin Huvane –

David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case. The decision was not ready.

FY16-21 359 Commercial Street, Unit H (*Town Commercial Center Zone*), 3 Old Dogs, LLC, dba Harbor Lounge, Inc. –

David M. Nicolau, Robert Littlefield, Joe Vasta, Bryan Armstrong and Jeffrey Gould sat on the case. Joe Vasta read the decision. *Robert Littlefield moved to approve the language as amended, Jeffrey Gould seconded and it was so voted, 4-0.*

FY16-22 404 Commercial Street (*Town Commercial Center Zone*), Ted Smith, Architect, LLC on behalf of Strangers and Saints, Inc. –

David M. Nicolau, Joe Vasta, Bryan Armstrong, Rob Anderson and Jeffrey Gould sat on the case. Jeffrey Gould read the decision. *Robert Littlefield moved to approve the language as written, Rob Anderson seconded and it was so voted, 5-0.*

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

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were five members of the Zoning Board present and three absent.

PUBLIC HEARINGS:

FY16-26 **132 Bradford Street (Town Commercial Center Zone), Steve Riley –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow public entertainment in a newly created theater space and the installation of a bar for the service of alcohol to patrons of the theater. Since a large number of citizens were in attendance for the hearing of this case and given the Board members present, Chair David M. Nicolau wanted to establish whether the applicant wanted to move forward with the case. He informed the applicant that there would only be 4 members available to be seated on the case. Since the granting of a Special Permit required 4 votes, a unanimous decision would be necessary. The applicant had the choice of continuing the hearing until 5 members of the Board could be seated or proceed with 4 members. He said that Board members could be polled before the vote to gauge their support for the application. The applicant chose to proceed.

FY16-10 **52 Creek Road (Residential 3 Zone), Lester J. Murphy, Esq. on behalf of 3 Cottages, LLC (continued from January 7) –**
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. David M. Nicolau recused himself because of a conflict of interest. Vice Chair Robert Littlefield informed Attorney Murphy that there were only 4 members available to sit on the case and given that a unanimous decision would be required in order to grant a Special Permit, he asked him if he wanted to proceed or continue the case until 5 members could be seated. Attorney Murphy chose to proceed, however he requested that the Board be polled before a vote was taken. The request was granted. Jeffrey Gould had submitted an affidavit attesting to the fact that he had watched a video recording of the previous hearing of the case on October 15, 2015, and invoked the Mullin Rule in order to sit on the case. Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Attorney Lester J. Murphy, Alan Cabral and Mike Miller appeared to discuss the application. Attorney Murphy indicated that he wanted to address some of the concerns and questions that abutters and neighbors had at the last hearing of the case. He stated that the property had a main dwelling and 3 cottages. As a result of the Board's discussion at the last hearing about principal v. accessory structures where it had been determined that the 3 cottages qualified as principal structures, a total of 4 principal structures are situated on the lot. The lot has an area of a little over 14,000 sq. ft. The proposal is to demolish the 3

cottages and replace them with 2 duplex structures, reducing the number of principal structures on the site from 4 to 3 and increasing the number of dwelling units from 4 to 5. The site has the land area required to accommodate 5 dwelling units in this Zoning District. The plan as proposed complies with other zoning issues such as setbacks, lot density and scale. Attorney Murphy pointed out that the non-conformancy was being reduced because the number of principal structures is being decreased from 4 to 3. He said that the non-conforming portion of the proposal would not be substantially more detrimental to the neighborhood. He argued that there would not be a significant increase in traffic in the neighborhood, contrary to a concern from abutters and neighbors, because only 1 more dwelling unit was being proposed.

A concern about the proposed 10 parking spaces on the site was voiced at the last hearing and, according to Attorney Murphy, the applicant would be willing to reduce that number to 8, if the Board requested it. As the scale and density of the project was of concern as well, he called the Board's attention to a spreadsheet submitted by Mr. Miller, who explained that the spreadsheet showed the size of the lots in the neighborhood compared with the size of the structures on those lots. Many of the lots surveyed had more, and larger, structures, proving that the proposal would be in conformity with the rest of the neighborhood. Attorney Murphy added that neither the density nor the scale of the proposal would be out of character with the neighborhood.

Another issue raised by neighbors, specifically those on Franklin Street, was in regard to soil erosion and destabilization of a hill in the area. Attorney Murphy called the Board's attention to a topographic site plan prepared by Mr. Cabral. The plan showed an outline of the property, which is on one of the more level portions of land in the area. It showed that the concerns of those neighbors that their properties would be undermined by construction of 2 duplexes and a septic system on this property would be unfounded. The Board was reminded that issues of site development were under the purview of the Planning Board, which in their site plan review of the project, would be carefully considered.

Noise was also an issue raised at the last hearing of the project. Attorney Murphy noted that the applicant had submitted revised plans showing that the proposed roof decks, a source of potential noise in the neighborhood, had been removed from all of the buildings. Privacy issues had been raised by a south abutting property. Attorney Murphy argued that the applicant would be willing to look into erecting vegetative screening on that boundary line and that 4 of the windows on the second floors of the structures facing that side of the property were for bathrooms and stairways, not for living areas where people would be more likely to look out of windows.

Attorney Murphy concluded that the redevelopment proposal would not be denser or on a scale greater than what is consistent with the neighborhood, that it would

not be substantially more detrimental to the neighborhood than the existing situation and that any adverse impacts from the proposal would be outweighed by the benefits of improving the property.

Public Comment: Sherry Dranch, on behalf of the Provincetown Conservation Trust, an abutter, spoke about its concerns regarding the project. Ms. Dranch said that the Trust had voted to request that an independent professional assessment of the effects of the project on the stability of abutting landforms be required.

Board Discussion: The Board questioned Attorney Murphy, Mr. Cabral and Mr. Miller.

Rob Anderson moved to make a finding that the project would not be substantially more detrimental to the neighborhood than the existing non-conformancy, Joe Vasta seconded and it was so voted, 4-0.

Rob Anderson moved to grant 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 at the property located at 52 Creek Road, pursuant to the revised plans showing 8 parking spaces, Joe Vasta seconded and it was so voted, 4-0. Robert Littlefield will write the decision.

FY16-23 20 Pleasant Street (Residential 3 Zone), 20 Pleasant Street, LLC –
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, of the Zoning By-Laws to construct roof dormers on the north and south roof planes. A quorum was not available to hear the case. ***Joe Vasta moved to postpone Case #FY16-23 to the February 4, 2016 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.***

FY16-24 18 West Vine Street (Residential 1 Zone), John DeSouza on behalf of Beverly Serabian –
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, extension or Alteration, of the Zoning By-Laws to extend a structure up and along pre-existing, non-conforming setbacks to create a half story on the rear ell, add a second story to an existing garage and connect the existing principle structure to the garage with a breezeway. There was a request to postpone the matter to the February 4, 2016 Public Hearing. ***Robert Littlefield moved to grant the request to postpone Case #FY16-24 to the February 4, 2016 Public Hearing at 7:00 P.M., Rob Anderson seconded and it was so voted, 5-0.***

FY16-25 401½ Commercial Street (Town Commercial Center Zone), Steve and B Company –
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the continued operation of a 37-seat restaurant with outdoor seating and a full liquor license. David M. Nicolau, Robert Littlefield, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the

case.

Presentation: James Woods and Brad Carlson appeared to present the application. Mr. Carlson said that the current seating plan shows 25 indoor and 12 outdoor patio seats. The applicant seeks to reconfigure that seating plan and institute a flex plan that would include 17 indoor and 20 outdoor seats at certain times. The hours of operation would be 8:00 A.M. to 10:00 P.M. from Patriot's Day weekend through Halloween. The applicant intends to take better advantage of the outdoor patio, as that option of eating is very popular in the summer. Mr. Carlson said that the change would increase tax revenue and attract more visitors to Town, allowing the restaurant to be more economically viable and better able to continue to provide local employment. The staff will consist of 5 kitchen employees and 8-10 servers.

Public Comment: Napi Van Dereck spoke in favor of the application. There were 6 letters in support of the application.

Board Discussion: The Board questioned Mr. Woods and Mr. Carlson. *Robert Littlefield moved to grant Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the continued operation of a 37-seat restaurant with outdoor seating and a full liquor license at the property located at 401 ½ Commercial Street (TCC), with the conditions that it will run with the applicant and expire on January 15, 2017, and that the restaurant's hours of operation will be 8:00 A.M. to 10:00 P.M., Joe Vasta seconded and it was so voted, 5-0.* David M. Nicolau will write the decision.

FY16-26

132 Bradford Street (Town Commercial Center Zone), Steve Riley –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow public entertainment in a newly created theater space and the installation of a bar for the service of alcohol to patrons of the theater. Robert Littlefield recused himself because of a conflict of interest. The applicant had already chosen to proceed with a 4-member Board. David M. Nicolau, Joe Vasta, Rob Anderson and Jeffrey Gould sat on the case.

Presentation: Rob Santora, of RJS Productions, a proposed lessee of the theater space, Steve and Mike Riley and Allison Alessi appeared to present the application. Mr. Santora stated that the applicant is proposing to create a 326-seat theater space with a service bar, the latter of which would only be open one-half hour before and during a theater performance. The theater will have no outdoor seating and all windows and doors will be closed during performances. Mr. Santora is proposing to bring a show to the space that would play for the entire season. He addressed traffic and congestion issues by saying that theater patrons would be enter through the store in the front of the building or on the east side of the building, in order to avoid congestion on Standish Street. Signage would be placed on the site to direct patrons to the theater entrance. There is ample parking on the site.

Mike Riley said that a lot of misinformation had been generated as a result of the

application. He emphasized that the bar would be a service bar only and that theater patrons would be directed to enter the front or east side of the building. Most of the activity would take place on these portions of the property, away from the Standish Street residential neighborhood. He said that the Town had a noise by-law and that the applicant would be willing to take decibel readings outside the theater in order to make sure they are in compliance with it. He said that there were plans to renovate the building and improve the property.

Public Comment: Napi Van Dereck asked a licensing question. Faye Simon had a concern about noise and privacy for neighbors on Standish Street, Bruce Mason had a question about the duration of the show booked at the theater and spoke of his concern regarding noise, Helen Van Dereck asked about how many people would be exiting the theater after a show, Larry Fontana had a question about the septic flow at the property and a concern about litter, Pat Bruno had a question about the licensing of the premises, Chris Racine asked about potential noise issues, Gary Wenc was concerned about exterior smoking and pedestrian congestion, Napi Van Dereck was concerned about pedestrian and traffic congestion, John Andert had concerns about noise and pedestrian and traffic flow, Jackie Kelly spoke in opposition to the application, Mike Riley, a nephew of the applicant, spoke in favor of the application, Dotty Feld was concerned about possible noise. There were 17 letters in opposition to the application, 1 letter in support of the application and 1 letter of concern about the application. The Board left the public portion of the hearing open.

Board Discussion: The Board questioned Mr. Santora, Mr. Riley and Ms. Alessi. Mr. Santora addressed some of the concerns of the neighbors who spoke and wrote letters. He indicated that the show he was producing would not entirely consist of music, but would have dialogue as well. He said that the whole perimeter of the building would be wrapped in fire-retardant and sound-dampening drapery to reduce noise and create more of a theater atmosphere inside. He added that he would be willing to test the decibel level of the show once it was operating in the theater, and adjust the noise level if needed. Mr. Riley added that the renovation plans for the building included the installation of windows with thicker panes than currently existed.

Mr. Santora said that the theater would most likely open at 7:00 P.M., half an hour before show time, however that could be adjusted if needed. The Board asked about potential vehicle and pedestrian traffic. Mr. Santora said that they are open to ideas in regard to traffic control and would be willing to hire a police detail if needed. Mr. Riley said that since he owned the property, traffic congestion issues on Bradford Street have been addressed and adjustments have been made in order to facilitate the flow in and out of the parking lot. Mr. Santora said that the flow of patrons would be through the shop in the front of the building on Bradford Street. As to the litter concern, Mr. Santora said that there would be garbage and recycling bins located in the theater area and the owners are motivated to keep the property clean. The Board would like more information from the applicant in regard to the type of windows that would be installed and

the thickness and weight of the drapery material. In addition, it would like to see a proposal for a police detail during the hours of operation and a plan for directional signage on the property to guide patrons into and out of the theater and the lot. Liquor and other deliveries, according to Mr. Riley, would be made on the east side of the building. He was asked by the Board if the applicant would be willing to put a fence and signage along the Standish Street boundary line in order to separate the commercial aspect of the property from the Standish Street residential neighborhood and to prevent patrons from exiting on the west side of the property. He indicated that the applicant would be open to the idea.

The Board would like the applicant to clarify and add more detail to the site plan, including indicating clearly where patrons would congregate before a show, the location of exterior garbage and recycling bins and the labeling of egresses. Chair Nicolau suggested that a developmental impact statement be submitted because of the potential for a significant increase pedestrian and vehicular traffic in the area, however he would recommend that requirement when the Special Permit was renewed in a year. He would also like to a tour of the interior of the building. He suggested that the applicant consult the Acting Building Commissioner in regard to the required exterior lighting for the premises.

Rob Anderson moved to continue Case #FY16-26 until the February 4, 2016 Public Hearing at 7:00 P.M., Joe Vasta seconded and it was so voted, 4-0.

Chair David M. Nicolau adjourned the Public Hearing at 9:15 P.M.

WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 9:15 P.M. The Board signed plans.

MINUTES: January 7, 2016– Joe Vasta moved to approve the language as written, Robert Littlefield seconded and it was so voted, 4-0.

NEXT MEETING: The next meeting will take place on Thursday, February 4, 2016. It will consist of a Work Session at 6:30 P.M followed by a Public Hearing at 7:00 P.M.

ADJOURNMENT: Joe Vasta moved to adjourn at 9:30 P.M. and it was so voted unanimously.

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2016
David M. Nicolau, Chair