

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
March 17, 2016**

**Members Present:** David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould.

**Members Absent:** Amy Germain (excused), Robert Littlefield (excused), Joe Vasta (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 6:31 P.M.

**PENDING DECISIONS:**

**FY 16-27**     **17 Montello Street (*Residential 3 Zone*), William N. Rogers on behalf of Todd C. Blais –**

David M. Nicolau, Robert Littlefield, Joe Vasta and Jeffrey Gould sat on the case. David M. Nicolau read the decision. *Jeffrey Haley moved to approve the language as written, Robert Anderson seconded and it was so voted, 3-0.*

**FY16-31**     **8 Kiley Court (*Residential 3 Zone*), Susan Pollack on behalf of Grace Rizk –**

David M. Nicolau, Robert Littlefield, Jeffrey Haley and Jeffrey Gould sat on the case. The Board is waiting for revised plans.

**MINUTES: March 3, 2016–** *Jeffrey Haley moved to approve the language as written, Jeffrey Gould seconded and it was so voted, 3-0.*

Chair David M. Nicolau adjourned the Work Session at 7:00 P.M.

## PUBLIC HEARING

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

### PUBLIC HEARINGS:

- FY16-29**      **338 Commercial Street (Town Commercial Center Zone), BHC, LLC**  
*(postponed from March 3<sup>rd</sup>) -*  
The applicant seeks a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, and 2460, Building Scale, and Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a dormer and outdoor stair on the east side of the structure and seeking relief from the parking requirement for a newly-established residential unit. A quorum was not available to hear the matter and it will be postponed to the April 21, 2016 Public Hearing at 7:00 P.M.
- FY16-30**      **34 Commercial Street (Residential 2 Zone), LeBlanc Jones Landscape Architects on behalf of 34 Commercial Street Trust** *(continued from March 3<sup>rd</sup>) -*  
The applicant seeks a Special Permit pursuant to Article 2, section 2450 (G12), Permitted Accessory Uses, of the Zoning By-Laws to install a 12.5' x 30.5' swimming pool. David M. Nicolau, Jeffrey Haley and Jeffrey Gould sat on the original case. Chair David Nicolau called for a motion to reopen the public portion of the meeting. *Jeffrey Gould moved to reopen the public portion of Case #FY16-30, Jeffrey Haley seconded and it was so voted, 4-0.* Robert Anderson invoked the Mullin rule and explained that he had watched the video recording of the previous hearing of the matter. Mr. Nicolau explained to the applicant's representative that there were only four members available to hear the case and, since a unanimous vote would be required in order to grant a Special Permit, he could proceed with four Board members or continue the matter until five could be seated. The applicant's representative chose to proceed. David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould sat on the case.  
**Presentation:** Keith LeBlanc, John Huvane, Frank LaVante and Mark Kinnane appeared to present the application. Mr. Nicolau explained that the applicant and the neighbors had come to an agreement regarding the project. Mr. LaVante read the agreement, which included the conditions that the pool be saltwater, that the pool mechanics be moved to the basement of the building on the lot, that the pool lighting be placed on a dimmer (the applicant will reduce the number of lights from two to one), that a bond be posted for the properties located at 36 and 32 Commercial Street and 1 Point Street in case of damage due to excavating activities (with photographic evidence of existing conditions submitted prior to construction). Mr. LaVante suggested to the neighbors that the applicant would be amenable to establishing a parking area off site for any construction or non-

construction vehicles to alleviate the problem of driveway obstruction in the neighborhood. He and the contractor are working on a construction schedule concerning digging activities and the arrival of materials, which will be distributed to neighbors and updated throughout the construction process. No modifications will be made to the fence between 34 and 36 Commercial Street. The last condition was a request that the Board impose hours of operation on the pool use to minimize noise disturbance.

**Public Comment:** There were no new public comments or letters in the file.

**Board Discussion:** Mr. Nicolau reviewed the conditions of the agreement and which were in the purview of the Board to impose. He added the condition that the Board requires water to fill the pool to be trucked onto the site. He suggested that the Board impose the condition that no amplification of music around the pool at night is allowed.

*Jeffrey Gould moved to grant a Special Permit pursuant to Article 2, section 2450 (G12), Permitted Accessory Uses, of the Zoning By-Laws to install a 12.5' x 30.5' swimming pool at the property located at 34 Commercial Street (Res 2) with the conditions that water to fill the pool will be trucked into the site, that the mechanicals are moved to the basement of the structure, that the pool lighting is low energy and that no amplification of music around the pool be allowed at night, Jeffrey Haley seconded and it was so voted, 4-0. Jeffrey Gould will write the decision.*

**FY16-32**      **176 Race Point Road (Seashore Zone), Provincetown Airport Commission**  
(postponed from March 3<sup>rd</sup>) –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations of the Zoning By-Laws to make improvements to a pre-existing, non-conforming aircraft landing area and facilities with the scope of work to include; improvements to an access road to the taxiways with improved lighting and an electric vault; repairs to a sightseeing shack; improvements to an access road to the approach light system; construction of a new service access road to a weather station and equipment shelter; the installation of a perimeter fence; and the expansion of a parking lot and an existing turf apron. Mr. Nicolau explained to the applicant's representative that there were only four members available to hear the case and, since a unanimous vote would be required in order to grant a Special Permit, she could proceed with four Board members or continue until five could be seated. The applicant's representative chose to proceed. David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould sat on the case.

**Presentation:** Amy Ball, or Horsley Witten Group, Bill Richardson and Butch Lisenby, Airport Manager appeared to present the application. Ms. Ball explained that the Airport is currently a pre-existing, non-conforming use in the Seashore District under the Zoning By-Laws. It currently operates under a Special Permit and is proposing a series of safety and operational efficiency improvements, which are part of a capital improvement plan comprised of twelve project elements. These include reconfigurations of the taxiways to meet current FAA and Mass. DOT safety regulations for airport uses, access roadways to existing

facilities at the Airport, additional capacity improvements for airplane and vehicle parking and a proposed fence to encircle the Airport to provide additional safety measures for wildlife to avoid conflicts with aircraft. No new project elements are being proposed, only reconfigurations of what currently exists.

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

**Board Discussion:** The Board questioned Ms. Ball, Mr. Richardson and Mr. Lisenby.

*Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations of the Zoning By-Laws to make improvements to a pre-existing, non-conforming aircraft landing area and facilities with the scope of work to include; improvements to an access road to the taxiways with improved lighting and an electric vault; repairs to a sightseeing shack; improvements to an access road to the approach light system; construction of a new service access road to a weather station and equipment shelter; the installation of a perimeter fence; and the expansion of a parking lot and an existing turf apron at the property located at 176 Race Point Road (Seashore), Robert Anderson seconded and it was so voted, 4-0.* Robert Anderson will write the decision.

**FY16-33      183-185 Commercial Street (Town Commercial Center Zone), John Yingling, dba Bubala's –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, to increase the scale of the building by constructing a second floor on the rear portion of the existing structure and the installation of an outdoor stair with no change to the existing footprint. The Board is postponing this matter until the April 21, 2016 Public Hearing at 7:00 P.M.

**FY16-34      199 Commercial Street, (Town Commercial Center Zone), Alan J. Cullinane, dba Café Heaven, on behalf of Scott Barron –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to increase seating from 32 to 61 seats by expanding into an adjacent retail space. Mr. Nicolau explained to the applicant's representative that there were only four members available to hear the case and, since a unanimous vote would be required in order to grant a Special Permit, he could proceed with four Board members or continue until five could be seated. The applicant's representative chose to proceed. Robert Anderson disclosed that he owns a restaurant nearby, however he is confident that he can make a fair and objective decision in the matter. David M. Nicolau, Jeffrey Haley, Robert Anderson and Jeffrey Gould sat on the case.

**Presentation:** Alan J. Cullinane and Patrick Drummey appeared to present the application. Mr. Cullinane explained that the applicant is seeking only 60 seats, not 61 as advertised, as one seat has been eliminated. The addition of seating will enable the season for the restaurant to be extended to January and allow more employees to be hired. The applicant did reach out to the neighbors about the project and received much support from both neighbors and the Town.

**Public Comment:** None. There was one letter in favor of the application in the file.

**Board Discussion:** The Board questioned Mr. Cullinane.

***Robert Anderson moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, to increase seating from 32 to 60 seats by expanding into an adjacent retail space at the property located at 199***

***Commercial Street (TCC), Jeffrey Gould seconded and it was so voted, 4-0.***

David M. Nicolau will write the decision.

**NEXT MEETING:** The next meeting will take place on Thursday, April 21, 2016. It will consist of a Work Session at 6:30 P.M followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Jeffrey Haley moved to adjourn at 7:38 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2016  
David M. Nicolau, Chair