

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
March 16, 2017**

Members Present: David M. Nicolau, Jeffrey Gould, Rob Anderson, Marianne Clements, Jeremy Callahan and Daniel Wagner.

Members Absent: Robert Littlefield (excused), Joe Vasta (excused and Jeffrey Haley (excused).

Others Present: Gloria McPherson (Town Planner).

WORK SESSION

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

PENDING DECISION:

FY17-52 **65B Howland Street (*Residential 1 Zone*), Andrew Lindera**, on behalf of **Stephanie Page & Meredith Lobur** –
David M. Nicolau, Jeffrey Gould, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case. David M. Nicolau read the decision. *Jeremy Callahan moved to approve the language as written, Marianne Clements seconded and it was so voted, 5-0-0.*

MINUTES: March 2, 2017– *Jeremy Callahan moved to approve the language as written, Marianne Clements seconded and it was so voted, 5-0-0.*

Chair David M. Nicolau adjourned the Work Session at 6:55 P.M.

PUBLIC HEARING

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

FY17-53 **132 Bradford Street (*Town Center Commercial Zone*), TMC New England, LLC, c/o TM Crowley & Associates**, on behalf of **Steve Riley** (*postponed to the hearing of April 6, 2017*) –
The applicant seeks a Special Permit pursuant to Article 2, Section 2360, Formula Business Regulated District, of the Zoning By-Laws to allow a formula business (CVS Pharmacy) to operate.

ZBA 17-54 7 Johnson Street (Residential 3 Zone), Christopher Fiset, Esq., on behalf of White Porch Inn, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the sale of alcoholic beverages to registered guests and guests of registered guests for private consumption. David M. Nicolau, Jeffrey Gould, Rob Anderson, Marianne Clements and Jeremy Callahan sat on the case.

Presentation: Attorney Christopher Fiset and Thomas Shirk appeared to present the application. Attorney Fiset explained that the service of alcohol to registered guests and guests of guests in the interior of the inn and on the decks, not on the exterior yard areas. The service will be from 9:00 A.M. to 11:00 P.M., Monday through Saturday, and 10:00 A.M. to 11:00 P.M. on Sunday. He argued that the social, economic and other benefits of the proposal outweigh any adverse effects such as hazard, congestion or environmental degradation. Mr. Shirk has two employees who are TIPS-certified and he will become certified shortly as well. He has agreed to keep the alcohol under lock and key on the premises and to install signage regarding the prohibition of taking alcohol off of the decks.

Public Comment: None. There was 1 letter in opposition to the application.

Board Discussion: The Board questioned Attorney Fiset and Mr. Shirk. The Board discussed restriction service of alcohol to 10:00 P.M. and to approve the Special Permit for a year as a trial period. Attorney Fiset confirmed that the alcohol will be served from a single point of sale in the interior of the White Porch Inn.

Rob Anderson moved to find that the proposal would not be substantially more detrimental to the Town or neighborhood than the existing situation, Jeremy Callahan seconded and it was so voted, 5-0.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to allow the sale of alcoholic beverages to registered guests and guests of registered guests for private consumption at the property located at 7 Johnson Street (Res 3) with the conditions that the Special Permit runs with the applicant, the hours of service are from 9:00 A.M. to 10:00 P.M., Monday through Saturday and 10:00 A.M. to 10:00 P.M. on Sundays, that signage will be installed indicating that alcohol is served only in the interior and the decks of the White Porch Inn and that the Special Permit will expire in one year, Marianne Clements seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

ZBA 17-55 225 Commercial Street (Town Commercial Center Zone), Topknot Properties, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to change the seating plan in an area of service, add a new point of sale location and expand an exterior area of service. David M. Nicolau, Jeffrey Gould, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case. Ms. McPherson said that the applicant had sent an email requesting to continue to the April 6, 2017 Public Hearing at 6:30

P.M. *Jeremy Callahan moved to grant the request to continue ZBA 17-55 to the April 6, 2017 Public Hearing at 6:30 P.M., Marianne Clements seconded and it was so voted, 5-0.*

- ZBA 17-56** **192-194 Commercial Street (Town Commercial Center Zone), Scott Powell –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to construct an egress deck on a structure along a pre-existing, non-conforming eaiser elevation and for an increase in building scale. David M. Nicolau recused himself because of a conflict of interest. Jeffrey Gould, Rob Anderson, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case.
Presentation: Gary Locke, of William N. Rogers, II, civil engineers, and Scott Powell appeared to present the application. Mr. Locke reviewed the project. The second and third floor egress deck and stairs will encroach into the east sideline setback by slightly over a foot and will increase the building scale by approximately 2000 cu. ft.
Public Comment: None. There was 1 letter from an abutter in support of the application.
Board Discussion: The Board had no questions.
Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to construct an egress deck on a structure along a pre-existing, non-conforming eaiser elevation and for an increase in building scale at the property located at 192-194 Commercial Street (TCC), Daniel Wagner seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.
- ZBA 17-57** **21 Dewey Avenue, Unit 9 (Residential 1 Zone), Timothy Scott –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace an existing gable roof with a flat roof and deck in a pre-existing, non-conforming dimension. David M. Nicolau, Jeffrey Gould, Rob Anderson, Marianne Clements and Jeremy Callahan sat on the case.
Presentation: Timothy Scott appeared to present the application. The Board did not have site plans in order to proceed with the hearing of the application. The case was tabled.
- ZBA 17-58** **85-87 Shank Painter Road (General Commercial Zone), MacGregor Hay –**
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter a pre-existing, non-conforming structure by adding temporary awnings to cover an outdoor patio and seating area. Jeffrey Gould recused himself because of a conflict of interest. Rob Anderson disclosed that he owns a restaurant, but is confident he can render an unbiased decision if the applicant is comfortable with that situation. The applicant

did not have an issue with Mr. Anderson sitting on the case. David M. Nicolau, Rob Anderson, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case.

Presentation: MacGregor Hay appeared to present the application. Mr. Hay said he wants to put two temporary awnings on the front of the building. Both will project 14' off the restaurant, one would be a shed-style awning with a flat pitch and the other is an A-frame style awning.

Ms. McPherson noted that the applicant had applied pursuant to Article 3, Section 3110, the legal ad indicated that the application for a Special Permit was being applied for pursuant to Article 2, Section 2460 of the Zoning By-Laws. The description of the project was accurate and the applicant has the right to re-advertise the application if he would like or move forward with the hearing. The Board reclassified the application pursuant to Article 3, Section 3110. ***Jeremy Callahan moved to re-classify ZBA 17-58 under Article 3, Section 3110 of the Zoning By-Laws, Rob Anderson seconded and it was so voted, 5-0.***

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

Board Discussion: The Board questioned Mr. Hay.

Marianne Clements moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to alter a pre-existing, non-conforming structure by adding temporary awnings to cover an outdoor patio and seating area at the property located at 85-87 Shank Painter Road (CG), Rob Anderson seconded and it was so voted, 5-0. David M. Nicolau will write the decision.

ZBA 17-59 7 Duncan Lane (Residential 3 Zone), Tom Boland and Jim Farley –

The applicant seeks a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct a structure, including extending up and along pre-existing, non-conforming east and west elevations. David M. Nicolau, Jeffrey Gould, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case.

Presentation: John DeSouza, Tom Boland and Jim Farley appeared to present the application. Mr. DeSouza noted that the Zoning District was Res 1 and not Res 3 as advertised. Mr. Farley gave a history of the structure on the property, including its present condition. Mr. DeSouza reviewed the proposal and the non-conforming checklist submitted with the application. The proposed building scale will not need relief. He argued that the project is consistent with the goals and policies of the Local Comprehensive Plan, including Chapter 1, Goal 1, Policy B, Goal 2, Policy A, in Chapter 4, Goal 2, Policy A. The project meets the criteria of Article 3, Section 3110 in that it will not be more substantially detrimental than the existing non-conformancy. The demolition is allowed in a different footprint if 3110 is approved. He also stated that the project was consistent with Article 5, Section 5330 in that there will be no detrimental effects as a result and the benefits including increasing the local tax base providing better accommodations

for the applicants and the continued economic contributions that they bring to the Town.

Public Comment: None There were 5 letters in support of the application.

Board Discussion: The Board questioned Mr. Boland and Mr. Farley.

s. 3110: *Jeremy Callahan moved to find that the proposed increase in the non-conformancy at 7 Duncan Lane (Res 1) was not substantially more detrimental to the Town or the neighborhood than the existing situation under the Goldhirsh v. McNear ruling, Marianne Clements seconded and it was so voted, 5-0.*

s. 3115: *Jeremy Callahan moved to find that demolishing and reconstructing the structure at 7 Duncan Lane (Res 1) was not substantially more detrimental to the Town or the neighborhood than the existing situation, Jeffrey Gould seconded and it was so voted, 5-0.*

Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish and reconstruct a structure, including extending up and along pre-existing, non-conforming east and west elevations at the property located at 7 Duncan Lane (Res 1), Marianne Clements seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

ZBA 17-60 333 Commercial Street (Town Commercial Center Zone), Courtney Hurst on behalf of Nancyann Meads –

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to continue the service of food and alcohol to the public. David M. Nicolau, Jeffrey Gould, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case.

Presentation: Courtney Hurst appeared to present the application. She is purchasing the business from Ms. Meads.

Public Comment: Attorney Christopher Snow spoke in support of the application. There were no letters in the file.

Board Discussion: The Board questioned Ms. Hurst.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to continue the service of food and alcohol to the public at the property located at 333 Commercial Street (TCC) with the condition that the Special Permit runs with the applicant, Jeffrey Gould seconded and it was so voted, 5-0. Marianne Clements will write the decision.

ZBA 17-57 21 Dewey Avenue, Unit 9 (Residential 1 Zone), Timothy Scott –

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to replace an existing gable

roof with a flat roof and deck in a pre-existing, non-conforming dimension. David M. Nicolau, Jeffrey Gould, Rob Anderson, Marianne Clements and Jeremy Callahan sat on the case.

Presentation: Timothy Scott appeared to present the application. He explained that the project involved flattening the existing gable roof above the front porch and replace the windows with sliders.

Public Comment: Attorney Christopher J. Snow, representing Neil Hanscomb, an abutter, spoke in opposition to the application. There were 2 letters from abutters in opposition to the application.

Board Discussion: Mr. Nicolau suggested that Mr. Scott that his case for relief is weak and since a portion of the structure is located in a private way, he didn't think the Board had jurisdiction to grant the relief sought. The Board will need more information from the applicant concerning the rights of abutters in the private way. The applicant requested a continuance to the April 6, 2017 Public Hearing.

Jeremy Callahan moved to grant the request to continue ZBA 17-57 until the April 6, 2017 Public Hearing at 6:30 P.M., Marianne Clements seconded and it was so voted, 4-1 (David M. Nicolau opposed).

NEXT MEETING: The next meeting will take place on Thursday, April 6, 2017. It will consist of a Work Session at 6:30 P.M. and a Public Meeting at 7:00 P.M.

ADJOURNMENT: *Jeremy Callahan moved to adjourn at 8:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

Approved by _____ on _____, 2017
David M. Nicolau, Chair