

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
April 20, 2017**

Members Present: David M. Nicolau (left at 8:30 P.M.), Joe Vasta, Jeffrey Haley, Jeffrey Gould, Rob Anderson and Daniel Wagner.

Members Absent: Robert Littlefield (excused), Marianne Clements (excused) and Jeremy Callahan (excused)

Others Present: Ellen C. Battaglini (Permit Coordinator).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:32 P.M.

PENDING DECISIONS:

ZBA 17-54 **7 Johnson Street (*Residential 3 Zone*), Christopher Fiset, Esq., on behalf of White Porch Inn, LLC –**
David M. Nicolau, Jeffrey Gould, Rob Anderson, Marianne Clements and Jeremy Callahan sat on the case. The decision was not ready

ZBA 17-56 **192-194 Commercial Street (*Town Commercial Center Zone*), Scott Powell –**
Jeffrey Gould, Rob Anderson, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case. Jeffrey Gould read the decision. ***Rob Anderson moved to approve the language as written, Joe Vasta seconded and it was so voted, 4-0-1 (David M. Nicolau abstaining).***

ZBA 17-58 **85-87 Shank Painter Road (*General Commercial Zone*), MacGregor Hay –**
David M. Nicolau, Rob Anderson, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case. David M. Nicolau read the decision. ***Rob Anderson moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0***

ZBA 17-59 **7 Duncan Lane (*Residential 3 Zone*), Tom Boland and Jim Farley –**
David M. Nicolau, Jeffrey Gould, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case. Jeffrey Gould read the decision. ***Rob Anderson moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.***

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

David M. Nicolau, Jeffrey Gould, Marianne Clements, Jeremy Callahan and Daniel Wagner sat on the case. The decision was not ready

MINUTES: March 16 & April 6, 2017 – Jeffrey Haley moved to approve the minutes of March 16 and April 6, 2017 as written, Joe Vasta seconded and it was so voted, 5-0.

Chair David M. Nicolau adjourned the Work Session at 6:53 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were 6 members of the Board present and 3 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 meeting of May 18, 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 17-55 **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. Rob Anderson recused himself because of a conflict of interest. David M. Nicolau, Jeffrey Haley, Joe Vasta, Jeffrey Gould, and Daniel Wagner sat on the case.

Presentation: Loic Rossignon appeared to present the application. He presented a revised seating and site plan. He reviewed the plan, which includes the addition of more seats based upon additional gallons awarded through an Economic Development Permit. A total of 71 seats are being added to the existing 44. The change in the seating plan is for the extra seats, which will be strictly exterior seats. No interior seating will be added, however the 2 benches, for a total of 8 seats, in the front of the restaurant have been added to the plan. These have previously been public seating and not a part of the seating plan. He said that the benefits to the Town of the additional seating are that the business will be more sustainable and will be able to stay open year-round and continue to employ locals.

Public Comment: None. There were 3 letters, 2 from abutters, in support of the application.

Board Discussion: The Board questioned Mr. Rossignon about the requirements of the Harbor Overlay District, within which the property is located, and the fact that relief is needed, notwithstanding that the relief was not legally advertised.

The Board requested that Mr. Rossignon revise the exterior seating plan to indicate the location of the Harborfront Overlay District.

Jeffrey Gould moved to find that the economic and other benefits to the Town outweighed any detrimental effects, Daniel Wagner seconded and it was so voted, 5-0.

Daniel Wagner moved to grant a Special Permit pursuant to Article 2, Section 2314, Special Permit Uses, of the Zoning By-Laws to operate a restaurant in the Harborfront Overlay District, Jeffrey Gould seconded and it was so voted, 5-0.

Jeffrey Gould moved to grant 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 at the property located at 225 Commercial Street (TCC) with the condition that the Harborfront Overlay District is delineated on a revised seating/site plan to be submitted by the applicant, Daniel Wagner seconded and it was so voted, 5-0. Jeffrey Haley 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. The Board did not have a quorum to hear this matter. Attorney Lester J. Murphy, on behalf of the applicant, requested to continue to the May 4, 2017 Public Hearing at 6:30 P.M. *Jeffrey Haley moved to grant the request to continue Case ZBA 17-57 to the May 4, 2017 Public Hearing at 6:30 P.M., Joe Vasta seconded and it was so voted, 5-0.*

ZBA 17-61 5 Carnes Lane (Residential 3 Zone), Ted Smith, Architect, LLC, on behalf of Robert Wotiz –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale, and Article 3, Sections 3110, Change, Extensions and Alterations, and 3115, Demolition and Reconstruction, of the Zoning By-Laws to demolish a three bedroom principal structure and an accessory shed and rebuild a new three bedroom principal structure. David

Presentation: Ted Smith, Robert Wotiz and Howie Lizotte appeared to present the application. Mr. Smith explained that the property was non-conforming as to frontage and that the building will be demolished and rebuilt and the new structure will need relief for an increase in building scale. The reconstructed building will be outside the setbacks. He argued that the proposed changes would not be more detrimental to the Town or neighborhood than the existing situation. He pointed out that the size of the proposed garage is a result of making room for a boat and is the reason that building scale relief is needed. He said that in regard to the scale by-law that the proposed structure will successfully integrate into the neighborhood and will not have would not have a significant negative impact on the natural light to, or views from, neighboring structures.

Public Comments: Jason Reidy and Jane Cowey, direct abutters, spoke in opposition to the application. There was 1 letter from an abutter in support of the application.

Board Discussion: The Board questioned Mr. Smith and discussed the proposal. *Rob Anderson moved to find that the lack of adequate frontage is not substantially more detrimental to the lot, Joe Vasta seconded and it was so voted, 5-0.*

The Board decided that relief was not needed for Article 3, s. 3115, as the rebuilt structure will not be encroaching into any setbacks, and will therefore have no non-conformancies in that regard.

Rob Anderson moved to find that the applicant did not need relief from Article 3, s. 3115 of the Zoning By-Laws, Jeffrey Haley seconded and it was so voted, 5-0.

The Board questioned Mr. Smith and discussed the size of the new structure. The Board noted that the application did not include existing elevation drawings and scale figures making it difficult to compare the existing structure with the proposed. A majority of the Board believed that the scale of the property was being increased too much and was out of proportion to the other structures in the neighborhood, nearly double the neighborhood average scale, and the new structure would interfere with light and air to abutting structures. After some discussion, the Board requested that the applicant re-design the new structure to make it smaller than what was proposed.

Jeffrey Gould moved to grant the request to continue ZBA 17-61 to the May 4, 2017, Jeffrey Gould seconded and it was so voted, 5-0.

ZBA 17-62 **579 Commercial Street (Residential 3 Zone), Joseph T. Realmuto –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions and Alterations, of the Zoning By-Laws to raise a structure pursuant to FEMA regulations up and along pre-existing, non-conforming dimensions. The applicant requested to postpone to the May 4, 2017 Public Hearing. *Jeffrey Haley moved to grant the request to postpone to the May 4, 2017 Public Hearing at 7:00 P.M., Joe Vasta seconded and it was so voted, 5-0.*

ZBA 17-63 **79 Shank Painter Road (General Commercial Zone), Five Star Pet Services –**
The applicant seeks a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to place a sandwich board sign listing specials and cute sayings. Jeffrey Gould, Joe Vasta, Jeffrey Haley, Rob Anderson and Daniel Wagner sat on the case.
Presentation: Adam Erhenberg appeared to present the application. He reviewed the sign proposal.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board briefly questioned Mr. Ehrenberg.
Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3420, Outside Display, of the Zoning By-Laws to place a sandwich board sign listing

specials and cute sayings at the property located at 79 Shank Painter Road (GC), Jeffrey Gould seconded and it was so voted, 5-0.

ZBA 17-64 **3 Cudworth Street (Residential 3 Zone), KA Bazarian Construction, on behalf of Maria Cirino** (*request to postpone to the meeting of May 4th*) – 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 a garage and rebuild in the same footprint, adding dormers on the east and west elevations. **Rob Anderson moved to grant the request to postpone to the May 4, 2017 Public Hearing at 7:00 P.M., Joe Vasta seconded and it was so voted, 5-0.**

ZBA 17-65 **192-194 Commercial Street (Town Center Commercial Zone), Center Brook, LLC** – 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 means of egress decks and stairs along a pre-existing, non-conforming west elevation and to increase the building scale of the structure. Jeffrey Gould, Joe Vasta, Jeffrey Haley, Rob Anderson and Daniel Wagner sat on the case.

Presentation: Gary Locke and Scott Powell appeared to present the application. Mr. Locke explained that the rearrangement and reconstruction of the egress decks and stairs were part of bringing the structure into compliance with the State Building Code and for public safety. The existing stairs are not adequate for egress purposes. He said that the stairs are not encroaching on the west elevation setbacks and that the applicant would not need relief from Article 3, s. 3110 of the Zoning By-Laws.

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

Board Discussion: The Board questioned Mr. Locke and Mr. Powell.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale of the Zoning By-Laws to construct means of egress decks and stairs along a pre-existing, non-conforming west elevation and to increase the building scale of the structure at the property located at 192-194

Commercial Street (TCC), Rob Anderson seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

ZBA 17-66 **540-544 Commercial Street (Residential 3 Zone), Provincetown Hospitality, LLC** – The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to approve a flex-seating plan for the service of alcohol. No representatives of the applicant appeared. **Joe Vasta moved to postpone ZBA 17-66 to the May 4, 2017 Public Hearing at 7:00, Rob Anderson seconded and it was so voted, 5-0.**

NEXT MEETING: The next meeting will take place on Thursday, May 4, 2017. 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 8:45 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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