

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
June 15, 2017**

Members Present: David M. Nicolau (left at 7:51 P.M.), Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould, Jeremy Callahan, Marianne Clements and Steven Latasa-Nicks.

Members Absent: Daniel Wagner (excused) and Rob Anderson (excused).

Others Present: Gloria McPherson (Town Planner), Ellen C. Battaglini (Permit Coordinator) and Ilana Quirk, Esq. (Town Counsel).

WORK SESSION

Chair David M. Nicolau called the Work Session to order at 6:31 P.M.

PENDING DECISIONS:

ZBA 17-67 **23 Winthrop Street, #E5 (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S.**, on behalf of **Russell Davies** - David M. Nicolau, Joe Vasta, Jeffrey Gould, Rob Anderson and Marianne Clements sat on the case. Marianne read the decision. *Jeffrey Haley moved to approve the decision as written, Joe Vasta seconded and it was so voted, 5-0.*

ZBA 17-68 **335 Commercial Street (Town Commercial Center Zone), Regina Binder**, on behalf of **Diarmuid O'Neill** and **Sarah Cole** – David M. Nicolau, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case. David M. Nicolau read the decision. *Joe Vasta moved to approve the decision as written, Jeffrey Gould seconded and it was so voted, 5-0.*

ZBA 17-71 **137 Bradford Street (Town Center Commercial Zone), Robin B. Reid, Esq., on behalf of 7-Eleven, Inc.** – David M. Nicolau, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case. Gloria McPherson read the decision. *Jeffrey Haley moved to approve the decision as written, Marianne Clements seconded and it was so voted, 5-0.*

ZBA 17-76 **258 Bradford Street (Residential 3 Zone), Thomas Thurston** – David M. Nicolau, Joe Vasta, Jeffrey Gould, Jeremy Callahan and Marianne Clements sat on the case. David M. Nicolau read part of the decision. He will revise it and read it in its entirety at the next meeting.

ZBA 17-73 384 Commercial Street (Town Commercial Center Zone), Meghan O'Connor, Danielle Niedzielski and Silvestro Schiavone, dba The Captain's Daughters, LLC –

Jeffrey Gould, Jeffrey Haley, Joe Vasta, Jeremy Callahan and Marianne Clements sat on the case. The decision was postponed to the next meeting.

ZBA 17-75 20 Montello Street (Residential 3 Zone), Tom Thompson, dba Provincetown Design Studio, on behalf of Scott R. Liddell –

Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould, and Daniel Wagner sat on the case. The decision was postponed to the next meeting.

MINUTES: June 1, 2017– Joe Vasta moved to approve the minutes as written, Jeffrey Haley seconded and it was so voted, 5-0.

Chair David M. Nicolau adjourned the Work Session at 6:58 P.M.

PUBLIC HEARING

Chair David M. Nicolau called the Public Hearing to order at 7:00 P.M. There were 8 members of the Board present and 2 absent. He called for a motion to take ZBA 17-78 out of order.

Robert Littlefield moved to take ZBA 17-78 out of order, Jeffrey Haley seconded and it was so voted, 5-0.

ZBA 17-78 46 Bradford Street (Residential 3 Zone), Regina Binder for Provincetown Commons, Inc. –

The applicant seeks a Special Permit pursuant to Article 2, sections 2440, Permitted Principal Uses, F4, Use having external observable attributes similar to uses permitted, and 2470, Parking Requirements, of the Zoning By-Laws for a change in use of a structure and relief from parking requirements. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Haley and Jeffrey Gould sat on the case.

Presentation: Attorney Lester J. Murphy and Regina Binder appeared to present the application. Attorney Murphy said that the proposed uses include artist studio, economic development and educational. He said the reason for this use request is because as the property develops, the uses may change over the course of the 99-year lease the applicant has entered into with the Town. Given that long lease, if the Special Permit were granted, the applicant would not have to return to the Board to modify it and seek a change in use. The proposed uses are now allowed in the district as of right, however as time goes on, activities in the building may evolve and a use not considered, existing or known at this time may be proposed. If the Board grants this Special Permit, and as long as a new use appears externally to be that of an artist studio, economic developmental or educational

use, it would be allowed without the applicant having to return for relief. He briefly reviewed the floor plans for uses in the building. Ms. Binder said that the intention in asking for relief from s. 2440, F4 was to optimize the flexibility within the permitted uses and maximum flexibility for the proposed uses.

Attorney Murphy argued the social, economic and other benefits outweighed any adverse effects such as hazard, congestion or environmental degradation. He said the proposal met seven out of the nine goals of economic development as outlined in the Local Comprehensive Plan. He added that the citizens of the Town had voted to support this use of the building and the project as proposed was a positive development. He said that there would be minimal or no adverse effects on the neighborhood or Town. He added that the proposal was also granted 83 economic development gallons from the Board of Selectmen in order to support the proposal.

As for relief from the parking requirement, Attorney Murphy argued that many people going to the site would be on bicycles or on foot as opposed to in motor vehicles. As the site plan shows, there are currently 14 spaces of various sizes, whereas 26 would be required for the amount of space in the building. He said it was unlikely that all of the spaces would be used at the same time. However, he said that if just the square footage of the actual, usable space of the building were calculated, only 16-18 spaces would be required. He added that bike racks would be installed on the property and that there was parking available in the area a short distance away from the site.

Public Comment: Napi Van Dereck spoke in support of the application. There were no letters in the file.

Board Discussion: The Board questioned Attorney Murphy and Ms. Binder. *Robert Littlefield moved to close the public portion of the hearing, Joe Vasta seconded and it was so voted, 5-0.*

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2470, Parking Requirement, of the Zoning By-Laws for relief from parking requirements at the property located at 46 Bradford Street (Res 3), as the Board has determined that the applicant has met the criteria of Article 5 Section 5300, that the social, economic and other benefits of the proposal outweigh any adverse effects such as hazard, congestion or environmental degradation, and that special circumstances such as proximity to a municipal off-street parking lot render a lesser provision adequate for all parking needs, Jeffrey Gould seconded and it was so voted, 5-0.

Robert Littlefield moved to grant a Special Permit pursuant to Article 2, Section 2440, F4, Use having external observable attributes similar to uses permitted, of the Zoning By-Laws for a change in use of a structure at the property located at 46 Bradford Street (Res 3), as the Board has determined that the applicant has met the criteria of Article 5, Section 5300, that the social, economic and other

benefits of the proposal outweigh any adverse effects such as hazard, congestion or environmental degradation, Jeffrey Gould seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

Chair Nicolau asked for a motion to take ZBA 17-72 out of order. **Robert Littlefield moved to take ZBA 17-72 out of order, Jeffrey Gould seconded and it was so voted, 5-0.**

ZBA 17-72 58-60 Bradford Street (Residential 3 Zone), MEILI, LLC –

The applicant seeks a Special Permit pursuant to Article 2, Section 2640, Building Scale and Article 3, Section 3110, Change, Extensions or Alterations of the Zoning By-Laws to alter and extend a multi-family structure and a cottage by raising their height up and along pre-existing, non-conforming dimensions and to increase building scale. David M. Nicolau, Robert Littlefield, Joe Vasta, Jeffrey Gould and Jeremy Callahan sat on the case.

Presentation: Attorney Lester J. Murphy and Ted Roach appeared to present the application. Attorney Murphy said that the relief sought was to alter and expand two lawful pre-existing, non-conforming structures on the site by raising them and for an increase in building scale of the main structure. He said that portions of the structures are located in the AE flood zone and because renovations costing more than 50% of the market value of the structure were proposed, compliance with FEMA regulations to raise the structures out of the flood zone was required. The main structure had to be raised slightly under 1.5' and the cottage structure just over 2.3'. The front building is non-conforming as to certain setbacks, requiring relief under Section 3110. As access stairways are being added and the structure is already over the neighborhood average and maximum allowed scale, scale relief is required. The cottage structure is non-conforming as to its setbacks, needing relief under Section 3110, but not building scale relief. Access stairways on the main structure are being expanded and modified to meet the requirements of the Building Code. He added that the property is connected to the sewer, there will be no increase in the number of dwelling units or in the footprint of either building and the number of parking spaces will be increased. These proposed changes represent substantial benefits, and will include an increase in the municipal tax base, to the Town and the neighborhood and they outweigh any adverse effects pursuant to Article 5, Section 5330.

Attorney Murphy said that the Historic District Commission has approved the final exterior features of the project, which will make the buildings safer and more visually appealing. New foundations and upgrades for both buildings will be installed, including a sprinkler system for the main one. He argued that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing structure. As to the building scale of the main structure, the proposal meets the requirements of Article 2, Section 2640, subparagraphs 1, 5 and 6. The project is in keeping with the goals and policies of the LCP; Section 1, Goal 1, Policy B, Section 4, Goal 1, Policy A and E and

Section 4, Goal 2. He argued that the height increase does integrate into its surroundings and minimize the appearance of mass from the streetscape and would not negatively impact neighboring structures. And, pursuant to subparagraph 6, the HDC has approved the exterior modifications.

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

Board Discussion: The Board questioned Attorney Murphy and Mr. Roach. *Robert Littlefield moved to find that the proposed changes, pursuant to Article 3, Section 3110, are not substantially more detrimental to the neighborhood due to the improvement in the safety of the stairways and the extensive renovations made to an historical structure, and are a benefit to the neighborhood and Town, Jeremy Callahan seconded and it was so voted, 5-0.*

Robert Littlefield moved to find that the proposal met the requirement of Article 2, Section 2640, specifically test 5, in that it will integrate into its surroundings and minimize the appearance of mass from the streetscape, Joe Vasta seconded and it was so voted, 5-0.

Robert Littlefield moved to find that the project met the criteria of Article 5, Section 5300 in that the social, economic and other benefits of the proposal outweigh any adverse effects such as hazard, congestion or environmental degradation, Joe Vasta seconded and it was so voted, 5-0.

Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2640, Building Scale and Article 3, Section 3110, Change, Extensions or Alterations of the Zoning By-Laws to alter and extend a multi-family structure and a cottage by raising their height up and along pre-existing, non-conforming dimensions and to increase building scale at the property located at 58-60 Bradford Street (Res 3), Robert Littlefield seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

ZBA 17-77 21 Bradford Street Extension, (Residential 1 Zone), Herring Cove Village Condominium Trust, Ryan Campbell, Trustee –

The applicant seeks a Special Permit pursuant to Article 3, Section 3230, Sign Size, of the Zoning By-Laws to display a 6 sq. ft. sign on the property. Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Marianne Clements sat on the case.

Presentation: Ryan Campbell appeared to present the application. Mr. Campbell said the proposed sign exceeds the 2 by 2' by-law requirement.

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

Board Discussion: The Board had no questions for Mr. Campbell.

Joe Vasta moved to grant a Special Permit pursuant to Article 3, Section 3230, Sign Size, of the Zoning By-Laws to display a 6 sq. ft. sign on the property located at 21 Bradford Street Extension (Res 1), Jeffrey Haley seconded and it was so voted, 5-0. Marianne Clements will write the decision.

FY17-53 132 Bradford Street (Town Center Commercial Zone), TMC New England, LLC, c/o TM Crowley & Associates, on behalf of Steve Riley –

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. Robert Littlefield, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Marianne Clements sat on the case.

Presentation: Attorney E. James Veara, Brian Dundon and Colleen Medeiros appeared to present the application. Attorney Veara reviewed the proposed project, which he noted had been give a Certificate of Appropriateness by the HDC. No exterior structural, or architectural changes in the characteristics of the structures, are being proposed and the footprint will not be increased.

Mr. Dundon reviewed the proposed site plan and the upgrades to the property, including to parking, landscaping and pedestrian and vehicle access. There will be improvements in stormwater management on site and a decrease in hardscape. He said that the project included some off-site improvements as well, including installation of traffic signs and striping improvements in the neighborhood, under the guidance of Dept. of Public Works and with approvals from the Board of Selectmen. In addition, proposed modifications to a landscape/traffic island in the intersection will eliminate conflicts with delivery trucks turning left at the intersection coming out of Standish Street. Bike racks will be installed, fog lines will get re-painted and overhead wires on Standish Street to the site will be put underground.

Attorney Veara described how delivery trucks would move on the site and what size trucks would be used at different times of the year. The plans, he indicated, have been revised to incorporate the recommendations of the Police Chief, the DPW, Town planning staff and the Cape Cod Commission. He said that the proposed use is permitted in the zoning district, however under the Formula Business by-law, the Board has to consider the impact of the visual character of the business on the Town. He argued that the building does not have a negative impact on the visual character of Town or the neighborhood. The applicant has worked with Town staff to enhance not only the building and the leasehold area, but the entire intersection and to further the Town's overall vision for its improvement. Only one sign is being proposed, an improvement over the existing situation, and he reviewed the many upgrades that are being proposed for the site, including an increase in employment opportunities, and argued that these benefits outweighed the adverse effects such as hazard, congestion and environmental degradation. He addressed the issue of vehicular traffic and potential congestion in the area during the tourist season and cited the Cape Cod Commission peer review report, which concluded that only a negligible impact on vehicular congestion would result.

Gloria McPherson reviewed the Massachusetts Attorney General's report in regard to the Formula Business by-law.

Public Comment: Barbara Rushmore, Napi Van Dereck, Jackie Kelly, Tracy Kachtick-Anders, Lise King, Pat Nadle, Ray Rigoglioso, Thom Biggert, Mary Jo Avellar, Patrick Patrick, on behalf of the Chamber of Commerce, Patricia Farrell, Bonnie McEwan, Joseph Murphy, Bruce Mason and April Baxter. There were 35 letters in opposition and 5 letters in support of the application.

Board Discussion: The Board questioned Attorney Veara and Mr. Dundon. Attorney Quirk reviewed a Wellfleet Land Court case regarding its formula business by-law, which was ultimately overturned. She advised that the Board look at what the property's visual impact would be as a result of it being a formula business without regard to the ownership issue. She suggested the Board focus on the visual impacts, both negative and positive, of the proposed use on the Town.

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

Attorney Veara requested time to speak. *Jeffrey Gould moved to re-open the public portion of the hearing, Joe Vasta seconded and it was so voted, 5-0.*

Attorney Veara focused on the visual character issue of the case and reviewed the definition of a formula business in the Town's by-law. *Jeffrey Haley moved to close the public portion of the hearing, Marianne Clements seconded and it was so voted, 5-0.*

Vice Chair Robert Littlefield polled the Board. There were 2 Board members in favor of granting the Special Permit and 3 opposed. Mr. Littlefield reviewed what he thought were the benefits and the negative effects of the project and concluded that the latter outweighed the former.

Jeffrey Haley moved to grant 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 at the property located at 132 Bradford Street (TCC), Joe Vasta seconded and it was so voted, 2-3 (Robert Littlefield, Jeffrey Gould and Marianne Clements opposed). Robert Littlefield will write the decision.

ZBA 17-64 3 Cudworth Street (Residential 3 Zone), KA Bazarian Construction, on behalf of Maria Cirino–

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. This case has previously been postponed to the Public Hearing of July 6, 2017 at 7:00 P.M.

NEXT MEETING: The next meeting will take place on Thursday, July 6, 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 10:30 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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