

**TOWN OF PROVINCETOWN  
ZONING BOARD OF APPEALS  
MEETING MINUTES OF  
May 18, 2017**

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

**Members Absent:** Robert Littlefield (excused).

**Others Present:** Gloria McPherson (Town Planner) and Ellen C. Battaglini (Permit Coordinator).

**WORK SESSION**

Chair David M. Nicolau called the Work Session to order at 6:30 P.M.

**PENDING DECISIONS:**

**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. Marianne Clements read the decision. *Jeremy Callahan moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.*

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

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

**ZBA 17-62**    **579 Commercial Street (Residential 2 Zone), Joseph T. Realmuto –**

David M. Nicolau, Jeffrey Gould, Jeremy Callahan, Marianne Clements and Daniel Wagner sat on the case. Jeremy Callahan read the decision. *Jeffrey Haley moved to approve the language as written, Marianne Clements seconded and it was so voted, 5-0.*

**ZBA 17-66**    **540-544 Commercial Street (Residential 3 Zone), Provincetown Hospitality, LLC –**

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

**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. The decision was not ready.

**ZBA 17-69**    **6 Cottage Street, #2 (Residential 2 Zone), Don DiRocco, of Hammer Architects, on behalf of Randall Sell and Edward Gilligan –**  
Robert Littlefield, Jeffrey Haley, Jeffrey Gould, Jeremy Callahan and Marianne Clements sat on the case. Jeffrey Gould read the decision. *Jeffrey Gould moved to approve the language as written, Jeffrey Haley seconded and it was so voted, 5-0.*

**MINUTES: May 4, 2017–** *Jeremy Callahan moved to approve the minutes as written, Rob Anderson seconded and it was so voted, 5-0.*

Chair David M. Nicolau postponed the Work Session at 7:01 P.M.

## **PUBLIC HEARING**

Chair David M. Nicolau called the Public Hearing to order at 7:01 P.M. There were 8 members of the Board present and 1 absent.

**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. There was a request from the applicant to postpone the case until the June 15, 2017 Public Hearing. *Joe Vasta moved to grant the request to postpone FY17-53 until the June 15, 2017 Public Hearing at 6:30 P.M., Jeremy Callahan 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, 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 M. Nicolau, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Rob Anderson sat on the case.  
**Presentation:** Ted Smith appeared to discuss the application. A new scale calculation had been completed and submitted to the Board. Mr. Smith said that the new scale calculation is 25,565 cu. ft., less than the previous scale of 26,000 cu. ft.  
**Board Discussion:** The Board was comfortable with the revisions regarding scale.  
*Jeffrey Haley 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 demolish a three bedroom principal structure and an accessory shed and rebuild a new three bedroom principal structure at the property located at 5 Carnes Lane (Res 3), Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau 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 been postponed to the Public Hearing of July 6, 2017 at 6:30 P.M.

**ZBA 17-68 335 Commercial Street (Town Commercial Center Zone), Regina Binder, on behalf of Diarmuid O’Neill and Sarah Cole –**

The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase the area of service of food and beverages to an exterior second floor deck. David M. Nicolau, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Daniel Wagner sat on the case.

**Presentation:** Ginny Binder appeared to discuss the application. She explained how the noise from The Squealing Pig would be mitigated with a proposed 6’ privacy fence along the western edge of the second floor walkway at the restaurant and around the southwest corner of the exterior seating area. She submitted drawings of the fence, proposed lighting information and a description of the privacy fence.

**Board Discussion:** The Board had no questions.

***Jeffrey Haley moved to find that the social, economic and other benefits of the fencing outweigh any adverse effects such as hazard, congestion or environmental degradation, Jeffrey Gould seconded and it was so voted, 5-0.***

***Jeffrey Haley moved to find that the fencing was not substantially more detrimental to the neighborhood or Town, Jeffrey Gould seconded and it was so voted, 5-0.***

***Jeffrey Haley moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to increase the area of service of food and beverages to an exterior second floor deck with the condition that a 6’ privacy fence be installed along the western edge of the second floor walkway at the restaurant and around the southwest corner of the exterior seating area at the property located at 335 Commercial Street (TCC) with the condition that the Special Permit runs with the applicant and shall expire on January 2, 2018, Jeffrey Gould seconded and it was so voted, 5-0. David M. Nicolau will write the decision.***

**ZBA 17-70** **94 Harry Kemp Way (Residential B Zone), 94 Harry Kemp Way Trust, William Gately, Trustee** (*request to postpone to the meeting of June 1<sup>st</sup>*) - The applicant seeks a Special Permit pursuant to Article 2, Section 2473, Parking Requirements, of the Zoning By-Laws to reduce the number of parking spaces from the required 39 spaces to 22 spaces. There was a request from the applicant to withdraw the case without prejudice. ***Jeffrey Gould to grant the request to withdraw ZBA 17-70 without prejudice, Joe Vasta seconded and it was so voted, 4-0-1 (David M. Nicolau abstaining).***

**ZBA 17-71** **137 Bradford Street (Town Center Commercial Zone), Robin B. Reid, Esq., on behalf of 7-Eleven, Inc.** –

The applicant seeks a Special Permit pursuant to Article 2, Section 2360, Formula Business Regulated District and 2440, B11, Permitted Principal Uses, of the Zoning By-Laws to operate a formula business, namely 7-Eleven. David M. Nicolau, Jeremy Callahan, Rob Anderson, Marianne Clements and Daniel Wagner sat on the case.

**Presentation:** Attorney Robin B. Reid and Chris Brosco appeared to present the application. Attorney Reid said that the existing chain convenience store, Tedeschi's, is being replaced with another chain convenience store, 7-Eleven. She reviewed the site plan approved by the Planning Board for the property. The motor vehicle gas facilities have already been removed. The site plan indicates improvements totally \$200,000 that will be made on the site and at the intersection adjacent to the site, including dividers, sidewalks and landscaping and other site improvements. Traffic flow and public safety in this very busy intersection will be improved. She said that the improvements would have a positive impact, including its visual character, on the neighborhood and Town. She argued that the social and other benefits to the neighborhood and Town, as stated previously, outweighed any adverse effects such as hazard, congestion or environmental degradation.

**Public Comment:** Tom Thurston spoke in favor of the application. There were no letters in the file.

**Board Discussion:** The Board questioned Attorney Reid.

***Jeremy Callahan moved to find that the project will improve the visual character of the neighborhood and Town, Marianne Clements seconded and it was so voted, 5-0.***

***Jeremy Callahan moved to find that the social and other benefits of the project to the neighborhood and Town outweigh any adverse effects such as hazard, congestion and environmental degradation, Marianne Clements seconded and it was so voted, 5-0.***

***Jeremy Callahan moved to grant a Special Permit pursuant to Article 2, Section 2360, Formula Business Regulated District and 2440, B11, Permitted Principal Uses, of the Zoning By-Laws to operate a formula business, namely 7-Eleven,***

*at the property located at 137 Bradford Street (TCC), Marianne Clements seconded and it was so voted, 5-0. Rob Anderson will write the decision.*

- 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. There was a request by the applicant to postpone the matter until the June 1, 2017 Public Hearing. ***Jeremy Callahan moved to grant the request to postpone ZBA 17-72 to the June 1, 2017 Public Hearing at 6:30 P.M., Marianne Clements seconded and it was so voted, 5-0.***
- ZBA 17-73 384 Commercial Street (Town Commercial Center Zone), Meghan O’Connor, Danielle Niedzielski and Silvestro Schiavone, dba The Captain’s Daughters, LLC –**  
The applicant seeks a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to operate a gallery, retail store and tea bar with six interior fast-food seats. Jeffrey Gould, Jeffrey Haley, Joe Vasta, Jeremy Callahan and Marianne Clements sat on the case.  
**Presentation:** Meghan O’Connor and Danielle Niedzielski appeared to present the application. Ms. Niedzielski stated that the store will display artwork on its walls, luxury retail goods will be available for purchase and a tea bar will operate on the premises. The applicants are requesting to install 6 seats, the gallons for which have been granted through an Economic Development Permit by the Board of Selectmen.  
**Public Comment:** None. There were no letters in the file.  
**Board Discussion:** The Board questioned Ms. O’Connor and Ms. Niedzielski. ***Joe Vasta moved to grant a Special Permit pursuant to Article 2, Section 2460, Special Permit Requirements, of the Zoning By-Laws to operate a gallery, retail store and tea bar with six interior fast-food seats at the property located at 384 Commercial Street (TCC) with the condition that the Special Permit run with the applicant, Jeremy Callahan seconded and it was so voted, 5-0.*** Marianne Clements will write the decision.
- ZBA 17-76 258 Bradford Street (Residential 3 Zone), Thomas Thurston –**  
The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add a screened-in porch to the west rear wing of a structure. David M. Nicolau, Joe Vasta, Jeffrey Gould, Jeremy Callahan and Marianne Clements sat on the case. Mr. Nicolau explained that the case had been mis-advertised as pursuant to Article 3, Section 3110, however the Board, pursuant to the *Duteau* ruling, could consider the matter pursuant to Article 2, Section 2640 if a majority of members agreed. ***Marianne Clements moved to re-classify ZBA 17-76 from Article 3, Section 3110 to Article***

*2, Section 2640 of the Zoning By-Laws, Jeremy Callahan seconded and it was so voted, 5-0.*

**Presentation:** Tom Thurston appeared to present the application. He reviewed the project and indicated that subparagraphs 5 and 6 of Article 2, Section 2640E supported his request.

**Public Comment:** None. There were 3 letters in support of the application.

**Board Discussion:** The Board had no questions about the project.

*Jeremy Callahan moved to find that the requirements of subparagraphs 5 and 6 of Article 2, Section 2640E of the Zoning By-Laws had been met, Jeffrey Gould seconded and it was so voted, 5-0.*

*Jeffrey Gould moved to find that the social, economic and other benefits of the project outweighed any adverse effects such as hazard, congestion and environmental degradation, Joe Vasta seconded and it was so voted, 5-0.*

*Jeremy Callahan moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to add a screened-in porch to the west rear wing of a structure at the property located at 258 Bradford Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau will write the decision.*

## WORK SESSION

Chair David M. Nicolau reconvened the Work Session at 7:45 P.M.

### PENDING DECISIONS:

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

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

**NEXT MEETING:** The next meeting will take place on Thursday, June 1, 2017. It will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

**ADJOURNMENT:** *Jeremy Callahan moved to adjourn at 8:00 P.M. and it was so voted unanimously.*

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2017  
David M. Nicolau, Chair