

**TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
May 4, 2017**

Members Present: David M. Nicolau, Robert Littlefield (left at 8:07 P.M.), Joe Vasta, Jeffrey Haley, Jeffrey Gould, Rob Anderson, Jeremy Callahan, Marianne Clements and Daniel Wagner.

Members Absent: None.

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 6:32 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. Jeremy Callahan read the decision.

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.

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

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

ZBA 17-65 **192-194 Commercial Street (*Town Center Commercial Zone*), Center Brook, LLC –**

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

MINUTES: April 20, 2017– *Jeffrey Haley moved to approve the minutes as written, Joe Vasta seconded and it was so voted, 5-0.*

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 9 members of the Board present and none 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 17-57 **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, Jeremy Callahan, Rob Anderson and Marianne Clements sat on the case.

Presentation: Attorney Lester J. Murphy and Patrick Rorke appeared to discuss the application. Attorney Murphy reviewed some of the concerns and issues in the matter that came up at a prior hearing. He said that a new site plan had been submitted to the Board. The project does not propose to change the footprint of the structure, but only to flatten a portion of the roof and install a deck on top of it. Due to the fact that the structure partially encroaches onto Garfield Street, Attorney Murphy explained the legality and validity of the Board's ability to make a ruling on the matter and the legal status of the structure as a lawful pre-existing, non-conforming structure suitable for consideration for alteration under Article 3, s. 3110. The Board has the jurisdiction and the ability to make a finding that the deck will not be substantially more detrimental to the neighborhood than the structure without the deck. Attorney Murphy said that one of the neighbors who objects to this proposal has an open deck on the second floor of his house and other properties in the neighborhood have second floor decks as well. Therefore, the addition of the applicant's deck will not be detrimental to the neighborhood, but in keeping with other structures in the neighborhood. Attorney Murphy said that the benefits of the proposal outweigh any detrimental effects such as hazard, congestion or environmental degradation. The project involves a 128 sq. ft. open deck and can exist in harmony with the neighborhood just as the other decks, both larger and smaller, currently do. The new deck will enhance the value of the property and generate tax revenue of the Town and offer employment opportunities to local builders. The proposed deck will not be more disruptive to the neighborhood than any other similar deck in the neighborhood and Attorney Murphy asserted that it would have no detrimental effects on the neighborhood.

Public Comment: Attorney Christopher J. Snow, on behalf of Neil Hanscomb, an abutter, spoke in opposition to the application. There were 7 letters from abutters in favor and 2 letters from abutters in opposition to the application.

Board Discussion: The Board questioned Attorney Murphy and Mr. Rorke. *Jeffrey Haley moved to find that the structure in question is pre-existing and non-conforming, Marianne Clements seconded and it was so voted, 5-0.*

Jeffrey Haley moved to find that the proposal will not be substantially more detrimental to the neighborhood than the existing situation and no intensification of a non-conformancy will occur on the property, Jeremy Callahan seconded and it was so voted, 5-0.

Jeffrey Haley moved to grant 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 at the property located at 21 Dewey Avenue, #9 (Residential 1 Zone), Marianne Clements seconded and it was so voted, 5-0. Jeremy Callahan 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. Robert Littlefield, Jeffrey Haley, Joe Vasta, Jeffrey Gould and Rob Anderson sat on the case.

Presentation: Elaine Quigley appeared to present the application. She explained that the proposal was in keeping with the flex-seating plan that already existed at the property.

Public Comment: None. There were 4 letters in favor of the application and 1 letter of ‘no concern’.

Board Discussion: The Board had no questions for Ms. Quigley.

Jeffrey Haley moved to grant 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 at the property located at 540-544 Commercial Street (Res 3), Joe Vasta seconded and it was so voted, 5-0. Robert Littlefield will write the decision.

ZBA 17-69 6 Cottage Street, #2 (Residential 2 Zone), Don DiRocco, of Hammer Architects, on behalf of Randall Sell and Edward Gilligan –

The applicant seeks a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a rear addition, to alter and remove portions of existing second floor decks within side and rear yard setbacks and to extend an existing front bump-out within a side yard setback. Robert Littlefield, Jeffrey Haley, Jeffrey Gould, Jeremy Callahan and Marianne Clements sat on the case.

Presentation: Don DiRocco appeared to present the application. He explained that the project involved altering a pre-existing, non-conforming structure. The cottage has no interior staircase, as it used to be a garage, so most of the proposed addition is to make a space for an interior staircase. A deck on the rear west elevation will be removed and an addition to contain the staircase will be built, resulting in a decrease in the non-conformancy on that elevation. On the south elevation, an existing deck and stair will be removed and a smaller deck will be built. In addition, the proposal includes extending a bump-out on the east elevation and a raising of the roof by 4’.

Public Comment: None. There were 4 letters from abutters in support of the application.

Board Discussion: The Board questioned Mr. DiRocco.

Jeffrey Haley moved to find that the proposed changes are not substantially more detrimental to the neighborhood than the existing situation, Jeffrey Gould seconded and it was so voted, 5-0.

The Board discussed the benefits to the neighborhood and if they outweighed any detrimental effects.

Jeffrey Gould moved to find that the proposed changes are harmonious with other structures in the neighborhood, there will be no extra hazard, no impact on the septic system, as there will be no increase in the number of bedrooms, or anything else, Marianne Clements seconded and it was so voted, 5-0.

Jeffrey Haley moved that the benefits outweigh any detrimental effects, such as hazard, congestion or environmental degradation, Marianne Clements seconded and it was so voted, 5-0.

Jeffrey Haley moved to grant a Special Permit pursuant to Article 3, Sections 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a rear addition, to alter and remove portions of existing second floor decks within side and rear yard setbacks and to extend an existing front bump-out within a side yard setback at the property located at 6 Cottage Street, #2 (Res 2), Jeremy Callahan seconded and it was so voted, 5-0. Jeffrey Gould will write the decision.

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 M. Nicolau, Joe Vasta, Jeffrey Haley, Jeffrey Gould and Rob Anderson sat on the case.

Presentation: Ted Smith, Robert Wotiz and Howie Lizotte appeared to discuss the application. Mr. Smith submitted revised plans for the structure and garage proposal. He reviewed the changes, including a re-orientation of the structure so

its mass was pulled away from the abutting property. It has been reduced as well, as it will go to a one and a half story from the proposed two-story and the size of the garage has been lessened and the living space above has been eliminated. Mr. Smith said that he had been unable to obtain a scale calculation for the revised volume of the structure.

Public Comments: None. There was 1 new letter from an abutter in support of the application.

Board Discussion: The Board questioned Mr. Smith. The Board continued the case until a new scale calculation could be obtained.

Joe Vasta moved to continue ZBA 17-61 to the May 18, 2017 Public Hearing at 7:00 P.M., Marianne Clements seconded and it was so voted, 5-0. David M. Nicolau will be writing the decision.

ZBA 17-62 579 Commercial Street (Residential 2 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. David M. Nicolau, Jeffrey Gould, Jeremy Callahan, Marianne Clements and Daniel Wagner sat on the case.

Presentation: Attorney E. James Veara, Jay Norton, of Coastal Engineering, Joseph Realmuto and Paul Korenberg appeared to present the application. Attorney Veara explained that the project will be curing a non-conforming setback issue on the west elevation, making it conforming. The project will result in a net reduction in the scale of the structure. Mr. Norton reviewed the project, which involves raising the structure out of the flood zone, 2.5' above the base elevation height, onto pile supports to be in compliance with the Massachusetts Building Code flood-compliance requirements. The ridge height will still be in compliance with zoning regulations. The proposed pile-supported foundation will improve safety and not be substantially more detrimental to the neighborhood than what exists and will not intrude farther into the setback. Attorney Veara said that there will be no adverse effects such as hazard, congestion or environmental degradation as a result of the proposed changes and the benefits include the elimination of a non-conformancy, a reduction in scale and complying with federal regulations.

Public Comment: Attorney Christopher J. Snow, an abutter, had no objections to the project. There was 1 letter in support of the application.

Board Discussion: The Board briefly questioned Attorney Veara, Messrs. Norton, Realmuto and Korenberg.

Jeremy Callahan moved to find that the benefits outweigh any adverse effects such as hazard, congestion or environmental degradation, Jeffrey Gould seconded and it was so voted, 5-0.

Jeffrey Gould moved to find that the changes are not substantially more detrimental to the neighborhood than the existing situation, Marianne Clements seconded and it was so voted, 5-0.

Marianne Clements moved to grant 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 at the property located at 579 Commercial Street (Res 2), Jeffrey Gould seconded and it was so voted, 5-0. Jeremy Callahan will write the decision.

ZBA 17-67 23 Winthrop Street, #E5 (Residential 3 Zone), William N. Rogers, II, P.E., P.L.S., on behalf of Russell Davies -

The applicant seeks a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a 20' by 22' second floor addition on the structure. David M. Nicolau, Joe Vasta, Jeffrey Gould, Rob Anderson and Marianne Clements sat on the case.

Presentation: Gary Locke appeared to present the application. He explained the project involves constructing a second floor up and along a pre-existing, non-conforming dimension with a slight increase in lot coverage due to the addition of a cantilevered deck and a 1'4" extension of the second floor addition. Green space will not be decreased. He identified the benefits of the project as creating a more habitable space for the property owners to live in and rent, as need be, and allowing them to continue to provide an economic benefit to the community.

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

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

Rob Anderson moved to find that the changes are not substantially more detrimental to the neighborhood than what exists, Jeffrey Gould seconded and it was so voted, 5-0.

Jeffrey Gould moved to find that the benefits of the project outweigh any detrimental effects, Rob Anderson seconded and it was so voted, 5-0.

Marianne Clements moved to grant a Special Permit pursuant to Article 3, Section 3110, Change, Extensions or Alterations, of the Zoning By-Laws to construct a 20' by 22' second floor addition on the structure at the property located 23 Winthrop Street, #E (Res 3), Jeffrey Gould seconded and it was so voted, 5-0. Marianne Clements will write the decision.

ZBA 17-64 3 Cudworth Street (Residential 3 Zone), KA Bazarian Construction, on behalf of Maria Cirino (request to postpone to the meeting of July 6th) –

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. *Jeremy Callahan moved to grant the request to postpone to the meeting of July 6, 2017 at 7:00 P.M., Marianne Clements 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 –

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: Regina Binder and Diarmuid O’Neill appeared to present the application. Ms. Binder reviewed the request to amend the area of service to include the second floor exterior deck. In previous decisions, the Board has approved this area of service. She explained that the restaurant had been granted economic development gallons and the seats on the second floor deck will no longer be considered flex-seats. The Board of Selectmen, in granting the property an additional 14 seats, will allow those to be added to 5 seats presently in the first floor dining room not being used, and which will now be transferred to the second floor deck. The total number of seats on the second floor deck will be 19. Access to the deck will be a staircase on the west elevation. A staircase on the southeast elevation will provide access for food service and a host will remain at the top of the stairs on Commercial Street at all times. She argued that the social and economic benefits outweigh any adverse impact as part of the expansion of the service area, an ADA-compliant entryway to the first floor dining area will be added, more meals taxes will be collected as a result of the additional seats, as well as increasing the number of food service jobs. No amplified music will be played and the hours of operation will be only when food is served from 8:00 A.M. to 10:00 P.M.

Public Comment: Amber Lord, an employee of the restaurant, spoke in favor of the application. There were 5 letters in favor, including a letter of concern from the abutting restaurant regarding potential noise emanating from the deck and a suggestion as to how to solve the issue.

Board Discussion: The Board questioned Ms. Binder and Mr. O’Neill. The Board suggested that Ms. Binder and the applicant meet with the owner and tenant of the abutting restaurant and work out a proposal for sound-proofing.

Daniel Wagner moved to continue ZBA 17-68 to the May 18, 2017 Public Hearing at 7:00 P.M., Joe Vasta seconded and it was so voted, 5-0. David M. Nicolau will be writing 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 1st) -

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.

Jeffrey Gould moved to grant the request to postpone ZBA 17-70 to the June 1, 2017 Public Hearing at 7:00 P.M., Joe Vasta and it was so voted, 5-0.

NEXT MEETING: The next meeting will take place on Thursday, May 18, 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 9:00 P.M. and it was so voted unanimously.*

Respectfully submitted,
Ellen C. Battaglini

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