



Office of
The Zoning Board of Appeals
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RECEIVED
JAN 24 2022
TOWN OF TOWNSEND
TOWN CLERK

William Cadogan, Chairman

David Chenelle, Clerk

Darlene Sodano, Vice Chair

David Funaiolo, Associate Member

Sean Pearson, Member

Victoria Janicki, Member
Jason Murray, assoc. Member

Craig Stevens, Associate Member

Zoning Board of Appeals Meeting Minutes

November 17, 2021, at 5:30 PM

VIRTUAL MEETING

VIA: ZOOM PER GOVERNOR'S ORDER SUSPENDING CERTAIN PROVISIONS
OF THE OPEN MEETNIG LAW, G.L. c. 30A, § 20†

And "Act relative to extending certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 20" signed by
the Governor on June 16, 2021.

PUBLIC ACCESS ZOOM MEETING LINK: Join Zoom Meeting

<https://us02web.zoom.us/j/85647100436?pwd=N3lpbEJKcmEvRm1ZU1d4Q2R1TjBudz09>

Meeting ID: 856 4710 0436

Passcode: 209841

1 PRELIMINARIES: votes may be taken.

- 1.1 Call the meeting to order and roll call. David Chenelle made a motion to open the meeting at 5:30pm. Darlene Sodano seconded. Roll call vote was taken as follows: AYE – DS, DC, SP, DF, BC. The motion carried. 5-0. Members present: Bill Cadogan (BC), Chair, Darlene Sodano (DS), Vice Chair, David Chenelle (DC), Clerk, Sean Pearson (SP), Member, Vicki Janicki (VJ), Member (arrived at 5:50 pm). David Funaoile (DF), Assoc. Member.
- 1.2 Chairman's additions or deletions. None noted.
- 1.3 Approval of Minutes 09-29-21. DF made a motion to approve the minutes of 09-29-21 as provided. DC seconded. Roll call vote was taken as follows: AYE –DC, SP, DF, BC, ABS – DS The motion carried. 4-1-0.

† On June 16, 2021, the Governor signed the "Act relative to extending certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 20" until April 1, 2022, at which time the extension will be repealed. Public bodies may therefore continue to conduct their meeting in accordance with the Order Suspending the Open Meeting law and may continue to have remote meetings in full. Public bodies are relieved from the requirement that they conduct their meetings in a public place that is open and physically accessible to the public; provided, however, that all public bodies shall ensure public access to deliberations through adequate, alternative means, which include (but are not limited to) telephone, internet or satellite enabled audio or video conferencing or other technology that enables the public to clearly follow the proceedings of the public body while they are occurring. The Order also allows remote participation by all members of a public body; and waives the requirements that a quorum and the chair be physically present at the meeting location.

2 **PUBLIC HEARINGS AND APPOINTMENTS:** votes may be taken.

- 2.1 5:45 pm Public Hearing** – the application of J. Smart Contracting, LLC for the property located at 8 Jefts Street (Map 51, Block 38, Lot 0) for an Appeal of the Building Commissioner's decision dated August 26, 2021, under §145-64 appealing the finding which states the Applicant is in violation of section 145-27 for a use that is not permitted in the Downtown Commercial District and/or a Special Permit under §145-65F & §145-18 of the Zoning Bylaw.

DC made a motion to open the public hearing on the application of J. Smart Contracting, LLC. At 5:46 pm. DS seconded. Roll call vote was taken as follows: AYE – DS, DC, SP, DF, BC. The motion carried. 5-0. Chairman Cadogan appointed David Funaiolo as a voting Member for the purposes of this hearing. Others present: Jeffrey Smart, J. Smart Contracting, LLC, Applicant; Roy Pastor, representing the Applicant; Eric Chartrand, Townsend Building Commissioner; Jennifer Eaton, Abutter and James LeCuyer, Carolyn Smart, Selectwoman Veronica Kell. DC read the legal notice of public hearing. Roy Pastor presented.

The property was purchased by the Applicant in March 2021 and stated that the property has had a broad variety of uses over the years, most recently as a machine shop. The previous owner had received a special permit in 2014 from the Townsend Planning Board to operate as a machine shop. The Applicant contends that the property was operating as a machine shop prior to the Applicant purchasing the property. The Applicant's proposed work includes working with multimedia to form functional artefacts and sculptures for clients. The Applicant is proposing to be the sole user and contends his proposed use is consistent with what was permitted under the special permit issued by the Townsend Planning Board in 2014.

Mr. Paster stated that the Building Commissioner considered the building abandoned. He argued to the contrary, that the previous owner operated the machine shop until his death in 2019., and claimed that the property was purchased by the Applicant less than 2 years after the prior owner's death. Mr. Paster stated he has provided to the Zoning Board of Appeals, a death certificate, and corporate filings made by the operating company named Cam Engineering in 2019, & 2020 and claims the company was not dissolved until 2021, a few weeks after the property was purchased by the Applicant. The Special Permit that was issued in 2014 was not recorded at the Middlesex South Registry of Deeds as is required to initiate the permit. Mr. Paster has taken the action to record the Special Permit and stated his intention to provide the proof of recording to the Zoning Board of Appeals upon receipt. He argued that there was no abandonment of the property by the previous owner, nor evidence of intent to abandon the use at the property. DC noted that the property was previously held by an individual not an entity. Discussion was had over the intent to continue the use and abandonment of the use. DC asked the applicant if the machinery from the prior use was still at the property to which he indicated that he had sold the equipment.

Discussion ensued as to whether the building at 8 Jefts Street was in use as a fully automated machine shop during and after the death of the prior owner. The Board asked for evidence and documentation that the prior business, operating at 8 Jefts Street, had continued to within 2 years of the Applicant's purchase of the property.

Per request of the Board, Eric Chartrand, Townsend Building Commissioner explained some of the reasoning for his determination; he stated the State has separated abandonment and non-use. He stated that he has not seen any activity nor use of the building since he began his employment for the Town a year and 4 months ago. He noted that the Town issued business certificate of the prior business operating at 8 Jefts Street expired in 2019. He stated that the previous Building Commissioner determined that the prior use was allowed by right, and that he disagrees with that determination. He further stated that the proposed use is not allowed by right in a Downtown Commercial district, and that the type of use is only provided for in the Industrial District.

DC noted that the facts establishing whether the use was abandoned would be one of the determining factors in the Board's decision given the fact that the use was allowed previously under special permit. Mr. Paster stated that the Applicant will allow the Zoning Board of Appeals Members to visit the shop at the property to view the operation. Chairman Cadogan requested more documentation from the Applicant to support the argument that the previous use allowed by site plan review special permit at 8 Jefts Street was not abandoned. Mr. Paster stated he would provide affidavits, and documented proof that the machine shop business was operating per this request. Chairman Cadogan responded that affidavits would not be sufficient, that documentary proof including payroll records, utility bills etc. would be needed. He requested a continuance of the public hearing to allow time for the Applicant to respond to the Board. Jim LeCuyer stated that the property has historically been used for various commercial uses and is in favor of allowing the use to continue. DF made a motion to continue the public hearing on the application of J. Smart contracting LLC, to January 12, 2022, at 5:45 pm. SP seconded the motion. A roll call vote was taken as follows: AYE – DS, DC, SP, DF, BC. The motion carried. 5-0.

3 **CORRESPONDENCE:** votes may be taken.

- 3.1 Citizen Planner Training Collaborative (CPTC) Fall Training webinars. Noted.
- 3.2 Memorandum Froin: Carolyn Smart copy to: Zoning Boards of Appeals RE: Special Town meeting. Noted.

4 **ADJOURN:** votes may be taken. Next Zoning Board of Appeals remotely held public meeting scheduled for Wednesday, December 8, 2021, At 5:30 pm. DF made a motion to adjourn the meeting at 6:15pm. Seconded. All in Favor.

Items on file:

- 1. Zoning Board of Appeals Application of J. Smart Contracting, LLC.
- 2. Memorandum re: Special Town Meeting.
- 3. Brochure: Citizen Planner Training Collaborative (CPTC) Fall Training webinars.

Respectfully submitted,

Approved on: January 12, 2022

Elizabeth Faxon

Zoning Board of Appeals Admin.

