



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

William Cadogan, Chairman
 David Funairole, Associate Member

David Chenelle, Clerk
 Sean Pearson, Member
 Craig Stevens, Associate Member

Darlene Sodano, Vice Chair
 Victoria Janicki, Member
 Jason Murray, Associate Member

Zoning Board of Appeals Meeting minutes

January 12, 2022, at 5:30 PM

VIRTUAL MEETING

VIA: ZOOM PER GOVERNOR'S ORDER SUSPENDING CERTAIN PROVISIONS
 OF THE OPEN MEETING 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/88649175842?pwd=RjhpNDllQVdPbEo4WXlwbVlmVi9Ddz09>

Meeting ID: 886 4917 5842

Passcode: 831787

1 PRELIMINARIES: votes may be taken.

1.1 Call the meeting to order and roll call. David Chenelle made a motion to open the public meeting at 5:38 pm. Darlene Sodano seconded. A roll call vote was taken as follows: YES – Clerk, David Chenelle (DC), Vice Chair, Darlene Sodano (DS), Member, Vicky Janicki (VJ) Member, Sean Pearson (SP), Chair, Bill Cadogan (BC). The motion carried. 5-0-0. Others present: David Funairole, Associate Member,

1.2 Elizabeth Faxon ZBA (Zoning Board of Appeals) Administrator, Hartley Pleshaw TCAM (Townsend Community Access Media), Veronica Kell Selectwoman & ZBA

* 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Provisions of the Open Meeting Law, G.L. c. 30A, Section 20" until April 1, 2022, at which time the extension will be repealed.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.

liaison, Michael Crowley, Land Use Coordinator, Alisa Struthers, Chair, Historic District Commission.

- 1.3 Chairman's additions or deletions. None noted.
- 1.4 Approval of Minutes 11-17-2021. DS made a motion to approve the minutes of November 17, 2021. VJ seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0.

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. DS made a motion to open the continuation of the 8 Jefts Street public hearing. DC seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0. Present: Jeffrey Smart, Applicant. Roy Pastor, Esq. representing the Applicant.

Mandatory referral comments were read into the record by David Chenelle. Mr. Pastor presented. The Applicant has provided utility bills from Unitil and water bills from the Town of Townsend dating into 2020. He added this to the previous submittal of the death certificate of the previous owner, the Secretary of State documents showing that the business had been renewed and was operating until October 2020. During the public hearing he submitted an Affidavit of Mark Donald Dupuis confirming the purchase of \$50,000 worth of machinery tooling from the prior owner that occurred on October 16, 2020. Mr. Smart purchased the property in March 2021. Mr. Pastor stated that this evidence has been provided to counter the assertion that the business at 8 Jefts Street was abandoned. The document was admitted into the record by the Clerk, David Chenelle, as an exhibit. DS opined that she is satisfied with the evidence provided which indicates the business continued operations and was not abandoned. David Chenelle noted that the affidavit provided is substantial evidence that the business was in operation well within two years of the purchase of the property by the Applicant.

D. Chenelle made a motion based on the findings of fact, including the recently submitted affidavit supporting the prior business was ongoing within 2 years of the applicant's purchase of 8 Jefts St, Map 51, Block 38 Lot 0 that the Building Commissioners Decision dated August 26, 2021 is overruled. D. Sodano seconded. D. Chenelle added this is contingent upon the Applicant's verbally withdrawal of the special permit.. Mr. Pastor agreed and asked for the special permit request be withdrawn. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0.

- 2.2 **6:15 pm. Public hearing** - on the application of **Candice Hagerstrom** for a **Special Permit** under Zoning Bylaw §§145-26B, Residential A and B Special Permit Uses pursuant to §145-65, Special Permits and/or **Appeal** of the Building Commissioners determination under Zoning Bylaw 145-64. The applicant and property owner proposes to construct and operate a dog grooming business in residence, in the existing single family home at **478 Main Street (Assessor's Map 11, Block 1, Lot 0)**. DC made a motion to open the public hearing of 478 Main Street at 6:15pm. DS seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0.

Present: Candice Hagerstrom, Applicant, Mark Hagerstrom, Maryjane Churchville, Robin Fischer, Daniel Guilfix, Alisa Struthers and Michael Crowley, Land Use Coordinator. D. Chenelle read the legal notice and Chair Cadogan read the mandatory referral comments into the record. Comments were received from the Historic District Commission, Board of Health, Board of Selectmen, Conservation Commission, Building Commissioner. The Applicant's proposal has been approved by the Board of Health. The Applicant has constructed a dog grooming shop in her barn and states that it is near completion other than hooking up the dog bathing tub and associated plumbing. She proceeded with a video tour of her abutting neighbors, driveway, the exterior of the barn and the interior of the barn where the shop is located. Chairman Cadogan confirmed the property is in the residential district.

The Board reviewed the Building Commissioners determination letter in which he advised the Applicant that a dog grooming business is not a permitted use in the residential district and to apply for a special permit or appeal his determination. Chairman Cadogan stated that the closest special permits in the Townsend Zoning Bylaw that a dog grooming business may be categorized under is a special permit for a kennel or a veterinary hospital in residence. D. Chenelle stated that there is nothing to support an appeal of the Building Commissioners determination because he is correct, dog grooming is not a permitted use in the Zoning Bylaw. He further noted that it is not permissible to generate a special permit for a use that is not permitted within the Bylaw. He added that granting a "use" variance is not permissible by State law.

The Board discussed the wording of the Bylaw and the options available to act on given the circumstances of the petition. Mr. Funaiole, Associate Member reminded the Board of a previous case on Edwards Road where the Zoning Board of Appeals denied an application for a dog grooming business because it was not a permitted use in the Bylaw. It was agreed that a re-application filing as a commercial kennel would be an option. D. Sodano commented that a communication with the Planning Board to amend the bylaw to include "dog grooming" businesses is advised. The Board then took comments from the public in attendance.

Alisa Struthers, Historic District Commission Chair commented. The only thing the Historic District Commission is concerned with is the required certificate

of appropriateness and noted that the Applicant has filed this application with the Town Clerk today.

Daniel Gulfix, member of the public, spoke in favor of the Applicant and her past record as a dog grooming business owner, and is in favor of the Town granting the approval of a special permit to let her operate the dog grooming business. Robin Fischer, a member of the public, also spoke in favor of the Applicant and stated she has been a client of the Applicant for 2 years and spoke highly of the Applicants excellent skills and conscientious work. She opined that she does not foresee any problems with the abutters in terms of nuisance because the Applicant works on only one dog at a time, and it is a quiet operation.

D. Sodano stated that the role of the Zoning Board of Appeal is not to be arbitrary. She reminded those present that a use is allowed, not allowed, or allowed by special permit. The Applicant commented that she had a quite dissimilar experience opening and operating her dog grooming business in Lunenburg and when she bought property in Townsend did not realize that a dog grooming business was not an allowed use in the residential district.

After multiple options were discussed, it was suggested that the Applicant can withdraw the application for a special permit for a dog grooming business without prejudice and reapply pursuant to Zoning Bylaw 145- 26 B (9) for a commercial kennel with the dog grooming as a subsequent use.

S. Pearson made a motion to waive the application fee for Candice Hagerstrom to reapply for a special permit. D. Sodano seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0. D. Sodano made a motion to continue the public hearing of 478 Main Street to February 23, 2022 @ 5:30 pm. D. Chenelle seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0. D. Sodano amended the motion to continue the public hearing of 478 Main Street to February 23, 2022, at 5:45 pm. D. Chenelle seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0.

3 CORRESPONDENCE: votes may be taken.

- 3.1** FY23 Budget and capital planning. Board reviewed the proposed budget. Chair directed Admin to add a 3% increase to wages with no other changes from FY 22 ZBA Budget.
- 3.2** Townsend Zoning Board of Appeals Annual report 2021. – Chair will review out of session and approve.

Discussion ensued as to information flow to Board Members. Admin will demark additional materials filed in the SharePoint Members packets any time they are emailed out. DS stated she is not receiving materials that have been sent out by the Admin. Chairman Cadogan noted the ZBA group that was created by the Admin is concerning as it may create a violation of OML. Admin will dissolve the group. The pathway to access and connect to the public meeting was reviewed. Admin

re-sent the 1-12-2022 ZBA meeting Member packet SharePoint folder to D. Sodano, and she acknowledged receipt.

Items on file:

1. 8 Jefts St. exhibit 9 – Affidavit (statement of facts) of Mark Donald Dupuis dated January 10, 2022, re: business transaction on October 16, 2020, which was a purchase of \$50,000 worth of tooling machinery from Dan Phem at 8 Jefts Street.
 2. 8 Jefts St. – Exhibit 8 - Utility Bills from Unitil and Water bills from the Town of Townsend dating from into 2020.
 3. 8 Jefts St. – Exhibit 4 - Death Certificate of Hoa Mimh Pham.
 4. 8 Jefts St. – Exhibit 1 - 2019 Annual Report Cam Engineering Inc. Secretary of State record.
 5. 8 Jefts St. – Exhibit 2 – 2020 Annual Report Cam Engineering Inc. Secretary of State record.
 6. 8 Jefts St. – Exhibit 3 – Articles of Voluntary dissolution Cam Engineering, Inc.
 7. 8 Jefts St. – Exhibit 6 - Recorded Notice of Decision Townsend Planning Board – Special Permit Cam Engineering, Inc.
 8. 8 Jefts St. – Exhibit 7 - Recorded Townsend Planning Board Decision – Special Permit Cam Engineering, Inc.
 9. 8 Jefts St. – Exhibit 5 – Deed to 8 Jefts Street.
 10. Zoning Board of Appeals - Application for special permit – 478 Main Street by Candice Hagerstrom.
 11. Draft ZBA 2021 Annual Report.
 12. ZBA FY23 proposed budget.
- 4 **ADJOURN: votes may be taken.** D. Sodano made a motion to adjourn at 7:30pm. V. Janicki seconded. A roll call vote was taken as follows: YES – DS, DC, VJ, SP, BC. The motion carried 5-0-0.

Respectfully submitted,

Elizabeth Faxon,

ZBA Administrator

Approved on: February 23, 2022