

TOWN OF PROVINCETOWN ZONING BOARD OF APPEALS

Meeting Minutes September 9, 1999

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Members Present: Peter Bez, Ray Boylan (arrived at 6:40 p.m.), Barbara Gard, Ken Janson, Steve Melamed, and Gary Reinhardt, Chairman.

WORK SESSION – 6:05 P.M.

- 98-102 291 Commercial Street, Hake Nominee Trust** – Rick Murray (former Chairman of ZBA), Barbara Gard, Peter Bez, Ken Janson, and Ray Boylan sat on the case originally. Mr. Joy, the architect for Hake Nominee Trust, indicated there was confusion regarding the decision as written. It was decided to postpone the case for a bit until Mr. Boylan arrived; he had written the decision.
- 99-068 32 Conwell Street, Edward Malone** – Ted Malone told the Board that, unfortunately, he had nothing new on 32 Conwell. It's basically the same plan with revised parking as he had shown at the last meeting. Gary Reinhardt said he needed a firm plan soon since the abutters should have two weeks to look at it. Ted said it all depended on the date the drawing is finished. He also told the Board that he did not have a final plan for 35 Conwell yet.
- 99-071 Hatches Harbor Condominium Association, 75 Provincelands Road** – Ray Boylan, Peter Bez, Gary Reinhardt, Ken Janson, and Barbara Gard sat on the case. Ken Janson said the request did not meet the criteria at all, Gary Reinhardt saw no hardship, and Barbara Gard said she had been prepared to vote in favor of the request. **Ken Janson made a motion to deny, Peter Bez seconded it and it passed. 3-1-1 (3 in favor of denial, 1 opposed, and 1 absent)**
- 99-076 623 Commercial Street, Seamus G. Henchy** – Ray Boylan, Barbara Gard, Ken Janson, Gary Reinhardt, and Peter Bez sat on the case. J.F. Kelly presented many numbers to support the height argument continued from the August 26th minutes. Gary Reinhardt did have one comment. Regardless of what Warren Alexander said, when FEMA regulations enter into a plan the ZBA does have a say in the matter and ZBA does have the ability to deny. Gary doesn't think the Board would have denied this particular dwelling but they have denied others which had similar restrictions put on by FEMA. **Ken Janson made a motion to deny Seamus Henchy's appeal, Peter Bez seconded it and the motion carried 4-0-1 (4 in favor, 0 opposed, and 1 absent). Barbara Gard will write the decision.**
- 99-069 35 Conwell Street, Edward Malone** – Ken Janson wrote a lengthy decision regarding the 35 Conwell Street project. It basically gave the five conditions listed in the minutes of August 26th which were:
- 1) storm drains must be installed as recommended by the Cape Cod Commission's letter of 8/25/99.
 - 2) the driveway into 35 Conwell Street must be at least 50 feet from any other driveway across the street,
 - 3) all trees depicted in the plan must remain, and
 - 4) the development will contain 6 units of affordable housing, 4 units of moderately-priced housing, and 8 units of market-priced housing.
- Ken Janson also stressed very strongly that any deviation will invalidate this special permit and the issue MUST COME BACK FOR APPROVAL.**

99-069 (continued)

Motion: Steve Melamed made a motion to approve the language of the decision, Barbara Gard seconded the motion and it passed 5-0.

98-102 291 Commercial Street, Hake Nominee Trust - Rick Murray (former Chairman of ZBA), Barbara Gard, Peter Bez, Ken Janson, and Ray Boylan sat on the case. Mr. Boylan arrived and the case will now be heard. The decision written by Ray Boylan stated in condition #5 that a janitor's closet in the establishment would provide a **public restroom**. The Board of Health entered into overseeing this decision and deemed a public restroom would require an enormous amount of septic availability. Since the intention was to provide only patrons and employees with a restroom facility, the decision will be rewritten for clarification. **A motion was made by Ray Boylan and seconded by Peter Bez to delete #5 (public restroom) from the original decision and to substitute "There shall be a restroom available to patrons and employees only."** It was approved by a vote of 5-0.

PUBLIC HEARING

The public hearing was called to order at 7:08 p.m.

99-070 17 Nelson Avenue, Jose M. Passos – Continued until October 6th.

99-078 225 Commercial Street, d/b/a Provincetown Cheese Market and Deli, Cynthia Padgett and Alisha H. King – Barbara Gard, Ken Janson, Gary Reinhardt, Peter Bez, and Ray Boylan sat on the case. Cynthia Padgett came before the Board to ask for an entertainment license for the cheese market. She presented a petition with 47 people's names who were in favor of the entertainment. The one letter which addressed negative concerns was from the Vorelli's who own the restaurant across the street. Theirs were noise concerns since they have tenants on the second floor and they, themselves, live on the third floor. Cynthia said it was her love of music and the opportunity to give a novice musician a chance that motivated her. Ken Janson was opposed to it, felt it was precedent setting, and saw it as another restaurant in the making. The rest of the Board disagreed with Ken and saw the request as innovative, creative, etc. Cynthia frankly told the Board she had already had, with the blessing of Licensing, two or three nights of entertainment and, all except for the first night, had no problems with noise or anything else. When asked what the occupancy of the shop was she said there was not an occupancy number since she has only a take-out business.

Motion: Peter Bez made a motion to grant the request and Ray Boylan seconded it. The following conditions were placed on the motion to grant:

- 1) **doors must be closed whenever entertainment is taking place.**
- 2) **entertainment will be limited to only one performer at a time and may be amplified.**
- 3) **granting the request is valid until 9/9/00.**
- 4) **entertainment on either Friday or Saturday night only for 2 – 3 hour period**
- 5) **entertainment is not to begin until the store upstairs is closed**

The motion passed 4-1 with Ken Janson opposing. Peter Bez will write the decision in two weeks.

99-079 68 Shank Painter Road, Charles W. Silva – Sitting on the case were Gary Reinhardt, Ken Janson, Peter Bez, Ray Boylan, and Barbara Gard. Mr. Silva began by presenting the case for building a new building to house Penny's Liquors as well as four other retail spaces. He said the Master Plan encourages business development so he was following its mandate. Mr. Joy, the architect, said the building he designed for the "Weathering Heights" space was a challenge. Both Mr. Silva and Mr. Joy stressed the social and economic benefits of the building and what it would house. Their plan was to demolish the Weathering Heights building and build the new one in its place. The proposed building would have 4,500 square feet of space on the first floor for Penny's package store as well as an 800 square foot shop. The proposed second floor would have 4,000 square feet of retail space which could be divided into three retail shops. Gary Reinhardt reminded them they were before Zoning because of the scale by-law and it has two main requirements: 1) is the building important to the community and 2) by necessity it must be large. Ken said he felt the proposal met neither criteria i.e., 1) it isn't important to the community and 2) a liquor store of 4,500 square feet might be O.K. but WHY 4 more stores? The Board was leaning toward denying the proposal but it graciously gave Mr. Silva an opportunity to withdraw his proposal without prejudice. Mr. Silva did so.

The public hearing ended at 8:35 p.m.

WORK SESSION (resumed)

99-073 398 Commercial Street, Marsha Ross – Gary Reinhardt, Peter Bez, Ray Boylan, Ken Janson, and Barbara Gard sat on the case. Peter Bez wrote a decision regarding widening the front stairway of the shops. The shop is in Zone R which

has a set back requirement of 10 feet. The Board saw no substantial hardship and no uniqueness in the request therefore it was denied. **Ken Janson made a motion to accept the language of the decision, Ray Boylan seconded it and it passed unanimously.**

99-075 21 Center Street, Robert A. O'Malley on behalf of Jay C. Anderson. – Peter Bez, Ray Boylan, Gary Reinhardt, Barbara Gard, and Ken Janson sat on the case. A decision was written by Ray Boylan regarding the gambrel roof request. The roofline change was deemed to be an improvement to the neighborhood. **Ken Janson made a motion to accept the language in the decision with Peter Bez seconding it. It was passed 5 – 0.**

Motion: Ken Janson made a motion to approve the minutes of the August 26, 1999 meeting as amended. Peter Bez seconded the motion and it was passed unanimously.

The meeting adjourned at 8:55 p.m. The next meeting will take place on September 23rd.