

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

July 8, 1999

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**Members Present:** Gary Reinhardt (Chair), Barbara Gard (Clerk), Ken Janson, Ray Boylan, Steve Melamed

**Members Absent:** Peter Bez (Vice Chair) (excused)

### WORK SESSION

Chair Gary Reinhardt called the Work Session to order @ 6:00 P.M.

PENDING DECISIONS - None

### PENDING CASES

**99-058**

**185 Commercial Street, Roslyn Garfield on behalf of 185 Commercial Realty Trust, d/b/a Bubala=s by the Bay -** Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Ms Garfield and William Rogers appeared to discuss the application, requesting a special permit for 203 seats in the restaurant. Health Agent O=Brien has stated that the septic flow is sufficient for 203 seats. Gary Reinhardt stated that the public hearing on this application was still open, but no one spoke either in favor or opposition. There were no new letters in file. **Board discussion:** number of seats allowed in floor space; booths are too small to legally seat more than two people; issue of growth management; applicant to provide clearly detailed seating plan.

**99-060**

**24 Captain Bertie=s Way, Sanjo Realty Trust -** Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Mr. Jamie Veara, Mr Reis, and Mr Silva appeared to discuss the application. Mr Veara presented a development impact statement. Mr Rogers explained the drainage plan. Fire Chief has recommended a hydrant on the property. Mr Veara presented a erosion and landscaping plan. Abutters have provided letters allowing the applicant to place plantings on their property. Construction phasing will depend on growth management permits allowed. Postponed until after public hearing.

Chair Gary Reinhardt postponed the Work Session until after the Public Hearing.

### PUBLIC HEARING

Chair Gary Reinhardt convened the public hearing at 7:02 P.M. and explained the hearing procedures to the audience. Five members of the Board were present and one was absent (Peter Bez).

**99-047**

**623 Commercial Street, Seamus G. Henchy -** Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. The application is to appeal the decision of the Building Commissioner on February 16, 1999 regarding the height of the building. Gary Reinhardt read a letter from Mr Henchy requesting that the application be withdrawn without prejudice. *Steve Melamed moved to accept withdrawal without prejudice, Ken Janson seconded and it was so voted, 5-0.* Gary Reinhardt stated that Mr Henchy has again applied to the Building Commissioner for a decision on the building height and Mr Henchy plans to again appeal that decision. Issue is whether letters already in file should be brought forward for consideration of the future appeal. **Board discussion:** whether new appeal should be treated as entirely new case; abutters will be notified that previous correspondence will be brought forward.

**99-057**

**16 MacMillan Wharf, Whydah Joint Venture Museum -** Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. The application is for a special permit to allow outside display of

merchandise, retail sales from a pushcart and bicycle rentals. Gary Reinhardt stated that a letter had been received from Barry Clifford requesting withdrawal without prejudice. **Barbara Gard moved to grant the withdrawal without prejudice, Ken Janson seconded, and it was so voted, 5-0.**

**99-065**

**50R Point Street, Deborah Paine, Inc. on behalf of Daniel Petrucci** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. Ms Paine and Mr Thompson appeared to present the application, which is for a variance to exceed the allowable height limitations for construction of a single-family dwelling. Ms Paine claimed financial and architectural hardships due to topography and addressed the variance criteria. Mr Jarrett, Mr Star, and Mr Denica spoke in favor. No one spoke in opposition. There were no letters in file. **Board discussion:** definition of mezzanine; cost of construction/buildout; configuration of grade; bottom floor is for principal use, therefore is a story and therefore mezzanine is the issue before the Board; if mezzanine roof line continued to edge of house, structure would only be 2 2 story; Building Commissioner=s report said mezzanine is a full story; possibility of use as a two family; applicant needs to readdress variance criteria for mezzanine; purchaser knew of property=s limitations. Mr Petrucci spoke to the issue of hardship. Gary Reinhardt suggested that the applicant revise the plans and return. Mr Denica rose to a point of order asking if it was not more appropriate to have the public comment now, after the Board=s discussion. Gary Reinhardt said that he understood the validity of the question, but said that the Board=s past practice of closing public comment after the applicant=s presentation would still apply.

**99-067**

**303 Commercial Street, Phyllis Schlosberg d/b/a Post Office Cafe** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan sat on case. Mr Jamie Veara and Ms Schlosberg appeared to present the application, which is for approval to modify the areas of service. Gary Reinhardt clarified that his previous conflict of interest had been eliminated due to a change in his employment. Gary Reinhardt also informed Mr Veara that Mr Melamed could not sit on this case due to a conflict-of-interest, so only four members could be seated. Mr Veara accepted the four member Board. Mr Veara presented seating plans. The Board of Health has approved 115 fixed theatre seats upstairs and also 49 restaurant seats downstairs, with a condition for maximum water flow of 1370 gallons-per-day. Need for flexible seating would be eliminated. No one spoke either in favor or opposition. There were no letters in file. **Board discussion:** whether additional seats would be placed near sound booth; whether building codes are met; additional requirements per Building Commissioner=s report; issue of growth management. **Ken Janson moved to grant the modification of areas of service to allow 115 fixed theater seats upstairs and 49 restaurant seats downstairs for a total of 164 seats with the condition that the Building Commissioner receive the information he requested, Ray Boylan seconded, and it was so voted, 4-0.** Ray Boylan will write the decision.

**99-061**

**303 Commercial Street, Phyllis Schlosberg, d/b/a Post Office Cafe** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan sat on case. The application is for renewal of a special permit to allow flexible seating between the cabaret and restaurant. Mr Jamie Veara appeared and accepted the four member board. Mr Veara submitted a written request to withdraw without prejudice. **Ken Janson moved to accept the withdrawal without prejudice, Barbara Gard seconded and it was so voted, 4-0.**

**99-063**

**179 Commercial Street, Tran Family Nominee Trust, d/b/a Szechuan Chinese Restaurant** - sat on case. appeared to present the application, which is for a special permit for outside dining (25 seats). Continued until the next public hearing.

**99-068**

**32 Conwell Street, Edward Malone** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. Mr Malone appeared to present the application, which is for a special permit to construct 18 dwelling units and 6 principal use artists= studios on a single lot. Mr Malone presented plans with greater detail and the most current information. Mr Malone addressed the special permit criteria. All 18 dwelling units will be affordable housing. Ms Glaykamp(?) and Ms Leeds spoke in favor. Ms Avellar asked a question about parking. Ms Downey spoke in favor, but with concerns about slope stabilization, drainage, oil tanks, and toxic dry cleaning hazards. Mr Boviea(?) spoke in favor. Mr Roderick spoke in opposition, asking for an environmental impact study and with concerns about the water table. Mr Berowski spoke in opposition, expressing concerns with density and rent levels. There were eight letters in favor. There were

no letters in opposition. **Board discussion:** parking concerns; garages can be rented separately; abutter concerns; oil tank to be removed; topographic map/study to be available soon; grade and fill concerns; affordable housing deed restrictions to be for 40 years; parking areas to be permeable; walking access to town. Ms Downey rose to a point of information concerning pedestrian access to Tiny=s Way. **Board discussion:** whether parking spots could be rented; affordable housing rental rates; drainage patterns; possibility of toxic dry cleaning residue; ask Planning Board why number of parking spots reduced; applicant to show all possible parking spots. Gary Reinhardt informed Mr Malone that the public should have been able to see all possible information prior to the hearing. Gary Reinhardt stated that at the Board=s next work session he would allow letters concerning any new information to be read into the file. **Board discussion:** possible need for a Developmental Impact Study under section 4331. Applicant to return with topographic map, a development impact statement; site sections; revised plan with all possible parking shown. Case continued.

**99-069**

**35 Conwell Street, Edward Malone** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. Mr Malone appeared to present the application, which is for a special permit to construct 10 dwelling units and 5 principal use artists= studios on a single lot and 8 dwelling units on a single lot. Mr Malone distributed plans and drawings with more detail. Planned to be a mixed-income affordable housing development. Mr Boviea spoke in favor. Mr Roderick spoke in opposition, requesting an environmental impact study and development density. Ms Welsh spoke with concerns, expressing frustration that the plans had not been made available and the location of the leaching field, development density and traffic congestion. Mr Berowski spoke in opposition with concerns about pollution and noise. There were nine letters in favor. Gary Reinhardt said he would read letters on new information at the Board=s next work session. Gary Reinhardt said the Board would require a Developmental Impact Statement under section 4331 and a revised plan showing all parking. **Board discussion:** all units to be owned; property is in Zone W; wetlands to be preserved; will be condominium association for property maintenance; retaining walls to be removed in revised plans. Continued until next work session.

Chair Gary Reinhardt closed the Public Hearing at 11:31 P.M.

**WORK SESSION (continued)**

Chair Gary Reinhardt reconvened the work session at 11:31 P.M.

MINUTES

**June 29, 1999** - *Ken Janson moved to accept the minutes, Steve Melamed seconded and it was so voted 4-0, 1 abstain (Barbara Gard).*

PENDING CASES

**99-060**

**24 Captain Bertie=s Way, Sanjo Realty Trust** - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Jamie Veara, Mr Reis, and Mr Silva appeared to discuss the application. Given the late hour, Mr Veara requested a special meeting of the Board in one week=s time to continue the discussion on this application. After discussion, the Board decided to continue this case until the Board=s next work session on July 22, 1999.

ADJOURNMENT

*Steve Melamed made a motion to adjourn at 11:42 P.M. and it was so voted unanimously.*

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These minutes were approved by a vote of the Zoning Board Members present at their meeting on \_\_\_\_\_, 199\_\_

Respectfully Submitted:

\_\_\_\_\_  
Zoning Board of Appeals Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Rachel T. Crosby, On-call secretary