

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

### Minutes

**June 10, 1999**

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**Members Present:** Gary Reinhardt (Chair), Peter Bez (Vice Chair), Ken Janson, Ray Boylan, Barbara Gard (Clerk) (arrived at 6:15 P.M.), Steve Melamed (arrived at 6:15 P.M.)

**Members Absent:** Greg Lambrou

### WORK SESSION

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

#### MODIFICATIONS

**237-241 Commercial Street, Whaler=s Wharf** - Ms Binder and Eric Dray appeared to present the requested modifications, which involve adding a partial basement at the north end, removing the partitions in the retail space on the first floor, changing the ramp to balconies with stairways, changing second-floor theater configuration from one 45 seat theater to two 40 seat theaters, changing to open plan retail space on the second floor, adding side decks to owner=s apartment on second floor, adding two more studios on the third floor, adding side decks to owner=s apartment on the third floor, and that the north-facing juliet balcony will not be built. Ms Binder presented revised plans showing the changes. Board discussion: first floor retail space increased by reduction of bathroom areas; side decks on both the second and third floors would probably require a public hearing; Board not in favor of juliet balcony. Ms Binder offered to remove the decks from her report on the proposed changes. The Board discussed the proposed restaurant. *Peter Bez moved to allow the modifications as amended without a public hearing, Ken Janson seconded, and it was so voted, 5-0.*

#### PENDING DECISIONS

**99-049**

**28 Alden Street, Mitchell Hollander** - Gary Reinhardt, Peter Bez, Barbara Gard, Ken Janson, Ray Boylan sat on case. Peter Bez read the decision. *Ken Janson moved to accept the decision, Barbara Gard seconded and it was so voted, 5-0.*

**99-050**

**14 Sandy Hill Lane, Charles Rogers on behalf of Joan Rogers** - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Greg Lambrou sat on case. Peter Bez read the decision. *Ken Janson moved to accept the decision, Barbara Gard seconded and it was so voted, 4-0, 1 absent (Greg Lambrou).*

**99-05**

**2 83 Shankpainter Road, Binder Boland and Associates on behalf of Clem and Deb Silva** - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Gary Reinhardt read letters from the Fire Chief and the Police Chief, both approving the parking lot. Ray Boylan read the decision. *Peter Bez moved to accept the decision, Ken Janson seconded and it was so voted, 5-0.*

**PENDING CASES**

**99-048**

**8 Johnson Street, Peter Garza and Christopher Covelli on behalf of COVGAR II, LLC d/b/a Christopher=s By the Bay** - Gary Reinhardt, Ken Janson, Barbara Gard, Greg Lambrou, Steve Melamed sat on case. Gary Reinhardt read a letter from the applicant requesting that the application be withdrawn without prejudice. *Ken Janson moved to accept the withdrawal without prejudice, Steve Melamed seconded, and it was so voted, 5-0*

**99-055**

**8 Browne Street, Warren and Rita Silva** - Gary Reinhardt, Ken Janson, Peter Bez, Barbara Gard, Ray Boylan sat on case. Gary Reinhardt received additional documentation from the applicants asking that the variance request be denied and that the special permit application be withdrawn. Gary Reinhardt will contact the applicant for additional information.

**MISCELLANEOUS**

The Board discussed the overlap between the Zoning Board of Appeals and the Licensing Board on Section 1260 special permits, especially on hours of operation. They also discussed problems with enforcement which occur when flexible seating arrangements have been granted. Gary Reinhardt suggested that the Zoning Board of Appeals could write a memo to the Licensing Board with recommendation on hours of operation. Gary Reinhardt will schedule a joint meeting with the Licensing Board, the Zoning Board of Appeals and the Code Compliance Team.

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

**PUBLIC HEARING**

Chair Gary Reinhardt convened the public hearing at 7:00 P.M. and explained the hearing procedures to the audience. Six members of the Board were present and one was absent (Greg Lambrou).

**99-047**

**623 Commercial Street, Seamus G. Henchy** - Seamus Henchy appeared to present the application, which is to appeal the decision of the Building Commissioner on February 16, 1999 regarding the height of the building. Attorney Jamie Veara, representing the property owners, rose to a point of order, stating that they had filed motion to dismiss, claiming that the Board did not have jurisdiction because the application had not been timely filed. Mr Veara reviewed material accompanying that motion. Mr Henchy disputed the facts as presented by Mr. Veara, stating that he had never been told of the time limitations. Building Commissioner Warren Alexander spoke, recommending postponing the hearing to get an opinion of Town Counsel. Gary Reinhardt stated that he thought that the case had been opened at the meeting of May 6, 1999 with the permanent members seated. After consulting the May 6, 1999 meeting minutes, the Board concluded that the hearing had not been officially opened. The application was continued to allow time to seek the advice of Town Counsel.

**99-053**

**494 Commercial Street, Binder Boland and Associates on behalf of David, LLC d/b/a School House Center** - This application had been previously postponed due to clerical error. Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Mr. Boland appeared to present the application, which is for a special permit to permit outside display cases. Gary Reinhardt explained to Mr Boland that his request for a directional sign would be allowed without Board approval. Mr Boland therefore verbally withdrew the third signage element, the directional sign. No one spoke in favor or opposition. There were no letters in file. *Ken Janson moved to approve, Ray Boylan seconded and it was so voted, 5-0. Peter Bez wrote the decision using the standard outside display form.*

**99-057**

**16 MacMillan Wharf, Whydah Joint Venture Museum** - Gary Reinhardt reported that the applicants had written a letter requesting a continuance. The application is for a special permit to allow outside display of merchandise, retail sales from a pushcart and bicycle rentals within the Harborfront Area. *Peter Bez moved to continue the application to June 24, 1999, Ken Janson seconded and it was so voted.*

**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. Roslyn Garfield and William Rogers appeared to present the application, which is for a special permit to increase the number of restaurant seats. Gary Reinhardt disclosed that he is employed part-time by the Lobster Pot Restaurant and that he has a letter on file with the Town Clerk requesting that he be allowed to sit on Section 1260 applications. Though the Selectmen have not yet acted on that request, he was going to sit on this case. Ms Garfield stated that she had been questioned by a member of the Zoning Board of Appeals concerning her right to represent clients before the Board. Ms Garfield explained, with documentation, why she was allowed to represent clients before the Board as a Special Municipal Employee. Gary Reinhardt stated that Ms Garfield=s representation rights had never been officially questioned by the Zoning Board of Appeals. Ms Garfield said that the Town=s building file on this property is missing, including the Title V septic plans, limiting her ability to present a factual case. The property owner is currently having the septic plans recreated. Ms Garfield stated that the capacity of the new Title V septic system would allow a maximum of 203 seats. Ms Garfield presented a copy of a 1981 license showing a total of 212 seats. No one spoke in

favor or in opposition. There was one letter in opposition and none in favor. The hearing was held open until the meeting of July 8, 1999. Gary Reinhardt requested that Ms Garfield provide a letter waiving the time limitations.

#### **99-059**

**276 Commercial Street, Cynthia Belle Gast on behalf of John Cicero, d/b/a The Shell Shop** - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Ms Gast appeared to present the application, which is for a special permit to allow outside display of merchandise. Dr. Murray and Ms Hansen spoke in favor and no one spoke in opposition. There was one letter in opposition and none in favor. Board discussion: display to be six buoys and two lobster traps; distance to street line. *Peter Bez moved to grant, Barbara Gard seconded and it was so voted, 4-1 (Ken Janson).* Peter Bez wrote the decision using the standard outside display form.

#### **99-060**

**24 Captain Bertie=s Way, Sanjo Realty Trust** - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Attorney Jamie Veara, William Rogers and Mr Reis appeared to present the application, which is for a special permit to allow construction of twenty-two dwelling units in eleven buildings on one lot. Presentation: lot coverage to be 17%; special permit criteria addressed. No one spoke in favor. Ms Assishawsky and Ms Hansen spoke in opposition. There were two letters expressing concerns. Mr Custodio Silva spoke with concerns for protecting abutters in the long run. Ken Janson reported that, if granted, the site would be built-out to the maximum. Board discussion: need for developmental impact statements; potential need for traffic analysis; possible need to refer project to Cape Cod Commission; items required by Planning Board to be provided to the Board as well; drainage issues; parking lots to be permeable; each gutter down spout to feed into a leaching pit; driveway run-off to be controlled by side berms; Mr Rogers to provide drawings of water control systems; water usage estimated at 52,080 gallons-per-day; questions in section 4331 (development impact statement) to be answered in writing. Taken under advisement.

Chair Gary Reinhardt closed the Public Hearing at 8:53 P.M.

### **WORK SESSION (continued)**

Chair Gary Reinhardt reconvened the work session at 8:56 P.M.

#### **MINUTES**

**May 20, 1999 - Ken Janson moved to accept, Peter Bez seconded and it was so voted unanimously .**

#### **MISCELLANEOUS**

- Barbara Gard said that the Shell Shop may have an illegal sign, though the shop owner says that the Building Commissioner has said it was permissible. The Board discussed this issue.

**ADJOURNMENT**

*Peter Bez made a motion to adjourn at 9:05 P.M. and it was so voted unanimously.*