

ZONING BOARD OF APPEALS

February 4, 1999

Members Present: Rick Murray, Ken Janson, Peter Bez, Ray Boylan, Gary Reinhardt, Steve Melamed, Greg Lambrou, Barbara Gard

Members Absent: None

WORK SESSION

Chair Rick Murray called the Work Session to order @ 6:01 PM

Rick Murray discussed the materials he had distributed at the start of the meeting. He also stated that application # 99-007, 284B Commercial Street, Eliseo/Johnson, had withdrawn. *Ken Janson moved to allow the applicant to withdraw without prejudice, Barbara Gard seconded and it was so voted.*

PENDING CASES

98-116

150 Bradford Street, Timothy McNulty, d/b/a McNulty=s 150 Marketplace - Rick Murray, Ken Janson, Barbara Gard, Gary Reinhardt, Steve Melamed sat on case. Mr. McNulty appeared to discuss the application. Rick Murray had received a letter from Roger Diaz, Building Inspector. The second egress will need a variance. Board discussion: whether the market must necessarily be large. Mr. McNulty presented new scale calculations with non-habitable buildings eliminated, however, the average scale had not increased significantly. Board discussion: the market is in the middle of the overall scale range; one-third of the addition will be the office; Elephant Walk should be calculated as three separate buildings; the Board is bound by the language of the by-law. Mr. McNulty addressed the requirements for exception to scale limitations. Board: the issue is not the business at the site, but the importance of the building; possible redesign of addition to make it all office; confine board discussion to current use as market. Taken under advisement.

99-010

401 2 Commercial Street, Arthur J. Santos on behalf of Zolton Gluck - Rick Murray, Ken Janson, Barbara Gard, Peter Bez, Greg Lambrou sat on case. Arthur Santos appeared to discuss the application. Rick Murray read a letter from Mr. Gluck. The Permit Coordinator and the Assistant Town Manager have said it is their opinion that a variance is not needed. The decision can be under Goldhirsch. Mr. Santos presented revised construction plans showing certified septic flows. The septic system is a pre-1995 Title V. The plans will be reviewed by the Board of Health. Rick Murray read a letter from the Health Agent. By consensus, the Board agreed the application is properly under '2110. The new building height will be 23 feet from grade. Board discussion: not increasing non-conformancy; the Board has decision latitude under Goldhirsch. *Peter Bez moved to approve under Goldhirsch, Barbara Gard seconded and it was so voted, 4-1 (Greg Lambrou).*

Chair Rick Murray postponed the Work Session until after the Public Hearing.

PUBLIC HEARING

Chair Rick Murray called the hearing to order at 7: 08 PM and informed the audience of the public hearing procedures. All eight members of the Board were present at the start of the meeting.

99-012

40A Nelson Avenue, Provincetown Heights, Inc. on behalf of Charlotte Nelson Rogel and Robin Garran - Rick Murray, Ken Janson, Barbara Gard, Greg Lambrou, Gary Reinhardt sat on case. Rick Murray read a letter of opinion from Town Counsel Brian Riley, stating that Rick Murray, Ken Janson, and Steve Melamed could all sit on this case. Mr. Riley advised the Board members to file the appropriate disclosures, however. Rick Murray and Ken Janson have filed their disclosures, but Steve Melamed has not yet filed. Rick Murray said his letter of request for an opinion of Town Counsel is also on file, and Mr. Riley=s letter will also be on file. Rick Murray had also asked for an opinion concerning other applications which may use Mr. Veara as legal counsel and Mr. Riley affirmed that any Board member can sit on an application, provided there is no financial interest. Rick Murray also referred to a letter he had on file which had been sent to Attorney Snow, stating that Mr. Snow was no longer Rick Murray=s attorney. Rick Murray asked the audience to please maintain order during the public hearing.

Attorneys Freeman and Snow, Ted Malone, Ms Garran and Ms Rogel appeared to present the application, which is for a comprehensive permit to construct eight units of affordable rental housing in four buildings. Presentation: Attorney Freeman referred to a memo presented with the application; he submitted amended scale calculations; all waivers requested are in writing. Rick Murray referred to a memo from Mr Will Joy of Coastal Engineering. Rick Murray read from sections of the Comprehensive Permit rules and regulations. Presentation: the site is in the high elevation protection district; 100% of the units will be rented to low-income persons; 2.42% of the housing in Provincetown is in the low to moderate income range; the applicant is a limited dividend organization; a letter from Cape Cod Commission concerning site acceptability was presented; the lot has 20 feet of frontage; Mr Malone stated that the buildings all have

small footprints and are 12 stories high; setbacks have been increased per abutter concerns; there is an existing drainage problem in the area; on-site drainage system is being planned; concrete retaining walls along the driveway are designed to contain runoff. Mr Tim Brady of East Coast Engineering presented material on the proposed septic system and on the drainage issue. Parking space will be limited; there will be one central septic system; the septic system has been submitted for preliminary review to the Board of Health; parking over the septic system is allowed; the driveway will be of permeable material with a drainage system; there will be rear retaining wall to prevent the top of the hill from sliding; four feet of the retaining wall will be above ground after completion; drainage will be directed by shaping the ground surface; more drainage holes could be added.

Rick Murray read a letter from the Conservation Commission concerning possible runoff into the nearby wetlands.

Emilio Rogel and Anthony Pasquani spoke in favor.

Speakers in opposition: Mr Henrique, Hattie Fitz, Celine Gandolfo, Richard Silva and Mr Speckland, Dick Capputo, Oren Donegan, E. James Veara and Will Joy.

Mrs Henrique posed questions about the trash, the septic system, guest parking, whether there would be a clerk of the works and how abutting properties were to be protected.

An unidentified member of the Planning Board stated that the Planning Board has not yet met to issue a report on the proposed project.

Attorney E. James Veara and Will Joy of Coastal Engineering appeared to make a formal statement of opposition. Mr Veara affirmed he was representing eight abutters. He reviewed pertinent case law and stated that the Comprehensive Permit legislation was designed to bypass zoning by-laws which would otherwise prevent low-moderate income housing. Mr Veara said that he did not know of any such zoning by-laws in Provincetown. The Board can deny a Comprehensive Permit if it is not consistent with local needs and if the health and safety of the occupants may be jeopardized. Mr Veara presented a letter from Health Agent Marina Brock concerning the proposed septic system. Rick Murray stated that Title V concerns needed to be taken to the Board of Health, that the Board has no jurisdiction. Mr. Veara said that the applicants' original plan did not have an affordable housing component. Mr Veara presented a 13 page statement of opposition. He said that the Board needed to get written opinions from the Police and Fire departments concerning the accessibility of the site by emergency vehicles. He requested that the Public Hearing on this application remain open so that more information could be presented.

Mr Joy of Coastal Engineering distributed a memo concerning the septic system and the high elevation district. He stated that there was only 11,000 square feet of developable land; that the septic system may require a variance from the State; that the reserve leaching area would not be accessible; that the 14 foot driveway would not allow two cars to pass abreast; that there was no indication of handicap accessibility or handicap parking; that the hardening material of the driveway would make it impermeable.

Mr. Veara said that the Board usually required exacting detail; that the applicants are asking for fee waivers without proving a financial hardship.

The Board affirmed the need to get reports from other Town boards and departments and that the public hearing would need to remain open.

There were 21 letters in favor and 6 in opposition, including one petition.

Rick Murray asked why the applicant was proposing 8 units and Attorney Freeman referred to financial considerations. Mr Malone confirmed that one of the grants required a minimum of 8 units.

All parties discussed dates when the hearing could be continued. Also discussed was how to get final septic plans to the Board of Health without cutting an access path for soil-testing machinery. By consensus, the public hearing was continued until Thursday, February 25, 1999 at 9:00 AM.

Gary Reinhardt moved to continue the public hearing on application #99-016, 14 Prince Street until the next meeting. Ken Janson seconded and it was so voted, 5-0.

99-013

5 Somerset Road, E. James Veara on behalf of Mark W. Baker - Rick Murray, Ken Janson, Gary Reinhardt, Barbara Gard, Greg Lambrou sat on case. This is a remand of case # 98-024. Steve Melamed, who was originally designated to sit on this case, disclosed that he is a client of Mr Veara's and that there is a disclosure on file. Rick Murray requested, however, that Steve Melamed not sit on the case and Steve Melamed agreed to step down and Barbara Gard took his place. Mr Baker and Attorney Veara appeared to present the application, which is for a variance to allow a garden shed within the required property line setback. Rick Murray reminded everyone that the Board was only going to hear new, additional information. Presentation: Mr Veara submitted an August 1998 letter from Health Agent Heufelder, as well as a new letter from Mr Heufelder; he cited precedent Board decisions in 1996 and 1997. Rick Murray showed Mr Veara letters from Health Agent Sean O'Brien and from the Board of Health. Chester Cook spoke in favor. No one spoke in opposition. There were five letters in favor and none opposed. Board discussion: possible site visit; memo from Sean O'Brien and differences from Heufelder letters; how the space under the deck was being used. The Board took the case under advisement.

Barbara Gard left the meeting at 10:30 PM.

99-014

67 Commercial Street, Roslyn Garfield on behalf of the Center for Coastal Studies and Ruth Hiebert - Ken Janson, Peter Bez, Greg Lambrou, Ray Boylan, Steve Melamed sat on case. Rick Murray stepped down. John Thomas and Peter Borelli appeared to present the application, which is for a variance from parking requirements for a non-residential use (offices). Presentation: this is a revision of a previous application; variance criteria reviewed; employees will not require parking - the Center has arrangements with the Coast Guard and the Provincetown Inn; without this expansion the Center would have to relocate. Evan Evans spoke in favor. No one spoke in opposition. There was one letter in favor and one letter of concern with questions. Board: how many cars parked at one time (4-5); there will be no new employees or autos; grant with condition of Center's occupancy. *Peter Bez moved to approve with conditions, Greg Lambrou seconded and it was so voted, 5-0.* Steve Melamed will write the decision.

99-015

185 Commercial Street, 185 Commercial Street Realty Trust d/b/a Bubala's By the Bay - Rick Murray, Ken Janson, Peter Bez, Gary Reinhardt, Ray Boylan sat on case. John Yingling and Tom Conklin appeared to present the application, which is for a renewal of a special permit for outdoor

seating and entertainment with several changes. No one spoke either in favor or in opposition. There were two letters in opposition and none in favor. Rick Murray referred to the previous special permits and their conditions. Rick Murray also referred to a memo from the Licensing Agent concerning how the special permit decisions should be written. Board discussion: music is amplified; no longer a need to specify which seats will be closed off; possible incremental increase in the number of musicians; whether the outside space is sufficient for the number of seats. Taken under advisement.

Rick Murray advised the applicants in case # 99-017, 1 Commercial Street, that their hearing would have to be postponed due to a lack of a quorum without conflicts.

Rick Murray adjourned the Public Hearing at 11:15 PM

WORK SESSION (continued)

Chair Rick Murray reconvened the work session at 11:15 PM

PENDING DECISIONS

99-002

428 Commercial Street, B. Charley Stites - Rick Murray, Ken Janson, Barbara Gard, Gary Reinhardt, Peter Bez sat on case. Peter Bez read the decision. *Ken Janson moved to approve the decision as read, Gary Reinhardt seconded and it was so voted, 4-0, 1 absent (Barbara Gard).*

99-008

131A Commercial Street, Francis J. Santos - Rick Murray, Ken Janson, Barbara Gard, Peter Bez, Greg Lambrou sat on case. Ken Janson read the decision. *Peter Bez moved to approve the decision as read, Greg Lambrou seconded and it was so voted, 4-0, 1 absent (Barbara Gard).*

Peter Bez made a motion to adjourn at 11:25 PM and it was so voted.