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ZONING BOARD OF APPEALS

TOWN OF PROVINCETOWN

February 25, 1999

Members Present: Rick Murray, Ken Janson, Gary Reinhardt, Steve Melamed, Greg Lambrou, Barbara Gard (arrived @ 9:15 AM)

Members Absent: Peter Bez, Ray Boylan (both excused)

PUBLIC HEARING

Chair Rick Murray called the hearing to order at 9:13 AM and informed the audience of the public hearing procedures. Five members of the Board were present at the start of the meeting. Barbara Gard arrived at 9:15 AM.

MINUTES

February 18, 1999 Regular Session - Greg Lambrou moved to approve as written, Gary Reinhardt seconded, and it was so voted, 5-0

February 18, 1999, Executive Session - Ken Janson moved to approve with one correction, Gary Reinhardt seconded, and it was so voted, 5-0

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 said hearing would start with applicant presenting revised plans. First, however, Rick Murray read a letter, faxed from Attorney James Veara, asking that the meeting be rescheduled due to weather conditions; the letter also addressed other pending issues. Rick Murray mentioned letters received from Police, Fire, DPW, etc as well as new material received from applicant and letters from various other organizations and individuals. Attorneys Freeman and Snow, Tim Brady and Ted Malone appeared to discuss and present the application.

Presentation: Attorney Freeman submitted copies of a draft Zoning Board decision. Original application in autumn 1998 was not for a market rate project, was also for affordable housing. Engineers have done new drainage calculations and have done soil percolation tests. No variance required for Title V system. Tim Brady, engineer, reviewed revised plans. Have changed shape and size of leaching system - have used most conservative design - resulted in shift of buildings location, several feet closer to property lines. Reserve area shown on plans is just to meet legal requirement, it will never be used - in case of failure of system, original system would be rebuilt.

Also referred to Sewage System Design plan submitted to DRM. Board of Health does not feel variance required for septic system. Mr Brady feels Conservation Commission review is not required, but have applied for review anyway; however, should not slow down Board=s deliberations. Moved drainage basins to throat of driveway and also at head of driveway, also drainage area in body of driveway. Leaching system is almost twice as large as would be necessary. Fire Department has made comments about driveway width and emergency vehicle access - concrete sidewalls could be replaced with sheet pilings of plastic and steel, which would add a foot of driveway width. There is limited turnaround for emergency vehicles, but believes fire truck would not try to drive down driveway. Proposed driveway not larger than many other driveways, also does not anticipate two-way traffic on driveway. Concerning runoff calculations, have allowed for greater runoff than Cape Cod Commission. Mr. Brady said he believes entire amount would go into leaching system. Have extended retaining wall on west side near Henrique property - will not increase runoff. Attorney Freeman mentioned that large oak tree is on applicant=s property - arborist=s opinion is that tree would not be threatened by construction. Spoke with Mr Peabody of Conservation Commission and they may require some conditions of construction. Police Chief feels that emergency vehicles will be able to access property.

Public Comment:

In Opposition: Mr. Henrique spoke in opposition, addressing new information submitted and reviewing issues by reading letter. Rachel Crosby asked a point of information about her letter of concerns being heard. Mrs Henrique spoke in opposition concerning potential number of occupants and potential damage to her property from pounding in sheets of steel - who will pay for damages - said money should be kept in escrow. Mr Peters spoke with concerns about sheets of metal being pounded into ground. Polly Richmond spoke about her experience with living next to steel driving project. Dick Capoto spoke, had his land surveyed, said buildable land not adequate for number of units.

In Favor: Mr. Rogel spoke in favor, mentioning his experience with driving sheets into the ground, offers to have pictures of abutters= buildings taken and to install monitoring equipment. Attorney Snow spoke in favor, saying abutters= mailboxes are on applicant=s property, also discussed boundaries of driveways - abutters= driveways are partially on applicant=s property, sheeting will create larger driveway, and several other issues. Ms Rogel spoke about width of proposed driveway, saying post in ground is not accurate, have twenty feet width of driveway.

New Letters: Three In favor, two in opposition.

Other Comments: Mrs Henrique spoke about legal agreement between Mr Peters and the Henriques concerning giving Mr Peters permission to use land, also permission to park was granted by Mrs Nelson. Francis Peters spoke about the history of neighborhood and land boundaries. Mr Snow affirmed proposed driveway is twenty feet.

Rick Murray read letter from Mr Trovato, Fire Chief, expressing concerns about access for fire or rescue vehicles.

Rick Murray called a recess at 10:35 AM.

Rick Murray reconvened hearing at 10:40 AM.

Mr Rogel spoke, saying that the abutter objections would be the same, regardless of size of project.

Mr Henrique spoke, responding to comments from Mr Rogel, saying he would not object to a one or two family building.

Rick Murray called a recess at 10:42 AM to allow people to move parked cars.

Rick Murray reconvened hearing at 10:46 AM.

Rick Murray asked for Board=s input concerning whether hearing should be kept open until all final were reports received and final comments heard from Attorney Veara. After discussion, the Board decided by consensus to meet for the final session of the Public Hearing in the evening on Tuesday, March 9, 1999 .

Board Discussion: number of stories of buildings; whether garages are all below grade; distance from buildings to drainage system; whether runoff would go into garages; all units will be for rent with 40 year deed restriction; proximity of nearest fire hydrant is at intersection of Stearns and Nelson Avenues; whether plantings would still be made if sheet piling is used for retaining walls on driveway, also location of plantings; depth of driveway sheeting approximately 14 or 16 feet; environmental impact of sheet piling versus concrete walls; two persons per bedroom is maximum allowed by code; only one car per household will be part of lease agreement; Rogels will be managing property; fewer than 10 units does not require handicap accessibility; fewer than eight units would eliminate one funding source, would affect affordability; would have to find another source for \$240,000; total grant funding is about \$500,000; half of funding would still be available; Town of Provincetown was applicant for part of funding, would be lender of record, but does not have any ownership; special permit criteria discussed - do not have to meet under Comprehensive Permit; reserve leaching area concerns - why is reserve area only legal, not functional requirement - refers to letter from Board of Health; whether property has ever been for sale; never developed; whether financial issues such as hardship or ability to use property in other ways are relevant under Comprehensive Permit; Ms Rogel said property was not sold was due to access problem and also was held as investment - wants to do project because of property tax expense; whether owners will provide someone to control traffic or clerk of works during construction; Mr Rogel will oversee construction, can use nearby land to store equipment and materials; how to protect abutters= properties during construction and would remedy damage, if any occurred; Attorney Freeman says owners would be legally liable, willing to photograph properties to establish benchmark; also lenders will require liability insurance; would create escrow account if legally required; driveway will not be paved, but will be impervious in effect; question of whether driveway will become rutted; question of need for traffic impact statement; Attorney Freeman says traffic statement is not necessary; need for site commitment/approval letter from State funding sources; Attorney Freeman says such approval/commitment not necessary under Comprehensive Permit; what is elevation of bottom of leaching field (51.5 feet above sea level); how leaching will be prevented from reaching Henrique=s property; proximity of buildings to edge of slope; beyond required distance per High Elevation District; issue of garage connecting two buildings; garage to be covered by deck; asking for waiver if garage considered part of buildings for scale calculations; Nelson Avenue is public street, with 40 feet right of way, but only paved average of 20-22 feet width; question of number of bedrooms and number of buildings; Ted Malone says funding sources like to see mix of unit sizes, also given household size in Provincetown; Ted Malone feels that current building configuration would appear smaller, that larger buildings would trigger scale considerations; discussion of roof pitch and necessity for high pitch; question of parking on septic system; Mr Brady responds with current requirements; question of buildable area, Ted Malone says 15,000 square feet of land are actually available; whether drainage system would handle heavy rainstorm; how to handle septic system failure - clean and/or replace existing system; possibility of dune=s north slope collapsing; need to get opinion on possibility of dune collapsing from DPW Director; Attorney Freeman said other buildings in Provincetown have utilized similar construction techniques; location of trash receptacles (private hauler provided by owner); Rick Murray read from Comprehensive Permit re: right to ask questions about financial arrangements; question of number of year-round living units in Provincetown and percentage of affordable housing units - what is data source and how often updated and how defined; Rick Murray pointed out that some numbers are 10 years old; Attorney Freeman referred to DHCD 1997 publication showing number of official affordable housing units that have been

funded, with deed restrictions, by State or Federal sources; whether Cape Cod Commission has recommended a larger storage capacity for drainage system; Brady says storage capacity is actually much larger than required; CCC calculations for runoff included land which is off-site; Rick Murray read from Comprehensive Permit regulations concerning possible reasons for denial (primarily health and safety issues); possible need for fire hydrant to be located closer, perhaps when water line is put in; Attorney Freeman said he would qualify in court as an expert on Comprehensive Permit, has dealt with 30 to 40 projects; realistic consideration of extra parked cars; Ted Malone refers to income requirements for renters; zoning by-law only requires eight parking spots, could also be towed; overflow will wind up parking on street; Mr. Malone said Nelson Avenue density calculations of percent build-out shows that virtually every property could add an additional unit, which would add to parking problems; Rogels do have land nearby available if parking problem develops; what are actual loans for project - \$220,000 from DHCD home program (state administering federal funds), \$50,000 from Barnstable County Home Consortium (local entity administering federal funds), \$297,000 from another funding source for site development; \$164,000 in private bank loan, also \$76,000 of equity from Rogels; Rogels would sell the land to the corporation (in which they are sole stockholders) for \$160,000 plus; total project cost is \$808,000; if configured for four units, would lose \$220,000, but would retain other sources; expected return to owners would be \$3,000 to \$4,000 per year plus tax benefits plus proceeds from sale of land. Rick Murray asked if there is any way to still do project, but on a smaller scale - can they reach a common goal; Rick Murray asked if attorneys could discuss possibility of a smaller project; Attorney Freeman says very difficult to make project work at less than \$800,000; Rick Murray said that the delay caused by reconfiguring would perhaps create opportunity to create greater comfort for all concerned;

Applicant Summation: Attorney Freeman said that the original application was always for affordable housing; Attorney Veara had misstated legal standard required; Ted Malone discussed income issues relative to funding; Attorney Freeman discussed waivers asked for; submits document entitled AProvincetown Heights Affordable Housing Project@; neighborhood is of mixed density housing, project is comparable in terms of properties in neighborhood.

Greg Lambrou made a motion to adjourn at 12:35 PM, Gary Reinhardt seconded it was so voted unanimously.