

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF FEBRUARY 7, 2002

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt (Chair), Peter Bez (Vice Chair), Larry Mahan (Clerk), Peter Page, Estherann Czyoski, Steve Melamed, Peter McDonough

Members Absent: None

Others Present: Warren Alexander (Building Inspector), Ellen C. Battaglini (Recording Secretary).

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:32 P.M.

PENDING DECISIONS

2002 - 001 929 Commercial Street (*Residential Class B Zone*), Michael Mann -

Steve Melamed, Estherann Czyoski, Peter McDonough, Peter Page and Larry Mahan sat on case. Steve Melamed read the decision. *Peter McDonough moved to accept the decision as amended, Estherann Czyoski seconded and it was so voted, 5-0.*

PENDING CASES

2001 - 081 229 Commercial Street, Binder Boland Associates on behalf of Scott

Ravelson (continued from January 17, 2002)-

Gary Reinhardt, Peter Page, Peter McDonough, Estherann Czyoski sat on case. There was a letter on file from Health Agent George Heufelder. Ginny Binder of Binder Boland Associates appeared to represent the applicant. Attorney Christopher Snow, representing two abutters to the project, questioned the Board concerning whether the space still retained its use as a restaurant or not. Chair Gary Reinhardt questioned Ms. Binder about this issue. There was Board discussion about the concerns of the abutters as voiced by Attorney Snow. Chair Gary Reinhardt questioned Licensing Agent Greta Holman, who was seated in the audience, about the last restaurant to occupy the building; how many seats it was licensed for and what was its last year of operation. Attorney Snow made a request that Town Counsel be consulted regarding this issue. There was further Board discussion concerning the application.

FINDINGS OF FACT:

- The address is licensed for 54 restaurant seats;
- The restaurant has not been in use for more than two years;
- The property is in the R Commercial Zone; and
- The restaurant use is allowable in this Zone.

Peter McDonough moved to grant a Special Permit under Article I Section 1260 of the Zoning By-Laws to relocate the area of food and liquor service with seating to remain the same at the property located at 229 Commercial Street (Commercial Class R Zone), Estherann Czyoski seconded and it was so voted,

4-0. Estherann Czyoski will write the decision.

Chair Gary Reinhardt closed the Work Session at 7:06 P.M.

PUBLIC HEARING

Chair Gary Reinhardt convened the Public Hearing at 7:06 P.M. Board member Steve Melamed was excused from the remainder of the Public Hearing as he would not be sitting on any of the scheduled agenda items.

2002 - 005 6 Whorf's Court (Residential Class W Zone), William Rogers, II, P.E., P.L.S. on behalf of Giannalda Fontana (continued from January 17, 2002) -

Peter Page, Estherann Czyoski, Larry Mahan, Peter Bez and Peter McDonough sat on case. The applicant seeks a Special Permit under Article II Section 2110 of the Zoning By-Laws to rebuild and raise existing foundation along existing building lines at the property located at 6 Whorf's Court. Gary Locke and Mike Winkler appeared to present the application. The Board had requested of the applicant scale calculations and elevations for the site plan. Mr. Locke presented these parameters to the Board. *Peter McDonough moved to grant a Special Permit under Article II Section 2110 of the Zoning By-Laws to rebuild and raise existing foundation along existing building lines at the property located at 6 Whorf's Court (Residential Class W Zone), Larry Mahan seconded and it was so voted, 5-0.* The Board determined that the decision came under the Goldhirsh v. McNear ruling.

Chair Gary Reinhardt then explained the Public Hearing procedures to the public. Six members of the Board were present and one was absent.

2002 - 006 120 Bradford Street (Residential Class W Zone), Dr. Mark E. Schiffman –

Gary Reinhardt, Peter Bez, Peter McDonough, Larry Mahan, Estherann Czyoski sat on case. The applicant seeks a Variance to the home occupation parking requirements under Article III Section 3500 of the Zoning By-Laws at the property located at 120 Bradford Street. **Presentation:** Dr. Mark Schiffman appeared to present the application. **Public Comment:** There were no speakers either in opposition or in favor of the application. There were no letters on file. **Board Discussion:** The Board discussed the application and questioned Dr. Schiffman. Chair Gary Reinhardt then asked Warren Alexander his interpretation of Article III Section 3500.

FINDINGS OF FACT:

- Article III Section 3500 only requires parking other than in the front yard;
- The lot configuration makes conforming to the by-law impossible for the applicant; and
- The Alden Street parking lot is within close proximity as is a large private parking lot;

Peter Bez moved to grant a Variance to the home occupation parking requirements under Article III Section 3500 of the Zoning By-Laws at the property located at 120 Bradford Street (Residential Class W Zone) Estherann Czyoski, seconded and it was so voted, 5-0. Peter Bez will write the decision.

2002 - 007 175 Bradford Street Extension(Residential Class W Zone), David L. Silva -

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter McDonough sat on case. The applicant seeks the renewal of a Special Permit under Article I Section 1260 of the Zoning By-Laws to allow service of alcoholic beverages at the property located at 175 Bradford Street Extension. **Presentation:** Paul Silva and David L. Silva appeared to present the application. The current liquor license, for beer and wine only, has been on a one- year renewal schedule and the applicant is asking the Board to waive that restriction. **Public Comment:** No one spoke in favor or in opposition. There were

three letters on file. The first letter from Michael Taylor and Steven Zeno expressed concern about the hours of operation, whether the license would remain for beer and wine only or be changed to an all-alcoholic and the vigilance of the new owners in controlling disruptive incidents that would disturb the peace and quiet of the neighborhood. The second letter was from the Thibeault family and expressed apprehension about an increase in noise and activity and what effect that would have on their community. The third letter, from Thomas Devlin, was in opposition to the application. **Board Discussion:** The Board questioned the Silvas and discussed the impending change in ownership and how that would affect their decision concerning the license. *Larry Mahan moved to grant the renewal of a Special Permit under Article I Section 1260 of the Zoning By-Laws to allow service of beer and wine at the property located at 175 Bradford Street Extension with the condition that the license will expire on December 31, 2002, Estherann Czyoski seconded and it was so voted, 5-0.*

2002 - 008 258 Commercial Street (Commercial Class R Zone), Theodore Tine on behalf of T-UNA-S, Inc. d/b/a Euro Café –

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter McDonough sat on case. The applicant seeks the renewal of a Special Permit under Article I Section 1260 of the Zoning By-Laws to allow theater and dancing at the property located at 258 Commercial Street. **Presentation:** Theodore Tine appeared to present the application. **Public Comment:** One member of the public spoke in favor of the application. There were no letters on file.

Board Discussion: The Board discussed the issue and came to the decision that because of the lack of opposition to the application that the renewal restriction be lifted as long as the current owner is in possession of the premises. *Peter Bez moved to grant the renewal of a Special Permit under Article I Section 1260 of the Zoning By-Laws to allow theater and dancing at the property located at 258 Commercial Street (Commercial Class R Zone) and that this Special Permit is valid as long as T-UNA-S, Inc. d/b/a Euro Café operated the business, Larry Mahan seconded and it was so voted, 5-0.* Gary Reinhardt will write the decision.

2002 - 009 45 Captain Bertie's Way (Residential Class W Zone), E. James Veara on behalf of John C. Corea and Leona C. Mendes –

Gary Reinhardt, Peter Bez, Peter McDonough, Larry Mahan, Estherann Czyoski sat on case. The applicant seeks a Variance under Article I Section 1320 of the Zoning By-Laws to allow an existing breakout prevention wall for the Septic System at the property located at 45 Captain Bertie's Way.

Presentation: Attorney E. James Veara appeared to present the application. **Public Comment:** Paul Mendes, an abutter and a relative of the owners of the property, spoke in favor of the application.

Attorney Lester J. Murphy, representing Kathleen Meads, an abutter, spoke in opposition to the application. There were no letters on file. **Board Discussion:** The Board questioned Attorney Veara about the application. Chair Gary Reinhardt then questioned William Rogers, II, who had drawn up septic plans for the property, about those plans. Warren Alexander commented on the application.

FINDINGS OF FACT:

- The property is located in Zoning District W;
- The applicable minimum setbacks, as set forth in Article I Section 1320 of the Zoning By-Laws, for Residential W Zone are: Side Yard – 6 feet and Rear Yard – 10 feet;
- On May 17, 2001, a septic plan prepared by William Rogers, II was approved by the Board of Health. Thereafter a retaining wall with a height of approximately 12 feet was constructed on the property and on November 6, 2001, a written stop-work order was issued by the Building Commissioner. The retaining wall that was built extended into both the sideline setback and the rear setback and was 2 feet over the property line;
- On or about November 13, 2001, the Health Department received a revised septic plan indicating an existing concrete retaining wall. This plan needed no variances and was approved by Health Agent George Heufelder;
- Engineer, William Rogers, II stated at the Zoning Board of Appeals Public Hearing that he originally recommended that the septic system on the property be sited in the front yard of the house and also that the approved septic plan dated May 4, 2001 remained a viable plan; and

- Mr. Heufelder, in a February 1, 2002 memorandum to the Zoning Board of Appeals, said that, “I can state that in no way did the Board of Health or its Agents compel the installation of the wall nor was it required for the installation of the septic system as approved on May 17, 2001.”

Peter McDonough moved to deny a Variance under Article I Section 1320 of the Zoning By-Laws to allow an existing breakout prevention wall for the Septic System located at 45 Captain Bertie’s Way (Residential Class W Zone), Peter Bez seconded and it was so voted, 5-0. Peter McDonough will write the decision.

2002 - 010 High Pole Hill (Residential Class W Zone), Chuck Turley on behalf of Cape Cod Pilgrim Memorial Association –

Chair Gary Reinhardt recused himself because he is a member of the Cape Cod Pilgrim Memorial Association. Vice Chair Peter Bez took over the duties of the Chair. Peter Bez, Larry Mahan, Estherann Czyoski, Peter McDonough, Peter Page sat on case. The applicant seeks a Special Permit under Article I Section 1240-B7 of the Zoning By-Laws to a parking lot at the property located at High Pole Hill.

Presentation: Chuck Turley and Mark Silva, Executive Director and President, respectively, of the Cape Cod Pilgrim Memorial Association presented the application. The Association would like to operate a paid parking lot at the property located at High Pole Hill because vandalism of cars that are parked in leased parking spaces has been taking place and the applicant feels that the presence of staff will stop this from occurring. **Public Comment:** Katherine Fair, an abutter, questioned the Vice Chair concerning the adequacy of the abutter notification process. She requested a continuance and added that another abutter that she had spoken to had not been notified at all of the application. Vice Chair Peter Bez ruled that the Public Hearing would continue because proper notice had been given to the abutters. Ms. Fair stated her opposition to the application and made a presentation to the Board illustrating her concerns. Warren Alexander, the Building Commissioner, stated his opinion concerning a paid parking lot at that location. There was a letter from the Police Chief about vandalism at the Pilgrim Monument lot and it was read into the record. There were 4 letters on file in opposition to the application. **Board Discussion:** The Board questioned the applicant. The Board then decided that before a decision could be rendered and a Special Permit granted, letters from the Fire Department and the Police Department, stating their opinions concerning the feasibility of the project, would need to be submitted. The applicant was informed that the Public Hearing would be continued for 4 weeks until the March 7, 2002 meeting of the ZBA.

2002 - 011 15 Central Street Residential Class W Zone), Neal Kimball on behalf of Jennifer Pinck and Nancy Whiteside –

Gary Reinhardt, Estherann Czyoski, Peter Bez, Peter McDonough, Larry Mahan sat on case. The applicant seeks a Special Permit under Article I Section 1300 and Article II Section 2110 of the Zoning By-Laws to remove a non-conforming front deck and construct a covered porch reducing the non-conformancy at the front yard of the property located at 15 Central Street.

Presentation: Neal Kimball and Jennifer Pinck appeared to present the application. The applicant wishes to improve the appearance of the house and make it more architecturally functional. **Public Comment:** There were no speakers either in favor or in opposition. There was 1 letter on file in favor of the application. **Board Discussion:** There was a brief discussion by the Board. *Peter Bez moved to grant a Special Permit under Article I Section 1300 and Article II Section 2110 of the Zoning By-Laws to remove a non-conforming front deck and construct a covered porch reducing the non-conformancy at the front yard of the property located at 15 Central Street (Residential Class W Zone), Larry Mahan seconded and it was so voted, 5-0.* The Board determined that the decision came under the Goldhirsh v. McNear ruling.

MINUTES

January 17, 2002 – *Peter Bez moved to approve the minutes of January 17, 2002, Larry Mahan seconded and it was so voted, 5-0-1 (Steve Melamed, absent).*

NEXT MEETING

Next meeting (Work Session at 6:30 P.M. and Public Hearing at 7:00 P.M.) will be on February 21, 2002.

Peter Bez and Estherann Czyoski will both be absent from the February 21, 2002 meeting.

ADJOURNMENT

Larry Mahan moved to adjourn at 10:22 P.M. and it was so voted unanimously.

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on February 21, 2002.

Respectfully submitted,

Zoning Board of Appeals Signature

Title

Ellen C. Battaglini

On-call secretary