

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

MEETING MINUTES OF FEBRUARY 21, 2002

MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt (Chair), Larry Mahan (Clerk), Peter Page, Steve Melamed, Peter McDonough (arrived at 6:50 P.M.).

**Members Absent:** Peter Bez (Vice Chair) (excused), Estherann Czyoski (excused).

**Others Present:** Warren Alexander (Zoning Enforcement Officer), Ellen C. Battaglini (Recording Secretary).

### WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:35 P.M.

#### MINUTES

**February 7, 2002** – *Peter Page moved to approve the minutes, as amended, of February 7, 2002, Larry Mahan seconded and it was so voted, 3-0-4 (absent).*

#### PENDING DECISIONS

**2002 - 081** 229 Commercial Street, Binder Boland Associates on behalf of Scott Ravelson -

Gary Reinhardt, Peter Page, Peter McDonough, Estherann Czyoski sat on case. Estherann Czyoski wrote the decision. Gary Reinhardt read the decision. *Peter McDonough moved to accept the language as written, Peter Page seconded and it was so voted, 3-0-1 (absent).*

#### PENDING CASES

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

Chair Gary Reinhardt announced that Case # 2002-010 would be continued until the March 7, 2002 Work Session.

Chair Gary Reinhardt postponed the Work Session at 7:00 P.M.

## PUBLIC HEARING

Chair Gary Reinhardt convened the Public Hearing at 7:00 P.M. Five members of the Board were present and two were absent.

**2002-012 291-293 Commercial Street (Commercial Class R Zone), Joyce A. Cuming, Architect's Studio, LTD., on behalf of Hake Nominee Trust -**

Steve Melamed recused himself because he owns a business at that location. Chair Gary Reinhardt explained to the applicant that since there would be only four Board members sitting on the case, a unanimous decision would be needed in order to approve the application. The applicant had the choice of postponing the presentation of the application until five members could be present or proceeding with four members seated. Joyce A. Cuming, representing the applicant, chose the latter

Gary Reinhardt, Larry Mahan, Peter Page, Peter McDonough sat on case. Applicant seeks a Special Permit under Article II Sections 2100 and 2110 of the Zoning By-Laws to replace and modify existing shop front facades on a pre-existing, non-conforming structure at the property located at 291-293 Commercial Street. **Presentation:** Joyce A. Cuming appeared to present the application. The applicant was granted a Special Permit, Case # 1999-031, in April of 1999, and did proceed with part of the project, but the façade renovation had not begun. The applicant wants to modify and simplify the plan. **Public Comment:** There were no speakers either in favor or in opposition. **Board Discussion:** Chair Gary Reinhardt explained that he was the only Board member seated who was also seated on Case # 1999-031, so he provided background on the property in question. The Board members questioned Ms. Cuming about the project.

**FINDINGS OF FACT:**

- In 1999, a Special Permit was granted for structural changes to the property located at 291-293 Commercial Street, including a change to the façade. Some of the changes were completed and some were not;
- More than two years have passed since that Special Permit was granted;
- The footprint of 293 Commercial Street extends beyond the façade of shop fronts due to a foundation wall which continues forward of the front of the building;
- The proposed additions are all located within the footprint of the property.

*Peter McDonough moved to grant a Special Permit under Article II Section 2110 of the Zoning By-Laws (the Board having determined that Section 2110 encompassed the project) to replace and modify existing shop front facades on a pre-existing, non-conforming structure at the property located at 291-293 Commercial Street (Commercial Class R Zone), Larry Mahan seconded and it was so voted, 4-0. Gary Reinhardt will write the decision.*

2002-013

**15 Commercial Street (*Residential Class B Zone*), David Silva representing the Red Inn at Provincetown, Inc., on behalf of The Red Inn, LLC -**

Chair Gary Reinhardt announced that the applicant in Case # 2002-013 has requested, and the Board has granted, a continuation until the March 7, 2002 Public Hearing.

2002-014

**175 Bradford Street Extension (*Residential Class W Zone*), P&L Cunliffe, LLC, on behalf of Paul Silva -**

Steve Melamed recused himself because he had a conflict of interest. Chair Gary Reinhardt explained to the applicant and his representative the implications of a four member Board. The applicant chose to proceed with the Hearing with four members seated. Chair Gary Reinhardt disclosed that he is on the abutter's list for this property, but he is neither a direct abutter nor an abutter to an abutter, so he sat on the case.

Gary Reinhardt, Peter Page, Larry Mahan, Peter McDonough sat on case. The applicant seeks a Special Permit under Article I Section 1260 of the Zoning By-Laws to alter the licensed premises for service of food and alcohol and add table service at the property located at 175 Bradford Street Extension.

**Presentation:** Attorney Robin B. Reid and applicant Paul Cunliffe appeared to present the application. There was a Purchase and Sale Agreement between Paul Silva, the current owner, and Paul Cunliffe, the buyer of the property, indicating that Mr. Cunliffe did have standing to appear on behalf of Mr. Silva.

**Public Comment:** Steve Melamed, as a private citizen, raised concerns about the establishment changing to a full service restaurant and whether an all alcohol license could be obtained for a restaurant that operated for ten months of the year. Chair Gary Reinhardt then asked Mr. Melamed if he had read a memo from the Board of Selectmen to the Zoning Board of Appeals. Mr. Reinhardt then read the memo that stated that Board members who had conflicts of interest with a case were required to leave the meeting room when those cases were being discussed. There were no other speakers in favor or in opposition. There were three letters in favor and one letter in opposition to the project on file. **Board Discussion:** The Board members questioned Attorney Reid and the applicant. Chair Gary Reinhardt then informed the applicant that he would need a letter from the Health Agent stating that no increase in water usage would result from the changes to the property before a Special Permit could be issued. He recommended that the Board require that there be an expiration date of one year on the alcohol license.

**FINDINGS OF FACT:**

- The application proposes to completely enclose all areas of service;
- The application is proposing a reduction in the number of seats from seventy-five to seventy-one and moving the septic flow attached to those four seats to a dwelling unit on the second floor of the building.

*Peter McDonough moved to grant a Special Permit under Article I Section 1260 of the Zoning By-Laws to alter the licensed premises for service of food and alcohol by reducing the number of seats, adding table service and allowing full alcohol service with the condition that the full alcohol service section of the Special Permit expire on December 31, 2002, at the property located at 175 Bradford Street Extension (Residential Class W Zone), Larry Mahan seconded and it was so voted, 4-0. Peter Page will write the decision. The applicant will submit the letter from the Health Agent to the file.*

**2002-015**     **16 Harry Kemp Way (Residential Class W Zone), John Reis, Inc., on behalf of J&J Realty Trust -** Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed, Peter McDonough sat on case. The applicant seeks a Special Permit under Article II Section 2110 of the Zoning By-Laws to construct additions to non-conforming structures at the property located at 16 Harry Kemp Way. **Presentation:** John Reis appeared to present the application. There are seven cottages on the property, but only five are being discussed this evening. **Public Comment:** Charles Rogers, owner of Conwell Lumber and an abutter, spoke in favor of the project. Pauline Richmond, an abutter, expressed concerns about the septic plan, whether the units would be residential or commercial, whether changes in the road configuration would occur and how parking in the area would be affected by the project. Sue Larkin, an abutter, spoke about her concerns regarding the increase in congestion in the area, the septic plan and the time frame of the project. There were no letters on file. **Board Discussion:** The Board questioned Mr. Reis and requested that a revised site plan that included a parking plan be provided to the Board. Mr. Reis asked the Board's opinion and recommendations regarding the problem of the project's encroachment on town-owned land. Chair Gary Reinhardt questioned Warren Alexander concerning the grade on the property and his opinion concerning the fact that part one unit is partially located on town-owned land. The Board suggested that the unit could be physically moved so it wasn't encroaching. The Board concluded that it would like to see a new site plan for the project that included a revised location for Unit #5 and a parking plan for its Work Session on March 7, 2002.

Chair Gary Reinhardt closed the Public Hearing at 8:38 P.M.

## **WORK SESSION**

Chair Gary Reinhardt reconvened the Work Session at 8:48 P.M.

## MISCELLANEOUS

Anne Howard, Chair of the Provincetown Planning Board and Vic Chair of the Local Comprehensive Planning Implementation Committee, appeared before the Board to ask that they co-sponsor an article that will appear on the warrant for the Spring Town Meeting. The article is for the creation of the position of Town Planner. If the Board would not co-sponsor the article, then she requested that they write a letter in support of the article. The Board then asked Warren Alexander his opinion of the Town Planner position.

***Steve Melamed made a motion that the Zoning Board of Appeals send a letter to Anne Howard, Chair of the Planning Board, in support of and co-sponsoring the petition to create the position of Town Planner for the Town of Provincetown, Larry Mahan seconded and it was so voted, 5-0-2 (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. Peter Bez wrote the decision. Gary Reinhardt read the decision. ***Peter McDonough moved to accept the language as written, Larry Mahan seconded and it was so voted, 3-0-2(absent).***

**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. Peter Bez wrote the decision. Gary Reinhardt read the decision. ***Peter McDonough moved to accept the language as written, Larry Mahan seconded and it was so voted, 3-0-2 (absent).***

**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. Gary Reinhardt read the decision. ***Larry Mahan moved to accept the language as written, Peter McDonough seconded and it was so voted, 3-0-2 (absent).***

**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. Peter McDonough read the decision. Chair Gary Reinhardt suggested several changes in the language of the decision and Peter McDonough will rewrite the decision for the March 7, 2002 Work Session.

## NEXT MEETING

Next meeting (Work Session at 6:30 P.M. and Public Hearing at 7:00 P.M.) will be on March 7, 2002. Chair Gary Reinhardt will be absent for the March 7, 2002 meeting.

## ADJOURNMENT

***Steve Melamed moved to adjourn at 9:15 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 March 7, 2002.

Respectfully submitted,

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Zoning Board of Appeals Signature

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Title

Ellen C. Battaglini

On-call secretary