

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF MARCH 21, 2002

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt (Chair), Peter Bez (Vice Chair), Larry Mahan (Clerk) (arrived at 6:37 P.M.), Estherann Czyoski, Steve Melamed, Peter McDonough.

Members Absent: Peter Page (excused).

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

WORK SESSION

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

PENDING DECISIONS

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

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

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

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

Gary Reinhardt, Peter Page, Larry Mahan, Peter McDonough sat on case. The decision was signed.

PENDING CASES

- 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 the case. John Reis appeared to present the application. He explained the new site plan, showing the new location of Cottage #5 and a revised parking plan, that he had presented to the Board on March 7, 2002. The Board questioned Mr. Reis and discussed the new site plan.
Steve Melamed moved to approve a Special Permit under Article II Section 2110 of the Zoning By-Laws to alter six non-conforming dwelling units from one story to two stories at the property located at 16 Harry Kemp Way (Residential Class W Zone), Peter McDonough seconded and it was so voted, 4-0-1 (absent).
Steve Melamed will write the decision.

REQUEST FOR ADMINISTRATIVE CHANGE

- 2001-072** Greg Russo, request to change location of display box without triggering a new Special Permit. Gary Reinhardt, Peter Bez, Estherann Czyoski, Larry Mahan, Steve Melamed sat on the case. Greg Russo presented a map to the Board that showed a new location for the display box.
Peter Bez moved to consider the request a modification, Larry Mahan seconded, and it was so voted 5-0. Peter Bez moved to approve the modification, Steve Melamed seconded and it was so voted, 5-0.

MINUTES

- March 7, 2002** –*Peter Bez moved to approve the minutes of March 7, 2002, Peter McDonough seconded and it was so voted, 5-0-1 (abstain).*

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

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:07 P.M. Six members of the Board were present and one was absent.

- 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 (Continued from February 21, 2002 and March 7, 2002) -**
Peter Bez and Steve Melamed recused themselves because of conflicts of interest. Chair Gary Reinhardt explained that the time requirement for the Board to hear this case would expire shortly, thus Peter Bez would sit on the case by necessity and with objection. Peter Bez, Gary Reinhardt, Larry Mahan, Estherann Czyoski, Peter McDonough sat on the case. The applicants seek a Special Permit under Article I Section 1260 and Article II Section 2110 of the Zoning By-Laws to expand the current areas of food and alcoholic beverage service to include guest suites and outside areas.
Presentation: Attorney Lester J. Murphy, David Silva, Rick Holland, Sean Burke, Phillip Mossy and Paul Silva appeared to present the application. Because of much opposition from abutters and in order to make a good faith effort to address the concerns of and accommodate their neighbors, the applicants are not requesting a Special Permit to expand the current areas of food and alcoholic beverages to include outdoor areas, but are only requesting a Special Permit to expand service to the guest suites and the foyer. **Public Comment:** Chair Gary Reinhardt explained the public hearing procedures to the public. Attorney E. James Veara, representing the abutters at 11, 19, and 21 Commercial Street, appeared to state that his clients have no objection to the application as presented. Peter Boyle, who resides at 10R Commercial Street, and Mary Jo Avellar, former owner of The Red Inn, both spoke in favor of the application. Don Richards spoke of his concerns about the service of food and alcohol outside. There were 25 letters in opposition to the original application on file. **Board Discussion:** Chair Gary Reinhardt presented a Appeals Court case to the Board involving the Red Inn that he had received from town counsel. The Board then discussed the case. Ms. Avellar, speaking as a friend of the Board, spoke about the history of her ownership of The Red Inn and of her understanding of the license held by the Inn. Mr. Boyle, recalling his tenure as a Selectman, commented on his recollection of the Red Inn license. Warren Alexander then stated his opinion on the use of the rooms and the fact that the only issue before the Board was regarding Section 1260. Michael Rogers commented on the court case. The Board then

concluded that they should consider the application under Article I Section 1260 and not under Article II Section 2110. The Board further questioned the applicants, inquiring as to whether there was a letter in the file from the Health Agent. The applicants responded that a letter had been sent. Chair Gary Reinhardt suggested that the applicants get the letter to the file because it was not presently in the file.

FINDINGS OF FACT:

- The licensed hours of operation are 7 A.M. to 1 A.M.;
- The property is currently zoned for 54 restaurant seats and 8 guest units;
- The existing area of service is known as Area A and Area B (on a plan submitted to the Board);
- The applicants are requesting to expand the area of service to guest bedrooms 1, 2, 3, 4, 5, and 6, one bedroom suite, one guest suite and the foyer;
- The applicants are proposing to provide 25 year-round, full-time/part-time jobs; and
- The applicants have come to an amicable agreement with the abutters and neighbors regarding the nature of the application.

Larry Mahan moved to grant a Special Permit under Article I Section 1260 to expand the current areas of food and alcoholic beverage service to include guest suites and foyer at the property located at 15 Commercial Street (Residential Class B Zone), Peter Bez seconded and it was so voted, 5-0. Peter Bez will write the decision.

2002-017 42 Conwell Street (Commercial Class P Zone), Shari Kadison d.b.a. Harry's Farm Stand, on behalf of Rod's Realty Trust -

The applicant seeks a Special Permit under Article II Section 2420 of the Zoning By-Laws for outdoor display and water vending machine.

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter McDonough sat on the case.

Presentation: Shari Kadison appeared to present the application. She is scaling down her operation of Harry's Farm Stand, her hours of operation and moving to a new location. She will be selling native and organic vegetables, flowers and plants.

Public Comment: No one spoke in favor or in opposition. There was one letter on file from Ms. Kadison's landlord, Mark Silva, authorizing her to locate her business on his property.

Board Discussion: The Board informed the applicant that Article II Section 2430 of the Zoning By-Laws addressed the issue of her vending machine as long as she adhered to the criteria required. They will only be considering a Special Permit for her outdoor display.

Peter Bez moved to approve a Special Permit under Article II Section 2420 of the Zoning By-Laws for outdoor display at the property located at 42 Conwell Street (Commercial Class P Zone), Peter McDonough seconded and it was so voted, 5-0. Larry Mahan moved to approve the language in the decision as written, Peter McDonough seconded and it was so voted, 5-0.

2002-018 9 Ryder Street Extension (Commercial Class R Zone), Christopher Lee Townsend on behalf of Robert Cabral -

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter McDonough sat on the case. The applicant seeks a Special Permit under Article I Section 1260 and Article III Sections 3621 B4f and B5 of the Zoning By-Laws for retail sales and sale of prepared food for takeout.

Presentation: Christopher Lee Townsend and Rebecca Townsend appeared to present the application for a full service fish market.

Public Comment: Robert Cabral and Vaughn Cabral spoke in favor of the application. There was one letter on file from Robert Cabral authorizing the applicant to use his property.

Board Discussion: The Board questioned the applicant. Chair Gary Reinhardt asked Warren Alexander to comment on the number of parking spaces needed for this type of business.

FINDINGS OF FACT:

- The proposed business will interrelate productively with the other waterfront activities and the fishing fleet due to its close proximity;
- The applicant will make efficient use of the waterfront area through his purchase of local fish and seafood;
- The applicant will improve visual interest and opportunities for pedestrian access to waterfront by providing a rustic, salty fish shanty; and

- The business will not adversely impact the harbor water due to its use of a closed system for the lobster tank and the installation of a grease trap.

Peter Bez moved to approve a Special Permit under Article I Section 1260 and Article III Sections 3621 B4f and B5 of the Zoning By-Laws for retail sales and sale of prepared food for takeout at the property located at 9 Ryder Street Extension (Commercial Class R Zone) with the provision that the Board receive a revised site plan showing the location of parking spaces for the business and a letter from the Health Agent, Estherann Czyoski seconded and it was so voted, 5-0. Estherann Czyoski will write the decision.

2002-019 73 Shank Painter Road (Commercial Class P Zone), Michael S. Trovato on behalf of Quahog Realty Trust -

Gary Reinhardt, Larry Mahan, Peter Bez, Estherann Czyoski, Peter McDonough sat on the case. The applicant seeks a Special Permit under Article VII Section 7102E of the Zoning By-Laws for a deviation from the allowed scale.

Presentation: Mike Trovato and Russell Zawaduk appeared to present the application.

Public Comment: No one spoke in favor or in opposition. There was one letter on file from an abutter expressing support for the project as long as no bright exterior lights or loud noises emanated from the area.

Board Discussion: The Board questioned Mr. Trovato.

FINDINGS OF FACT:

- The property has an existing foundation connecting the two existing structures;
- The use at the property is for the sales and service of major household appliances;
- In order to remain competitive, the manufacturer of these appliances require that the retailer stock large numbers of units;
- The proposed project would allow the applicant to stock the required number of units thereby allowing him to better serve the community with competitively priced units; and
- The proposed project would be in keeping with the character of the neighborhood, namely a largely business-oriented/industrial use zone.

Peter Bez moved to approve a Special Permit under Article VII Section 7102E, by reason of subparagraph #2 of the Zoning By-Laws and the Local Comprehensive Plan, for a deviation from the allowed scale at the property located at 73 Shank Painter Road (Commercial Class P Zone), Larry Mahan seconded and it was so voted, 5-0. Larry Mahan will write the decision.

2002-020 16 Harry Kemp Way (Residential Class W Zone), John Reis, Inc. on behalf of J and J Realty Trust -

Peter Bez, Gary Reinhardt, Larry Mahan, Estherann Czyoski, Peter McDonough sat on the case. The applicant seeks a Special Permit under Article II Section 2110 of the Zoning By-Laws to alter a pre-existing non-conforming use by modifying the interior layout of the main house.

Presentation: John and Joy Reis appeared to present the application. They want to add a kitchen to the second floor and turn the single-family unit into a two-family unit. **Public Comment:** There were no speakers either in favor or in opposition. There were no letters on file. **Board Discussion:** The Board informed the applicants that they would need to apply for a Variance because what they propose changes the structure from a conforming one to a non-conforming one. The Board discussed whether or not to consider the application under Goldhirsh. Chair Gary Reinhardt polled Board members on their opinions in this regard. He then apprised the applicants of their options. The Board could take a vote or the applicants could withdraw their application. However, if the application is denied and the applicants choose to appeal, they lose the right to reapply for two years. The applicants chose to withdraw their application. Warren Alexander expressed his opinion of the project.

2002-016 540-544 Commercial Street (Residential Class W Zone), Lester J. Murphy, Jr., on behalf of Provincetown Hospitality, LLC (Continued from March 7, 2002) –

Peter Bez and Steve Melamed recused themselves because of conflicts of interest. Gary Reinhardt, Larry Mahan, Estherann Czoski, Peter McDonough sat on the case. The applicant seeks a Special Permit under Article I Section 1260 of the Zoning By-Laws to relocate a 15 seat restaurant/lounge and provide liquor

service to first floor of existing motel/inn building. **Presentation:** Attorney Lester J. Murphy and Mike Sullivan appeared to present the application. Last year the applicant had sought a Special Permit under Section 1260 in Case # 2001-034 to establish a restaurant/lounge on the water side of Commercial Street. Gary Reinhardt, Peter Bez, Estherann Czyoski, Larry Mahan, Peter McDonough sat on that case. The applicant has now revised the plans and seeks to operate the restaurant/lounge on the other side of Commercial Street. **Public Comment:** No one spoke in favor or in opposition. There were four letters on file. **Board Discussion:** The Board questioned the applicant and discussed the application.

Larry Mahan moved to grant a Special Permit under Article I Section 1260 of the Zoning By-Laws to relocate a 15 seat restaurant/lounge and provide liquor service to first floor of existing motel/inn building at the property located at 540-544 Commercial Street (Residential Class W Zone), Peter McDonough seconded and it was so voted, 4-0. By granting the Special Permit, the Board annuls the Special Permit granted in Case #2001-034, decided on July 6, 2001 and signed off on July 19, 2001. Estherann Czyoski will write the decision

NEXT MEETING

Next meeting (Work Session at 6:30 P.M. and Public Hearing at 7:00 P.M.) will be on April 4, 2002.

ADJOURNMENT

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

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on April 4, 2002.

Respectfully submitted,

Zoning Board of Appeals Signature

Title

Ellen C. Battaglini
On-call secretary