

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

MEETING MINUTES OF MAY 16, 2002

MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt (Chair), Larry Mahan (Clerk), Estherann Czyoski, Peter Page.

**Members Absent:** Peter Bez (excused), Steve Melamed (excused), Peter McDonough (unexcused).

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

### WORK SESSION

Chair Gary Reinhardt convened the Work Session at 6:37 P.M.

### PENDING DECISIONS

**2002-036 High Pole Road, Chuck Turley, Executive Director, on behalf of the Cape Cod Pilgrim Memorial Association –**

Peter Bez, Larry Mahan, Peter Page, Estherann Czyoski, Steve Melamed sat on the case. Estherann Czyoski read the decision. Gary Reinhardt read a memo from Warren Alexander, Building Inspector, stating that the number of parking spaces the Pilgrim Monument Memorial Association is required to reserve for patrons of the Monument and Museum is 28. The applicant, Chuck Turley, revised the site plans to reflect that information and submitted them to the Board. *Peter Page moved to accept the language as written, Larry Mahan seconded and it was so voted, 3-0-2 (absent).*

**2002-037 837 Commercial Street, Attorney Christopher J. Snow on behalf of Clancy Realty Trust for WAC, Inc. -**

Gary Reinhardt, Larry Mahan, Estherann Czyoski and Peter Page sat on the case. Peter Page read the decision. *Larry Mahan moved to accept the language as written, Estherann Czyoski seconded and it was so voted, 4-0-1 (absent).*

### MINUTES

**May 2, 2002 – Larry Mahan moved to approve the minutes as amended, Peter Page seconded and it was so voted, 4-0-2(absent).**

### PENDING CASES

**2002-033 50 Bradford Street, Gregory Lambrou on behalf of Fifty Bradford Street Realty Trust -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter Page sat on the case. Chair Gary Reinhardt postponed the discussion of this case after the Public Hearing.

### OTHER BUSINESS

The Board discussed a memo from the Town Clerk about the rule of necessity. The Board discussed a memo from Assistant Town Manager, Mark L. Latour, asking for input from Town Boards on future goals for the Town. The Board discussed the issue and concluded that the role of the Zoning Board of Appeals did not include commenting on policy.

Chair Gary Reinhardt postponed the Work Session at 6:56 P.M.

## PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:00 P.M. and explained the Public Hearing procedures to the public. Four members of the Board were present and three were absent. Mr. Reinhardt explained the implications of a four-member Board. He stated that each applicant would be asked, before their presentation, if they would like to proceed with a four-member Board and if they chose to not to, their case would be postponed until a five-member Board was seated.

- 2002-039**      **315A-319 Commercial Street, Leonard E. Enos, Jr. on behalf of Luco Realty, Inc.** – Gary Reinhardt, Larry Mahan, Estherann Czyoski, Peter Page sat on the case. The applicant seeks a Special Permit under Article I, Section 1260 of the Zoning By-Laws to “construct a bar” upon the existing service deck.. The applicant was asked if he would like to proceed with a four-member Board and he agreed.
- Presentation:** Leonard E. Enos, Jr. appeared to present the application.
- Public Comment:** Attorney Christopher J. Snow spoke in favor of the application. There were no letters on file.
- Board Discussion:** The Board questioned Mr. Enos about the seating at the premises and whether that would change with the addition of a bar.
- FINDINGS OF FACT:**
- The property is in the Town Center Commercial (TCC) Zone where a restaurant is an allowable use;
  - The applicant is licensed for 120 seats inside and 120 seats outside;
  - The proposal calls for replacing a four-top table with a four-stool bar. *Estherann Cayoski moved to grant a Special Permit under Article I, Section 2110 of the Zoning By-Laws to “construct a bar” upon the existing service deck at the property located at 315A-319 Commercial Street, Larry Mahan seconded and it was so voted, 4-0.* Peter Page will write the decision.

- 2002-040**      **68 Franklin Street, Deborah Paine, Inc. on behalf of Barnett Adler** – Gary Reinhardt, Larry Mahan, Peter Page, Estherann Czyoski sat on the case. The applicant seeks a Special Permit under Article II, Section 2110 of the Zoning By-Laws to remove, reconstruct and extend a preexisting nonconforming structure up and along nonconforming dimensions. The applicants were asked if he wanted to proceed with a four-member Board and they agreed.
- Presentation:** Deborah Paine and Barnett Adler appeared to present the application. The two-family structure is located in the Residential 3 Zone. The applicant wants to tear down the structure and build a new one, intensifying the front setback nonconformancy from ten feet to eight feet.
- Public Comment:** Gary Delius, an abutter, spoke in favor of the application. There were no letters on file.
- Board Discussion:** The Board questioned Ms. Paine about the project. The Board determined that they would consider the decision under the *Goldhirsh v. McNear* ruling.
- Estherann Czyoski moved to grant a Special Permit under Article II, Section 2110 of the Zoning By-Laws to remove, reconstruct and extend a preexisting nonconforming structure up and along nonconforming dimensions at the property located at 68 Franklin Street, Larry Mahan seconded and it was so voted, 4-0.*

- 2002-041**      **185 Commercial Street, Laura White on behalf of 185 Commercial Street Realty Trust -** Gary Reinhardt, Larry Mahan, Peter Page, Estherann Czyoski sat on the case. The applicant seeks a Special Permit under Article II, Section 2420 of the Zoning By-Laws for the outdoor display and sale of merchandise (flowers). The applicant was asked if she would like to proceed with a four-member Board and she agreed.
- Presentation:** Laura White appeared to present the application.
- Public Comment:** Phillip Guadiano spoke against the application, voicing his concern about the increasing number of outdoor displays and how that was contributing to a change in the ‘character’ of the Town. Ed Steblein spoke in favor of the application. There were no letters on file.

**Board Discussion:** The Board expressed concern about the number of applications for Special Permits for outdoor display of items from individuals who were not property owners of the premises. The Board questioned Ms. White about the location and appearance of her flower display of flowers and her hours of operation. The Board strongly suggested that the applicant camouflage the cooler that will contain four five-gallon buckets of flowers for sale.

*Larry Mahan moved to grant a Special Permit under Article II, Section 2420 of the Zoning By-Laws, for a period of one year (to expire on December 31, 2002), for the outdoor display and sale of merchandise (flowers) at the property located at 185 Commercial Street, Peter Page seconded and it was so voted, 4-0.*

**2002-042**

**6 Winston Avenue, Joel B. Searcy on behalf of Joyce Aimee Titchnell –**

Gary Reinhardt, Larry Mahan, Estherann Czyoski, Peter Page sat on the case. The applicant proposes an addition to the existing single-family dwelling for the purposes of storage and seeks a Special Permit under Article VII, Section 7102E of the Zoning By-Laws to deviate from the neighborhood allowed building scale. The applicant was asked if he would like to proceed with a four-member Board and he agreed.

**Presentation:** Joel B. Searcy appeared to present the application. The structure was originally built as a beach house and has no basement. The applicant wishes to increase the size of the structure in order to create storage space.

**Public Comment:** Attorney Christopher J. Snow, representing abutter, Mo and Patricia Siegel, spoke in opposition to the project. There were four letters on file in opposition to the application, expressing concern about the scale of the project in relation to the rest of the neighborhood and the erosion that such a project may cause in an environmentally sensitive beach area.

**Board Discussion:** The Board questioned Mr. Searcy about the project and the issue of its scale. Warren Alexander spoke to some of the issues raised by the letters on file. Chair Gary Reinhardt then asked the applicant if he would like the Board to proceed with a vote or whether he would prefer to withdraw his application without prejudice. Mr. Searcy requested that his application be withdrawn without prejudice. *Larry Mahan moved accept the withdrawal, Peter Page seconded and it was so voted, 4-0.*

**2002-043**

**145 Commercial Street, Edward Steblein on behalf of Victor Caruso, Fisherman Cove Condominium, Unit M2 -**

Gary Reinhardt, Larry Mahan Estherann Czyoski, Peter Page sat on the case. The applicant seeks a Special Permit under Article II, Section 2420 for the outdoor display of small antique-type items and/or art. The applicant was asked if he would like to proceed with a four-member Board and he agreed.

**Presentation:** Ed Steblein appeared to present the application.

**Public Comment:** Robert O'Malley indicated that he felt the applicant had no standing to request a Special Permit because he is not the owner of, but only the leases, the premises. He asserted that the area of the proposed display is a common area of the condominium and is not an exclusive use area. Attorney Christopher J. Snow spoke in support of that objection. Phillip Guadiano spoke in opposition to the application because of his concern about the proliferation of outdoor displays in Town and because of the potential safety hazard of pedestrians crossing the street at a busy intersection.

Evelyn Guadiano also spoke in opposition to the application. Rick James and Bill Fitzpatrick, both abutters, spoke against the application, the latter citing his concern about the change in character of the neighborhood that might result from an outdoor display of merchandise. Attorney Snow, as an abutter, reiterated his opposition to the application. There was a letter on file from Mr. O'Malley stating his reasons for opposing the granting of the Special Permit. There were six letters of support for the application on file.

**Board Discussion:** The Board questioned Mr. Steblein about his lease with the owner of the premises. Chair Gary Reinhardt asked Mr. Steblein if he would like to proceed with a Board vote or if he would prefer to withdraw his application without prejudice. Mr. Steblein chose to proceed. After a discussion of the issue, a majority of the Board agreed that the applicant did not have standing.

**FINDINGS OF FACT:**

- The applicant presented a valid lease showing that the premises discussed under the lease was a one-room shop with a lavatory containing 255 square feet (plus or minus), with access via a door to the Commercial Street sidewalk;
- The lease doesn't discuss the use of the outdoor space;
- The outdoor spaces at this property are a common use of the condominium association.

*Peter Page moved to deny a Special Permit under Article II, Section 2420 for the outdoor display of small antique-type items and/or art at the property located at 145 Commercial Street, Estherann Czyoski seconded and it was so voted, 3-1(Larry Mahan opposed).* Estherann Czyoski will write the decision.

**2002-044**

**7 Masonic Place, Brian D. Alexander on behalf of Eliot Denault, III –**

Gary Reinhardt, Larry Mahan, Estherann Czyoski, Peter Page sat on the case. The applicant seeks a Variance under Article I, Section 1320 *Dimensional Schedule* of the Zoning By-Laws from the front and side yard setbacks of the Residential W Zoning District, to construct an open porch.

**Presentation:** Brian Alexander appeared to submit a request that the application be continued in order that an up-dated site plan of the premises can be completed by his engineer. The case was postponed until the May 30, 2002 Public Hearing.

Chair Gary Reinhardt closed the Public Hearing at 9:30 P.M.

## WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 9:30 P.M.

**2002-033 50 Bradford Street, Gregory Lambrou on behalf of Fifty Bradford Street Realty Trust -**

Gregory Lambrou appeared to submit copies of a revised site plan to the Board. The plan showed proposed elevations and the means of egress. Mr. Lambrou requested that his application be postponed until a five-member Board is seated. The case will be continued to the May 30, 2002 Work Session at 6:30 P.M.

## NEXT MEETING

The next meeting will be a Work Session and a Public Hearing on May 30, 2002.

## ADJOURNMENT

*Larry Mahan moved to adjourn at 9:33 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 May 30, 2002.

Respectfully submitted,

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Ellen C. Battaglini

*Zoning Board of Appeals Signature*

*Title*

*On-call secretary*