

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**

**MEETING MINUTES OF July 18, 2002**

**MEETING HELD IN TOWN HALL**

**Members Present:** Gary Reinhardt (Chair), Peter Bez (Vice Chair), Larry Mahan (Clerk), Estherann Czyoski, and Steve Melamed.

**Members Absent:** Peter Page (excused).

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

**WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 6:22 P.M.

**PENDING DECISIONS:**

**2002-047 100 Bradford Street, Attorney Lester J. Murphy on behalf of Peter A. Steele and Rose Steele Santos, Trustees of 100 Bradford Street Realty Trust –**

Gary Reinhardt, Peter Bez, Estherann Czyoski, Peter Page, Steve Melamed sat on the case. Peter Bez read the decision. *Steve Melamed moved to approve the language as amended, Estherann Czyoski seconded and it was so voted, 4-0-1 (absent).*

**2002-050 258 Commercial Street, Lawrence A. Grab on behalf of Theodore Tine, T-UNA-S, Inc., d/b/a Euro Café –**

Gary Reinhardt, Peter Bez, Peter Page, Estherann Czyoski sat on the case. Gary Reinhardt read the decision.

*Estherann Czyoski moved to approve the language as written, Peter Bez seconded and it was so voted, 3-0-1 (absent).*

**2002-051 24 Race Point Road, William Lovely, AGM Marine Contractors, on behalf of the Town of Provincetown–**

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

Attorney Jonathan Silverstein, of Kopelman & Paige, appeared before the Board to report on the settlement of three cases involving the ZBA and the owners of property at 421 Commercial Street. The three lawsuits were consolidated into one and an Agreement for Judgment was reached and was subsequently recorded at the Barnstable Registry of Deeds. Attorney Silverstein informed the Board on the provisions of the settlement agreement.

**MINUTES:**

**June 20, 2002 - Peter Bez moved to approve the minutes as written, Steve Melamed seconded and it was so voted, 4-0-1 (absent).**

Chair Gary Reinhardt closed the Work Session at 6:50 P.M.

**PUBLIC HEARING**

Chair Gary Reinhardt called the Public Hearing to order at 7:01 P.M. and explained the public hearing procedures to

the public. Five members of the Board were present and one was absent.

**2002-052 208 Bradford Street, Berta Walker on behalf of Berta Walker Gallery -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks to renew a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of four sculptures.

**Presentation:** Steve Roderick appeared on behalf of Berta Walker to present the application.

**Public Comment:** None. No letters were on file.

**Board Discussion:** None

*Peter Bez moved to renew the Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of four sculptures, Estherann Czyoski seconded and it was so voted, 5-0.*

**2002-053 6 Telegraph Hill, Lester J. Murphy, Attorney, on behalf of Ozland Realty, LLC -**

Gary Reinhardt is an abutter to an abutter of the premises and recused himself. Vice Chair Peter Bez chaired the case. Mr. Bez explained that with a four member Board they would need a unanimous vote in order for the application to be approved asked the applicants if they would like to proceed with the application. They assented. Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the average neighborhood building scale in the construction of a new single-family dwelling.

**Presentation:** Attorney Lester J. Murphy, Thomas Bombardier, and John Fowler appeared to present the application. Attorney Murphy argued why the deviation from scale was warranted under the appropriate Town By-Laws and added that the neighborhood of Telegraph Hill has been under close scrutiny by the Planning Board because of its location in a high elevation district.

**Public Comment:** None. There were no letters in the file.

**Board Discussion:** The Board questioned Attorney Murphy, Mr. Bombardier and Mr. Fowler about the project.

**FINDINGS OF FACT:**

- The building is located in the Res 1 Zoning District; and
- The neighborhood average building scale is 81.65 Scale Units. The allowable building scale is 107.05 S.U. The proposed structure is 199.41 S.U.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the average neighborhood building scale in the construction of a new single-family dwelling at 6 Telegraph Hill, Larry Mahan seconded and it was so voted, 4-0.* Peter Bez will write the decision.

**2002-054 421 Commercial Street, Unit 1, Frank A. McLean –**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to continue a preexisting, nonconforming structure along a nonconforming dimension and an amendment to Special Permit decision 94-56 to allow the existing steel deck material to remain.

**Presentation:** Attorney John Doonan, representing Frank A. McLean, appeared to present the application. Warren Alexander made a site visit earlier in the day and gave his opinion as to what would be involved in changing the deck from steel to wood and concluded that the deck should remain steel.

**Public Comment:** None. There was a letter on file from the trustees of the Breakwater Condominium, abutters to the premises, expressing their concerns about noise as a result of the increased capacity of the steel deck. More people would, they allege, make more noise. They also expressed their disapproval of the owner's apparent disregard for the Zoning By-Laws when the deck was built. They requested certain compromises from the owner of the unit. There was a letter from Stephen Tate, an abutter, who was against the application because of the material involved. There was a letter from an abutter in favor of the application. Attorney Christopher Snow, speaking as a private citizen and taxpayer, why Town Counsel was present at the meeting this evening and who would be paying for Attorney Silverstein's time. Attorney Silverstein explained that the terms of the Agreement for Judgment included his fees for the litigation and for his appearance at the Board's meeting. Attorney Jonathan Silverstein then spoke to this application and the subsequent two applications which concern other units at the premises. He summarized the discussions he had had with the Board of Selectmen and the Building Inspector in order to arrive at the Agreement for Judgment that evolved out of the

litigation surrounding the premises.

**Board Discussion:** The Board questioned Attorney Doonan about the application.

**FINDINGS OF FACT:**

- The Board accepts the recommendation of the Building Inspector that steel would be the preferred building material for the deck.

*Peter Bez moved to grant a an amendment to Special Permit decision #94-56 to allow the existing steel deck material to remain at 421 Commercial Street, Unit Larry Mahan seconded and it was so voted, 5-0.* Peter Bez will write the decision.

2002-055

**421 Commercial Street, Unit 2, John and Kathleen DeMatteis –**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to continue a preexisting, nonconforming structure along a nonconforming dimension and an amendment to Special Permit decision 94-56 to allow the existing steel deck material to remain.

**Presentation:** Attorney Joan Doonan and John DeMatteis presented the application.

**Public Comment:** None. There was one letter in the file in favor of the application although the two letters opposing the previous case incorporated all three units on the premises.

**Board Discussion:** The Board briefly discussed the application.

**FINDINGS OF FACT:**

- The Board accepts the recommendation of the Building Inspector that steel would be the preferred building material for the deck; and
- The extension upward above the existing roof would cause no adverse effect.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to continue a preexisting, nonconforming structure along a nonconforming dimension and an amendment to Special Permit decision #94-56 to allow the existing steel deck material to remain at 421 Commercial Street, Unit 2, Larry Mahan seconded and it was so voted, 5-0.* Peter Bez will write the decision.

2002-056

**421 Commercial Street, Unit 3, John and Kathleen DeMatteis –**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to continue a preexisting, nonconforming structure along a nonconforming dimension and an amendment to Special Permit decision #94-56 to allow the existing steel deck material to remain.

**Presentation:** Attorney John Doonan and John DeMatteis presented the application.

**Public Comment:** None. The same letters as pertained to Units #1 and #2.

**Board Discussion:**

**FINDINGS OF FACT:**

- The Board accepts the recommendation of the Building Inspector that steel would be the preferred building material for the deck; and
- The extension upward above the existing roof would cause no adverse effect.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to continue a preexisting, nonconforming structure along a nonconforming dimension and an amendment to Special Permit decision 94-56 to allow the existing steel deck material to remain at 421 Commercial Street, Unit 3, Larry Mahan seconded and it was so voted, 5-0.* Peter Bez will write the decision. Chair Gary Reinhardt informed Mr. DeMatteis that revised plans would need to be submitted to the Board before the decision is filed.

2002-057

**240 Commercial Street, Joseph Patrick on behalf of the Patrick Family -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws to add the sale of hotdogs and balloons for an existing popcorn display.

**Presentation:** Joseph Patrick appeared to present the application. He wishes to sell balloons, non-helium, on sticks and hotdogs in order to make money to support his popcorn cart.

**Public Comment:** Hattie Fitts expressed her concern about the sale of balloons in regard to the effect of balloons that escape into the atmosphere on wildlife. There was one letter on file from the owners of the Provincetown Bookstore who were opposed to the application.

**Board Discussion:** The Board expressed its desire for a new Special Permit for the sale of balloons and hotdogs instead of just adding those items to the Special Permit Mr. Patrick already possesses. The Board also discussed the issue of outdoor displays in general.

Mr. Patrick chose to withdraw his application without prejudice.

*Larry Mahan moved to accept the withdrawal of the application without prejudice, Peter Bez, seconded and it was so voted, 5-1 (Steve Melamed opposed).*

**2002-025      651 Commercial Street, William von Thaden, von Thaden Builders and Designers, Inc., on behalf of Robert Steinberg and Lise Motherwell -**

The applicants seek a Special Permit under Article II, Section 2110 of the Zoning By-Laws for the removal and reconstruction of a preexisting, nonconforming single-family dwelling, with the reconstruction to include the elevation of the structure up and along preexisting, nonconforming dimensions.

Chair Gary Reinhardt read a letter on file from William von Thaden requesting the withdrawal of this application without prejudice.

*Peter Bez moved to accept the withdrawal, Larry Mahan seconded and it was so voted, 5-0.*

**2002-058      651 Commercial Street, William von Thaden, von Thaden Builders and Design, Inc., on behalf of Robert Steinberg and Lise Motherwell -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and to extend up and along a nonconforming dimension of a preexisting, nonconforming single-family dwelling.

**Presentation:** Paul Krueger, architect, appeared on behalf of William von Thaden to present the application. The applicants needed to raise the structure in order to be consistent with flood zone requirements.

**Public Comment:** None. There was one letter on file from Brunetta Wolfman, an abutter, supporting the application.

**Board Discussion:** The Board questioned Mr. Krueger about the application and determined that they would consider the decision under the *Goldhirsh v. NcNear* ruling.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and to extend up and along a nonconforming dimension of a preexisting, nonconforming single-family dwelling at 651 Commercial Street, Larry Mahan seconded and it was so voted, 5-0.*

**2002-059      5 Somerset Road, Mark Baker -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks a Special Permit under Article 2, Section 2450, G14, footnote 2 of the Zoning By-Laws for the location of a garden shed.

**Presentation:** Attorney Robin B. Reid, Mark Baker and Thomas McCanna appeared to present the application. The applicant seeks to move a garden shed to a location that conforms to side and rear yard setbacks.

**Public Comment:** Attorney Christopher Snow, representing abutter Will King, objected to the application. He stated that the location of the shed was unclear from the site plan presented to the Board. He added that his client has spent too much money fighting the siting of this shed. There were twenty-three letters on file supporting the application.

**Board Discussion:** The Board questioned Attorney Reid and Mr. Baker about the application. The Board decided that they would like a site visit to familiarize themselves with the landscape of the premises in order to make a more informed decision. The case will be continued until the August 1, 2002 Work Session.

**2002-060      238 Bradford Street, Robin B. Reid, Attorney, and Kurt Raber, of Brown, Lindquist, Fenuccio & Richmond, Architects, Inc., on behalf of The Provincetown Theater Foundation, Inc. -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicants seek a Special Permit under Article 3, Section 3230 of the Zoning By-Laws to deviate from

the average neighborhood building scale when renovating and altering a structure.

**Presentation:** Attorney Robin B. Reid and Kurt Raber and Phillip Lindquist, of Brown, Lindquist, Fenuccio & Richmond, Architects, Inc., appeared to present the application. Attorney Reid stated the reasons why she felt that the criteria for an increased building scale in the Res 3 Zoning District had been met by this project.

**Public Comment:** Alix Ritchie and Brian O'Malley, speaking on behalf of the Provincetown Theater Foundation, spoke in favor of the application. Rick Wrigley, an abutter, also spoke in favor. There was a letter on file from an abutter expressing concerns about the scale of the building, the congestion that would result from an increase in foot and car congestion in the area and the lighting of the building.

**Board Discussion:** After questioning Attorney Reid, Mr. Raber and Mr. Lindquist, the Board determined that this case was an ideal candidate for Article 3, Section 3340 E2 of the Zoning By-Laws

**FINDINGS OF FACT:**

- The existing structure is 205.37 Scale Units;
- The neighborhood average scale is 78.22 .U. and the allowable scale for the neighborhood is 89.95 S.U.;
- The proposed structure is 220.34 S.U.;
- The use of the structure as a theater requires a larger scale; and
- The property is located on Bradford Street, which can handle an increased flow of traffic as well as any street in Provincetown.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3340E2 of the Zoning By-Laws to deviate from the average neighborhood building scale when renovating and altering a structure at 238 Bradford Street, Steve Melamed seconded and it was so voted, 5-0.* Estherann Czyoski will write the decision.

**2002-061**

**238 Bradford Street, Robin B. Reid, Attorney, and Kurt Raber, of Brown, Lindquist, Fenuccio & Richmond, Architects, Inc., on behalf of The Provincetown Theater Foundation, Inc. -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicants seek a Variance under Article 3, Section 3230 of the Zoning By-Laws for the maximum sign size allowed.

**Presentation:** Attorney Robin B. Reid and Kurt Raber and Phillip Lindquist, of Brown, Lindquist, Fenuccio & Richmond, Architects, Inc., appeared to present the application. The applicant is planning on utilizing the same fascia panel that exists on the structure now.

**Public Comment:** Alix Ritchie, speaking on behalf of the Provincetown Theater Foundation, spoke in favor of the application. Rick Wrigley, an abutter, also spoke in favor. Building Inspector Warren Alexander spoke in favor of the application. There were no letters on file.

**Board Discussion:** The Board questioned Attorney Reid, Mr. Raber and Mr. Lindquist after which they decided to withdraw the application without prejudice.

*Peter Bez moved to accept the withdrawal of the application without prejudice, Larry Mahn seconded and it was so voted, 5-0.*

**2002-062**

**238 Bradford Street, Robin B. Reid, Attorney, and Kurt Raber, of Brown, Lindquist, Fenuccio & Richmond, Architects, Inc., on behalf of The Provincetown Theater Foundation, Inc. -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case The applicants seek an administrative amendment to Special Permit 2001-003 to reduce the number of parking spaces from 50 to 40.

**Presentation:** Attorney Robin B. Reid and Kurt Raber and Phillip Lindquist, of Brown, Lindquist, Fenuccio & Richmond, Architects, Inc., appeared to present the application. The previous Special Permit, Case #2001-003, was applied for and granted before any architectural plans had been drawn. On that application, a 199-seat theater with fifty parking spaces was envisioned. Since the architectural plans have progressed, the proposed structure will house a 180-seat theater. With the forty parking spaces drawn on the plans, the applicant meets the requisite number of parking spaces for a 180-seat theater.

**Public Comment:** Alix Ritchie, speaking on behalf of the Provincetown Theater Foundation, spoke in favor of the application. Rick Wrigley, an abutter, also spoke in favor. There were no letters on file.

**Board Discussion:** There was a brief discussion by the Board.

*Peter Bez moved to grant the Administrative Amendment to Special Permit #2002-003 to reduce the*

*number of parking spaces from 50 to 40 at 238 Bradford Street, Steve Melamed seconded and it was so voted, 5-0.*

Steve Melamed will write the decision.

**NEXT MEETING**

The next meeting will be on August 1, 2002 and will consist of a Work Session at 6:15 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT**

*Peter Bez moved to adjourn at 11:03 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 August 1, 2002.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

Ellen C. Battaglini