

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

MEETING MINUTES OF November 7, 2002

### MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt (Chair), Larry Mahan, Peter Page, Steve Melamed and Howard Weiner.

**Members Absent:** Robert Harrison and Lynne Davies.

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

### WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:40 P.M.

Robert Harrison was appointed to a permanent seat on the Zoning Board of Appeals by the Board of Selectmen with a term to expire on December 31, 2002. Howard Weiner appeared to apply for an alternate seat on the Board. The Board interviewed Mr. Weiner. Steve Melamed nominated him for the position and the Board voted 4-0 to appoint him to the alternate position, with a term to expire on December 31, 2002. Mr. Weiner was then sworn in by the Town Clerk and was seated on the Board for the meeting. Lynne Davies was referred to the Board for the other alternate position, with a term to expire on December 31, 2002. Larry Mahan nominated Ms. Davies for the position and the Board voted, 4-0 to appoint.

### PENDING DECISIONS:

**2002-077 586 Commercial Street (Residential 2 Zone) Eric Dray -**

Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case. The applicant submitted the revised plans requested by the Board. Peter Page read the decision. *Larry Mahan moved to approve the language as written, Steve Melamed seconded and it was so voted, 4-0-1 (abstain).*

**2002-078 586 Commercial Street (Residential 2 Zone) Tom Thompson -**

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

Gary Reinhardt postponed the Work Session at 7:02 P.M.

### PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:02 P.M. and explained the Public Hearing procedures to the public. Five members of the Board were present and two were absent.

**2002-080 15 Commercial Street (Residential 1 Zone), E. James Veara, Esq. on behalf of Donald Winter and Richard DiFrummolo -**

This case is continued until November 21, 2002. The applicant agrees to waive the time restraints.

**2002-079 412 Commercial Street (Residential 3 Zone), Timothy Harrington on behalf of Leona Egan (continued from October 17, 2002) -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a preexisting, nonconforming three family dwelling structure further into a nonconforming dimension. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case.

Warren Alexander reported that the structure had been reduced from a three to a two family and the Certificate of Occupancy would be issued shortly.

**Presentation:** Timothy Harrington and Ginny Binder appeared to present the application. The applicant wants to add a porch that runs the length of the structure and states that while he would be increasing the nonconformity, it would not be detrimental to the neighborhood.

**Public Comment:** None. There was a petition signed by twenty-four neighbors in support of the application on file.

**Board Discussion:** The Board determined that the case would be considered *under* the *Goldhirsh v. McNear* ruling.

*Steve Melamed moved to consider the application under the Goldhirsh v. McNear ruling, Peter Page seconded and it was so voted, 5-0.*

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a preexisting, nonconforming two-family dwelling structure further into a nonconforming dimension at the property located at 412 Commercial Street (Residential 3 Zone) under the Goldhirsh v. McNear ruling, Peter Page seconded and it was so voted, 5-0.*

**2002-084**

**16 Thistlemore Road (Residential 1 Zone), Mark Baker on behalf of Mark Baker and Twelve Abutters of 16 Thistlemore Road -**

The applicant seeks to appeal the decision of the Building Commissioner dated July 26, 2002 under Article 5, Section 5223c of the Zoning By-Laws. Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case.

**Presentation:** Attorney Robin B. Reid, Esq. and Robin Haeter appeared to present the application.

Warren Alexander read a letter that outlined his position on this case. Chair Gary Reinhardt questioned Ms. Reid about the issues raised by Mr. Alexander. Mr. Reinhardt determined that the application was flawed and any decision that the Board came to would be open to appeal. He offered the applicant the option to withdraw the application or to move forward in which case the Board would deny the application on a technicality.

**Public Comment:** Attorney Christopher Snow, as a friend of the Board, spoke against the application. The applicant chose to withdraw the application without prejudice.

*Larry Mahan moved to accept the withdrawal without prejudice, Howard Weiner seconded and it was so voted, 5-0.*

**2002-085**

**48 Race Point Road (Residential 3 Zone), John A. Lisbon on behalf of Miriam Collinson and James Buckingham -**

The applicants seek a Special Permit under Article 2, Section 2440, A1b (8) of the Zoning By-Laws to approve the construction of “three or more” (6), two (2) family dwelling buildings on a single lot. Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case.

**Presentation:** John A. Lisbon, Miriam Collinson and James Buckingham appeared to present the application.

**Public Comment:** None. There was a letter signed by four abutters opposing the project, citing a concern for safety issues, traffic congestion, drainage issues, environmental degradation and aesthetics.

**Board Discussion:** The Board questioned the applicants and, specifically, traffic issues were discussed.

**FINDINGS OF FACT:**

- The Residential 3 Zoning District allows for up to three (3) two-family dwelling units by right and more than three dwelling units by Appeal. The applicants propose six (6) two-family dwelling units on the property;
- The applicants are required to have twelve parking spaces and they propose to have eighteen; and
- The applicants addressed concerns regarding drainage and traffic.

*Steve Melamed moved to grant a Special Permit under Article 2, Section 2440, A1b (8) of the Zoning By-Laws to approve the construction of “three or more” (6), two (2) family dwelling buildings on a single lot at the property located at 48 Race Point Road (Residential 3 Zone), Larry Mahan seconded*

*and it was so voted, 5-0.* Steve Melamed will write the decision.

**2002-086**

**1 Winthrop Street, Mark Kinnane of Cape Associates on behalf of Peter**

**Karl –**

The applicant seeks a Special Permit to construct a dormer on a preexisting, nonconforming structure up and along a nonconforming dimension. Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case.

**Presentation:** Attorney Lester J. Murphy, Mark Kannane and Peter Karl appeared to present the application.

**Public Comment:** None. There were two letters on file from abutters who supported the project.

**Board Discussion:** Gary Reinhardt asked Warren Alexander to comment on the application. Mr. Alexander would like to make a site visit to the property in order to determine whether the patio is part of the dwelling structure. The Board would like to see revised site plans for the deck. The case will be continued until the November 21, 2002 Work Session.

**2002-087**

**16 Jerome Smith Road (Residential 3 Zone), the Provincetown Recreation Commission on behalf of the Town of Provincetown –**

The applicant seeks a Special Permit under Article 2, Section 2440, D3 of the Zoning By-Laws to extend a preexisting, nonconforming Municipal Use Parking Lot by constructing a “Skate Park”. Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case.

**Presentation:** Candy Silva, Bob Cahill, Jill Macara and Dawn Henrique appeared to present the application.

**Public Comment:** Michelle Couture, member of the Board of Selectmen, spoke in favor of the application, as did Officer Marty Menangas, Officer Rachel Peters both of the Provincetown Police Department, Treg Kaeselau, Mary Jo Avellar, member of the Board of Selectmen, and Rose Kennedy. Mary DeRocco, speaking on behalf of herself, Laura DePalo and a group of neighbors from Jerome Smith Road and Winslow Street, spoke in opposition to the project, as did Rhee Gold, an abutter, and Mark Leach, a resident of Winslow Street. There were two letters on file from John and Wendy Salvador and Custodio and Karen Silva supporting the application and one from Mary DeRocco and Laura DePalo opposing the application.

**Board Discussion:** The Board questioned the applicants.

**FINDINGS OF FACT:**

- The applicant proposes a “Skate Park” 80’ by 120’;
- The “Skate Park” will be surrounded by a tall chain link fence;
- The “Skate Park” will have a lockable gate;
- The “Skate Park” will be buffered from the neighborhood with a row of trees;
- The hours of operation shall be 10:00 A.M. until dusk; and
- Helmets shall be required in order to use the “Skate Park”.

*Steve Melamed moved to grant a Special Permit under Article 2, Section 2440, D3 of the Zoning By-Laws to extend a preexisting, nonconforming Municipal Use Parking Lot by constructing a “Skate Park” at the property located at 16 Jerome Smith Road (Residential 3 Zone), Peter Page seconded and it was so voted, 5-0.* Steve Melamed will write the decision.

Chair Gary Reinhardt closed the Public Hearing at 9:04 P.M.

## WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 9:04 P.M.

**2002-083**

**11 Creek Round Hill Road (Residential 1 Zone), Cape Associates, Inc., on behalf of Richard and Judith Wurtman -**

Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case. Peter Page read the decision. *Steve Melamed moved to approve the language as written, Larry Mahan seconded and it was so voted,*

*4-0-1 (abstain).*

**MINUTES:**

**October 17, 2002** – *Peter Page moved to approve the minutes as written, Larry Mahan seconded and it was so voted, 4-0-1 (abstain).*

**NEXT MEETING**

The next meeting will be on November 21, 2002 and will consist of a Work Session at 6:30 P.M.

**ADJOURNMENT**

*Howard Weiner moved to adjourn at 9:20P.M. and it was so voted unanimously.*

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

Respectfully submitted,

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*Zoning Board of Appeals Signature*

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Ellen C. Battaglini