

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF November 21, 2002

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt (Chair), Larry Mahan, Peter Page, Steve Melamed, Howard Weiner, Robert Harrison and Lynne Davies.

Members Absent: None.

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

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:30 P.M.

PENDING CASES:

2002-086 **1 Winthrop Street (Town Center Commercial Zone), Mark Kinnane of Cape Associates, Inc. on behalf of Peter Karl -**

Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case. Gary Reinhardt read the site visit report of Warren Alexander concluding that the patio was part of the structure at the premises.

Presentation: Attorney Lester J. Murphy and Peter Karl appeared to present the application. A revised site plan, as requested by the Board, was submitted .

FINDINGS OF FACT:

- The existing use of the property is as office space and the proposed use of the property is as office space;
- The applicant proposes dormering the greater part of the structure without increasing the footprint;
- The applicant proposes a second floor deck over an existing patio, which has been determined to be part of the structure; and
- The existing ridge height is 20 feet and the proposed ridge height is 25 feet.

Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a dormer on a preexisting, nonconforming structure up and along a nonconforming dimension on the property located at 1 Winthrop Street (TCC Zone), Larry Mahan seconded and it was so voted, 5-0. Larry Mahan will write the decision.

PENDING DECISIONS:

2002-085 **48 Race Point Road (Residential 3 Zone), John A. Lisbon on behalf of Miriam Collinson and James Buckingham -**

Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case. Steve Melamed read the decision. *Peter Page moved to accept the language as written, Larry Mahan seconded and it was so voted, 5-0.*

2002-087 **16 Jerome Smith Road (Residential 3 Zone), Provincetown Recreation Commission on behalf of the Town of Provincetown -**

Gary Reinhardt, Larry Mahan, Peter Page, Steve Melamed and Howard Weiner sat on the case. Steve Melamed read the decision. *Peter Page moved to accept the language as written, Larry Mahan seconded and it was so voted, 5-0.*

MINUTES:

November 7, 2002 – Steve Melamed moved to approve the minutes as amended, Peter Page seconded and it was so voted, 4-0-3 (abstain).

Chair Gary Reinhardt adjourned 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. Seven members of the Board were present and none were absent.

2002-080 15 Commercial Street (Residential 1 Zone), E. James Veara, Esq. on behalf of Donald Winter and Richard DiFrummolo (continued from November 7, 2002) -

The applicant seeks to appeal a decision of the Building Commission dated August 29, 2002 under Article 5, Section 5223 c of the Zoning By-Laws. Steve Melamed and Howard Weiner excused themselves because of conflicts of interest. Gary Reinhardt, Larry Mahan, Peter Page, Robert Harrison and Lynne Davies sat on the case.

Presentation: Attorney E. James Veara appeared to present the application. He explained that his clients object to the service of alcohol on the outside deck of the premises. He believes that the opinion letter written by the Building Inspector, Warren Alexander, misrepresents the issues involved. Attorney Veara then went on to elucidate the zoning and licensing history of the property, as he believes both issues pertain to this matter and are inextricably intertwined.

Public Comment: Mary Jo Avellar and Richard Olson spoke in opposition to the application. There were no letters on file.

Attorney Lester J. Murphy, representing the owners of 15 Commercial Street, rebutted Attorney Veara's argument. His clients believe that the service of alcohol outside the premises is a preexisting, nonconforming use. Attorney Murphy emphasized that he believes that the issue being discussed, contrary to Attorney Veara, concerns the Red Inn's innholder's license and is thus a licensing issue, not a zoning issue. Rick Holland, one of the owners of the premises, stated that a lapse in use never occurred and when the Red Inn was purchased it came with an innholder's license. Warren Alexander read into the record a letter that he had written to Attorney Veara expressing his opinion about the issue.

Board Discussion: The Board questioned Attorney Veara about the application.

FINDINGS OF FACT:

- Since 1971, patrons of the Red Inn have been allowed to take drinks, including alcoholic beverages, to the outdoor deck and yard;
- The applicant concedes this fact;
- Article 2, Section 2460 requires all changes in areas of service shall require a Special Permit, but does not mention consumption;
- The Building Commissioner responded to the applicant's letter of August 14, 2002 within the required time period; and
- The applicant appealed the decision of the Building Commissioner within the required time period.

Larry Mahan moved to deny the appeal of the decision of the Building Commissioner dated August 14, 2002 under Article 5, Section 5223 c of the Zoning By-Laws regarding the property located at 15 Commercial Street (Res 1 Zone), Robert Harrison seconded and it was so voted, 4-0-1 (abstain). Gary Reinhardt will write the decision.

NEXT MEETING

The next meeting will be on December 5, 2002 and will consist of a Public Hearing at 7:00 P.M. with a Work Session following.

ADJOURNMENT

Lynne Davies moved to adjourn at 8:50 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

December 5, 2002.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini