

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

### MEETING MINUTES OF November 3, 2005

#### MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt, Peter Bez, Peter Page, Lynn Davies and Steve Melamed and Patrick Eleey.

**Members Absent:** None.

**Others Present:** Doug Taylor (Building Commissioner), Maxine Notaro (Permit Coordinator).

### WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:45 P.M.

#### PENDING CASES:

**2005-042**      **566 Commercial Street (General Commercial Zone), Attorney Lester J. Murphy on behalf of James M. Costa -**

The case is continued until the December 1, 2005 hearing.

**2005-063**      **42 Franklin Street (Rear) (Residential 3 Zone), Ron Reil –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** John DeSouza and Tom Thompson appeared to discuss the application.

**Board Discussion:** The Board questioned Mr. DeSouza and Mr. Thompson.

#### FINDINGS OF FACT:

- The existing structures are pre-existing, non-conforming to both side yard setbacks.
- The existing structures are comprised of two cottages on the west and east sides of the property.
- The increase in scale is within the allowable scale for the property.
- The proposed second floor additions to each cottage do not alter the original footprint.
- The cottages are existing dwellings units.

*Peter Bez moved to approve a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback at the property located at 42 Franklin Street (Res 3), Peter Page seconded and it was so voted, 5-0. Lynne Davies will write the decision.*

**MINUTES: October 20, 2005 – Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 6-0.**

Gary Reinhardt adjourned the Work Session at 7:00 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. There were six members of the Zoning Board of Appeals present and none absent.

**2005-064**      **291 Commercial Street (Town Commercial Center Zone), Richard Corsino -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the

service of food and alcohol and public entertainment. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eleey sat on the case.

**Presentation:** Richard Corsino appeared to present the application. The applicant stated that the door to the establishment is always closed and is unaware of any noise violations over the past year.

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

**Board Discussion:** The Board questioned Mr. Corsino.

*Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcohol and public entertainment at the property located at 291*

*Commercial Street (TCC) with the following conditions:*

- *The Special Permit shall expire at midnight on December 31, 2008.*
- *The hours of entertainment shall be limited to 12 P.M. to 1 A.M.*
- *When entertainment is being provided, all doors shall be closed and the air conditioning shall be on.*
- *The entertainment shall be restricted to cabaret/comedian-type acts.*
- *This Special Permit pertains to this applicant only and is not transferable.*

*Patrick Eleey seconded and it was so voted, 5-0. Peter Bez will write the decision.*

**2005-065**

**205 Commercial Street (Town Commercial Center Zone), Denny Camino -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws to outside display. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Denny Camino appeared to present the application.

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

**Board Discussion:** The Board questioned Mr. Camino.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws to outside display for the property located at 205 Commercial Street (TCC), Peter Bez seconded and it was so voted, 5-0.*

**2005-066**

**7 West Vine Street (Residential 3 Zone), Thadd and Julie Papetsas -**

The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to extend a pre-existing, non-conforming up and along a non-conforming setback and deviation in building scale. Gary Reinhardt disclosed that he is an abutter to an abutter but will remain seated. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Thadd and Julie Papetsas appeared to present the application. The applicant seeks to raise the roof, add a deck and place a dormer on the side of the structure.

**Public Comment:** Bill Dougal and Ken Freed spoke in favor of the application. There were no letters in the file.

**Board Discussion:** The Board questioned Mr. and Ms. Papetsas.

**FINDINGS OF FACT:**

- The proposed extension of non-conformancy is within the existing footprint, including some extensions that encroach on the existing setbacks.
- The existing structure is non-conforming on the front or west side;
- The existing structure is 98.6 scale units. The average neighborhood scale is 92.27 s.u. The proposed scale will be 109.11 s.u.
- The neighborhood consists of a variety of similarly sized buildings.
- The proposed additions are harmonious with the surrounding neighborhood.
- Of the 49 buildings identified in the development of the allowable scale units, 22 are larger than the allowed and 12 are larger than the proposed building.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to extend a pre-existing, non-conforming up and along a non-conforming setback and deviation in building scale at the property located at 7 West Vine Street (Res 3), Peter Bez seconded and it was so voted, 5-0. Lynne Davies will write the decision.*

**2005-067 125 Bradford Street Extension (Residential 1 Zone), Regina Binder on behalf of Victo de Poalo -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use to 9 apartments with 17 bedrooms from 6 apartments, 13 motel rooms and 1 owner's dwelling. Peter Bez recused himself because of a conflict of interest. Gary Reinhardt, Peter Page, Lynne Davies,

Steve Melamed and Patrick Eleeey sat on the case.

**Presentation:** Ginny Binder and Victor de Poalo appeared to present the application. The change is occurring only to Building 4, the other three remain unchanged. The change will bring that building more into conformity.

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

**Board Discussion:** The Board questioned Ms. Binder and Mr. de Poalo. Based on the discussion of the Board, the applicant decided to withdraw the application without prejudice.

*Lynne Davies moved to accept the withdrawal without prejudice, Steve Melamed seconded and it was so voted, 5-0.*

**2005-068 59 Commercial Street (Main House) (Residential 2 Zone), Neal Kimball -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure (cottage #3) up and along a non-conforming setback. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Neal Kimball appeared to present the application.

**Public Comment:** Elise Cozzi, an abutter, spoke in favor of the application.

**Board Discussion:** The Board questioned Mr. Kimball. The Board informed the Mr. Kimball that the applicant needs to obtain approval for a change of use for the property. The case is pending.

**2005-069 184 Commercial Street (Town Commercial Center Zone), Neal Kimball -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Neal Kimball appeared to present the application. The owner seeks to make improvements to the building, improving living conditions for the tenants and providing code compliant means of egress. As a result, the roof will be reconfigured and the building scale will increase.

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

**Board Discussion:** The Board questioned Mr. Kimball.

**FINDINGS OF FACT:**

- The existing structure has a scale of 185.07 scale units.
- The proposed additions total 18.32 s.u. for a total proposed scale of 203.39 s.u.
- The allowed scale, as per the Assessor's data, is 129.80 s.u.
- This is a neighborhood composed of both residential and commercial properties with a number of very large structures along Commercial Street.
- The proposed additions will not be visible from Commercial Street and only slightly visible from Court Street.
- This proposal will create a building in keeping with its site and the surrounding neighborhood.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale, at the property located at 184 Commercial Street (TCC), Peter Page seconded and it was so voted 5-0. Peter Page will write the decision.*

**2005-070 125 Bradford Street Extension (Residential 1 Zone), Regina Binder on behalf of Victor de Poalo -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback. The applicant needs to obtain approval for a change of use at the property. This case is pending.

**PENDING CASES:**

**2005-061 3 and 3A Browne Street (Residential 3 Zone), John and Terese Nelson -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback and to extend a second pre-existing, non-conforming structure out and along a non-conforming setback. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** John and Terese Nelson appeared to discuss the application.

**Board Discussion:** The Board questioned Mr. and Ms. Nelson.

*Steve Melamed moved to consider as a finding under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 5-0.*

*Lynne Davies moved to approve a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback and to extend a second pre-existing, non-conforming structure out and along a non-conforming setback at the property located a 3 and 3A Browne Street (Res 3) as a finding under the Goldhirsh v. McNear ruling, Steve Melamed seconded and it was so voted, 5-0.*

Chair Gary Reinhardt adjourned the Public Hearing at 9:25 P.M.

**NEXT MEETING:**

The next meeting will be on November 17, 2005 and will consist of a Work Session at 6:00 P.M.

**ADJOURNMENT:**

*Peter Bez moved to adjourn at 9:29 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 1, 2005.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

Ellen C. Battaglini