

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
December 15, 2005

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt, Peter Bez, Peter Page, and Patrick Eleey.

Members Absent: Lynne Davies (excused) and Steve Melamed (excused).

Others Present: Doug Taylor (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

WORK SESSION

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

PENDING CASES:

2005-068 **59 Commercial Street (Main House) (*Residential 2 Zone*), Neal Kimball on behalf of Thomas Roberts –**

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.

2005-071 **59 Commercial Street (Cottage) (*Residential 2 Zone*), Neal Kimball on behalf of Thomas Roberts –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use from an existing, non-conforming commercial use (office space) back to a conforming single-family residential use.

2005-072 **59 Commercial Street (Main House) (*Residential 2 Zone*), Neal Kimball on behalf of Thomas Roberts -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use from an existing, non-conforming commercial use (office space) back to a conforming single-family residential use.

Presentation: Attorney E. James Veara appeared to present the application. Attorney Veara discussed the issue of non-conforming uses versus non-conforming structures. He argued that the by-law is silent on changing a use back from a non-conforming to a conforming and that the by-laws allows and encourages reversion to conforming uses.

Board Discussion: The Board briefly questioned Attorney Veara and then postponed the discussion of this case until the Work Session is reconvened.

Chair Gary Reinhardt postponed the Work Session at 7:00 P.M.

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:00 P.M. There were four members of the Zoning Board of Appeals present and two absent.

PENDING CASES:

2005-074 **212 Commercial Street (*Town Commercial Center Zone*), David Hamnquist -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for Outdoor Display. Chair Gary Reinhardt explained to the applicant that there were only four members of the

Board seated and thus the vote would have to be unanimous in order for a Special Permit to be granted. The applicant could continue the case until a five-member Board is seated or he could proceed with four. The applicant chose to move forward. Gary Reinhardt, Peter Bez, Peter Page and Patrick Eeley sat on the case.

Presentation: David Hamnquist appeared to present the application.

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

Board Discussion: The Board questioned Mr. Hamnquist.

Peter Bez moved to approve a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for Outdoor Display at the property located at 212 Commercial Street (TCC), Patrick Eeley seconded and it was so voted, 4-0.

2005-075

305 Commercial Street (Town Commercial Center Zone), Robert Dalton -

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for Outdoor Display. Chair Gary Reinhardt explained to the applicant that there were only four members of the Board seated and thus the vote would have to be unanimous in order for a Special Permit to be granted. The applicant could continue the case until a five-member Board is seated or he could proceed with four. The applicant chose to move forward. Gary Reinhardt, Peter Bez, Peter Page and Patrick Eeley sat on the case.

Presentation: Robert Dalton and Angelina Prouty appeared to present the application.

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

Board Discussion: The Board questioned Mr. Dalton and Ms. Prouty.

Building Commissioner Doug Taylor stated that he would like to work with the applicant to come up with a modified proposal for the site. The case is continued until the January 5, 2006 Work Session.

2005-076

212-214 Commercial Street (Town Commercial Center Zone), Robin B. Reid, Esq. on behalf of New Art Realty Corp. -

The applicant seeks the renewal of Special Permits #2004-032 and #2005-008 under Article 2, Section 2460 of the Zoning By-Laws. The applicant requested a continuance until the January 5, 2006 hearing.

2005-077

154 Commercial Street (Town Commercial Center Zone), Robert Valois -

The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws for a change of use from residential to commercial and deviation from the neighborhood average for building scale on a pre-existing, non-conforming structure. Chair Gary Reinhardt explained to the applicant that there were only four members of the Board seated and thus the vote would have to be unanimous in order for a Special Permit to be granted. The applicant could continue the case until a five-member Board is seated or he could proceed with four. The applicant chose to move forward.

Presentation: Robert Valois and Stephen Syta appeared to present the application. The applicant seeks to change the use of the structure from three dwelling units to two.

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

FINDINGS OF FACT:

- § The existing use, which is three dwelling units on the property in one structure, is conforming in this zone; however, the lot area is not sufficient to allow the third dwelling unit. Therefore what exists presently is a dimensionally non-conforming lot.
- § The proposal is to replace the third dwelling unit with a commercial space, therefore removing the existing dimensional non-conformancy on the lot.
- § This is a commercial portion of the town and therefore a retail space would be harmonious and compatible with the surrounding streetscape.
- § The existing structure has a scale of 94.54 scale units.
- § The proposed structure will have a scale of 104.00 s.u.
- § The allowed scale, per the assessor's data, is 95.80 s.u.
- § The additions to the structure are small in scope and on the rear portion of the building, therefore not visible from Atlantic Avenue or Commercial Street. Thus, the proposed changes will not affect the harmony of the neighborhood in any way.

Peter Bez moved to grant a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws for a change of use from residential to commercial and deviation from the neighborhood average for building scale on a pre-existing, non-conforming structure at the property located at 154 Commercial Street (TCC), Peter Page seconded and it was so voted, 4-0. Patrick Eeley will write the decision.

2005-078 49 Bradford Street (Residential 3 Zone), Michael Powers -

The applicant seeks a Variance under Article 4, Section 4100 of the Zoning By-Laws for a change of use resulting in an additional dwelling unit. The applicant requested a withdrawal without prejudice.

Peter Bez moved to accept the withdrawal without prejudice of Case #2005-078, Peter Page seconded and it was so voted, 4-0.

2005-079 89 Bradford Street, Unit #1 (Residential 3 Zone), John Richard Burrows -

The applicant seeks a Special Permit under Article 3, Section 3100 of the Zoning By-Laws for a change of use from a gallery back to the original residence. Chair Gary Reinhardt explained to the applicant that there were only four members of the Board seated and thus the vote would have to be unanimous in order for a Special Permit to be granted. The applicant could continue the case until a five-member Board is seated or he could proceed with four. The applicant chose to continue the case until five members were seated. The case will be heard at the January 5, 2006 hearing.

Chair Gary Reinhardt adjourned the Public Hearing at 7:56 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 7:56 P.M.

PENDING DECISIONS:

2005-073 10 Washington Street (Residential 3 Zone), Neal Kimball on behalf of Vernon Brown -

Gary Reinhardt, Peter Bez, Lynne Davies, Steve Melamed and Patrick Eeley sat on the case. Peter Bez read the decision. *Patrick Eeley moved to accept the language as written, Peter Bez seconded and it was so voted, 3-0-2 (Lynne Davies and Steve Melamed absent).*

2005-042 89 Shank Painter Road (General Commercial Zone), Lester J. Murphy, Esq. on behalf of James M. Costa -

Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Peter Bez read the decision. *Peter Page moved to accept the language as written, Gary Reinhardt seconded and it was so voted, 3-0-2 (Lynne Davies and Steve Melamed absent).*

2005-068 59 Commercial Street (Main House) (Residential 2 Zone), Neal Kimball on behalf of Thomas Roberts -

2005-071 59 Commercial Street (Cottage) (Residential 2 Zone), Neal Kimball on behalf of Thomas Roberts -

2005-072 59 Commercial Street (Main House) (Residential 2 Zone), Neal Kimball on behalf of Thomas Roberts -

Board Discussion: The Board continued discussion of the issues involved in these cases with Attorney Veara. Chair Gary Reinhardt decided to consult with Town Counsel concerning these issues and the cases are continued until the Work Session on January 5, 2006.

MINUTES: December 1, 2005 - Peter Bez moved to approve the language as amended, Peter Page seconded and it was so voted, 4-0.

NEXT MEETING:

The next meeting will be on January 5, 2006 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT:

Peter Page moved to adjourn at 9:00 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 January 5, 2006.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini