

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

Meeting Minutes September 23, 1999

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Members Present: Peter Bez, Barbara Gard, Ken Janson, Larry Mahan, Steve Melamed, and Gary Reinhardt, Chairman.

Member Absent: Ray Boylan

WORK SESSION – 6:00 P.M.

99-06832 Conwell Street, Edward Malone – Gary Reinhardt, Ken Janson, Barbara Gard, Steve Melamed, and Ray Boylan are currently sitting on the case. Ken told the group a fax was received just that day from Attorney Veara regarding the suit over rights on Tiny's Way; stating that no title exam has been performed. Veara also said, in the fax, that he had received yet another revised plan and he is particularly interested in talking about back filling and retaining wall during the building process. At that moment Ted Malone arrived at the meeting and said he did not want to talk about Tiny's Way this evening. Ted was there with another revised plan. It showed changes in the telephone lines and he stated there will be a need for new retaining structures. He continued, there will be 39 parking spaces (25 required and 14 additional for visitors and/or people with second cars).

Ted also said he'd be coming back with detailed construction protocol. He has recalculated all the required green space. Gary Reinhardt told Ted that he had answered most of the Board's concerns but the big concern is the manner in which the plan has been presented. It came in piecemeal and the Board would like to see and study the construction protocol in order to respect the abutters concerns. Steve Melamed wondered if the Board would be able to see the plan from the other engineer Ted spoke of who will be assisting Billy Rogers.

Ted assured the Board that the overall design is, more or less, locked in place. Ken Janson wondered if the drawings are going to be ready in two weeks. Ted said he needed but a week for the drawings. Barbara Gard revisited the center area of the plan over the septic. Ted said it would become a small pocket park. Barbara wondered if it might become a playground?

In summing up this case, Gary Reinhardt told Ted Malone the Board would like to be updated regularly since, with so many versions of the same plan, it made the entire case confusing. The next two ZBA meetings will be held on October 7th and 14th and then not until November. A decision should be made at the next meeting and then signed in November.

98-102291 Commercial Street, Hake Nominee Trust – Rick Murray (former Chair of the ZBA), Barbara Gard, Peter Bez, Ken Janson, and Ray Boylan originally sat on the case. The original decision led to a bit of confusion; therefore, #5 of the decision was rewritten. The new #5 of the decision now reads, "There shall be a restroom available to patrons and employees only."

Motion: Ken Janson made a motion to accept the revised language of the decision, Peter Bez seconded the motion and it passed 3-0-1.

99-071 Hatches Harbor Condominium Association, 75 Provincelands Road – Ray Boylan, Barbara Gard, Ken Janson, Gary Reinhardt, and Peter Bez sat on the case. Peter Bez wrote a lengthy decision detailing why the request for a sign was denied.

Motion: Ken Janson made a motion to accept the language of the decision, Barbara Gard seconded the motion and it passed 4-0-1.

99-076623 Commercial Street, Seamus G. Henchy – Gary Reinhardt, Ken Janson, Peter Bez, Barbara Gard, and Ray Boylan sat on the case. Barbara Gard wrote the decision denying the appeal of Mr. Henchy. His reason for the appeal stemmed from the height of the building at 623 Commercial Street.

Motion: Ken Janson made a motion to accept the language of the decision Barbara wrote. Peter Bez seconded and it passed 4-0-1.

99-078225 Commercial Street, d/b/a Provincetown Cheese Market and Deli, Cynthia Padgett and Alisha H. King – Barbara Gard, Ken Janson, Gary Reinhardt, Peter Bez, and Ray Boylan sat on the case. Peter Bez wrote the decision to allow entertainment at the Cheese Market and Deli with the following stipulations:

- 1) Doors must be closed whenever entertainment is taking place.
- 2) Entertainment will be limited to only one performer at a time and may be amplified.
- 3) Granting the request is valid until 9/9/00.
- 4) Entertainment on either Friday or Saturday night (either/or not both nights)
- 5) Entertainment is not to begin until the store upstairs is closed.

Motion: Barbara Gard made a motion to approve the language of the decision with Ken Janson seconding it. It then passed 4-0-1.

A motion was then made to re-open 99-078 since a discrepancy in the language of the decision was discovered.
Motion:4) of the original decision would now read "Entertainment on either Friday or Saturday night (either/or – not both nights) for no more than 3 hours.Ken Janson made the motion to accept the amended language of the decision and it was seconded by Peter Bez and approved by a vote of 4-0-1.
Motion:Ken Janson made a motion to approve the minutes of the September 9, 1999 meeting. Peter Bez seconded it and it was approved unanimously.

PUBLIC HEARING

99-07017 Nelson Avenue, Jose M. Passos – Peter Bez, Barbara Gard, Ken Janson, Gary Reinhardt, and Larry Mahan sat on the case.A letter from Mr. Passos was read into his file regarding his change of heart.
Motion:Ken Janson made a motion to allow Mr. Passos to withdraw without prejudice.Peter Bez seconded it and it passed unanimously 5-0.
99-077277 Commercial Street, Honbets, Inc. on behalf of the Knights of Columbus, d/b/a Stormy Harbor.The applicant seeks modification of a previously granted Special Permit to allow amplified music at the aforementioned property.The application has been postponed until November 4, 1999.

99-081421 Commercial Street Realty Trust, James R. McGowan, Trustee.The applicant seeks a variance to allow reconstruction of decks within the required property line setback at the property located at 421 Commercial Street.(This public hearing is being held pursuant to a court remand of the case entitled James R. McGowan, Trustee of 421 Commercial Street Realty Trust, et al. V. Gary Reinhardt et al., Barnstable Superior Court Civil Action #98-235, which case is an appeal of Zoning Board of Appeals' Decision #97-101, dated March 6, 1998, denying the Trust's application for a variance.

Ken Janson, Barbara Gard, Gary Reinhardt, Steve Melamed, and Peter Bez sat on the case.John Doonan, an attorney, and Charles Basile, an architect, presented the application on behalf of 421 Commercial Street Realty Trust.Mr. Doonan said he only wanted to bring the long winded issue to rest and asked the Board to please listen to the arguments for reconfiguring the decks (cutting them back to the sliders) but NOT removing the support columns.The problem with moving the supports was that it would place them directly over the septic tank and/or leaching fields.

Gary Reinhardt said an identical scenario was proposed the last time they came before the Board in maybe '98 or '97.Gary then looked it up and said case #97-101 was denied on January 8, 1998.Nothing has changed.Gary further said there were two options for the Board:1) take a vote tonight, or 2) ask the Town Counsel for clarification.It was then decided the Board will consider this issue at a future meeting after consulting with Town Counsel.

99-080Application by **Christopher J. Snow on behalf of William York** under Article II, Section 2110 of the Zoning By-law.The applicant seeks approval to construct a dormer at the property located at **48 Commercial Street.**

The hearing portion of the meeting recessed for 10 or 15 minutes in the hopes that Atty. Snow might arrive.It resumed at 7:50 p.m. with Tom Thompson, the architect for the project, presenting for Chris Snow.Gary Reinhardt, Ken Janson, Barbara Gard, Peter Bez, and Steve Melamed sat on the case.The architect had many drawings and began by saying that the 1st and 2nd floors would remain the same with the only changes happening on the 3rd floor; overall, the building's footprint will remain the same.

The drawings detailed three possible scenarios:1) a single large dormer, 2) twin dormers, or 3) four corner dormers.Four men then spoke in favor of the application.One was the former owner of the building, another the owner of 49 Commercial Street, a third the owner of 46Commercial Street, and last, but not least, Rick Murray, a neighbor.There were two letters read in opposition.

Both Gary and Peter felt the proposal was not a matter for the Zoning Board of Appeals to decide on and the following motion was made:

Motion:Ken Janson made a motion determining the entire matter was not properly before the Zoning Board of Appeals and more appropriately should be under the Building Department's jurisdiction.Peter Bez seconded the motion and it passed unanimously 5-0.

Motion:Peter Bez made a motion to adjourn at 8:15 p.m., Steve Melamed seconded and it joyously passed unanimously!

These minutes were approved by a vote of the Zoning Board Members present at their meeting on _____, 1999.

Respectfully submitted:

Zoning Board of Appeals Signature Title Evelyn Rogers Gaudiano, On-call secretary