

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

### Meeting Minutes August 26, 1999

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**Members Present:** Peter Bez, Ray Boylan, Barbara Gard, Ken Janson, Steve Melamed, and Gary Reinhardt, Chairman.

### WORK SESSION – 6:00 P.M.

- 99-068 32 Conwell Street, Edward Malone** - Gary Reinhardt, Ken Janson, Barbara Gard, Steve Melamed, and Ray Boylan were sitting on the case. Ted Malone presented much the same plan with a few changed ideas regarding parking. He also had a report of the traffic study conducted by Cape Cod Commission. Ted said the Planning Board is demanding construction protocol to ensure topography of the hill during work. Ted also said he would be furnishing additional storm water plans to the Planning Board. Steve Melamed worried about traffic patterns around 32 Conwell as they would relate to safety issues. The entire presentation indicated the plan, although many details had already been worked out, was still evolving.
- 99-069 35 Conwell Street, Edward Malone** - Gary Reinhardt was concerned about the wetlands issue. Ted assured him he was making a big effort to not abuse the wetlands. Ted also said the Planning Board will not act on this project until the Zoning Board of Appeals does. He continued he would like a definitive vote on 35 Conwell tonight because he is up against a time line. Gary said they were out of time but might return to 069 after the public hearing session.
- 99-064 32 Conwell Street, Edward Malone & Ronald Smith.** This project was approved on June 29<sup>th</sup> with a vote of 5 – 0. Peter Bez, Ray Boylan, Steve Melamed, Ken Janson, and Gary Reinhardt sat on the case. The approval was signed.

### PUBLIC HEARING

Chair Gary Reinhardt called the hearing to order at 7:02 p.m.

- 99-077** Application by **Honbets, Inc. on behalf of the Knights of Columbus** under Article I, Section 1260 of the Zoning By-law. The applicants seek modification of a previously granted Special Permit to allow amplified music at the property located at **277 Commercial Street, Provincetown, d/b/a Stormy Harbor** (Commercial Class R Zone) **Postponed until Sep-tember 23, 1999 meeting.**
- 99-070** Application by **Jose M. Passos** under Article IV, Section 4223 and Article III, Section 3110 of the Zoning By-law. The applicant seeks to appeal an enforcement order issued by the Building Commissioner on June 4, 1999, and in the alternative, seeks a Variance from lot area requirements to allow a third dwelling unit at the property located at **17 Nelson Avenue, Provincetown** (Residential Class W Zone) **Postponed until September 9, 1999 meeting.**
- 99-076** Application by **Seamus G. Henchy** under Article IV, Section 4223 of the Zoning By-law. The applicant is appealing the decision of the Building Commissioner on June 14, 1999 regarding the height of the structure located at **623 Commercial Street, Provincetown** (Residential Class G Zone)  
Gary Reinhardt, Ken Janson, Barbara Gard, Peter Bez and Ray Boylan sat on the case. Mr. Henchy presented photos of the completed building at 623 Commercial St. and contended the structure was not as originally approved. He cited the greatly increased height of the building as his main objection. The building overshadows his home which is directly across the street and robbed him and his family of space, air and light. He further felt any deviation from the original plan negates the special permit.  
Warren Alexander speaking in defense of the structure at 623 Commercial Street said that since the tiny A-frame house sat in the velocity zone, any major renovations to it would have to come under FEMA mandates, necessitating a first floor elevation of 13.87 feet. Since the house was originally situated so that you had to step down into it, the increase was considerable but mandatory. The building sits in the A-2 zone as well as the B-2 zone and the more stringent

velocity zone must take precedence. Warren continued by saying he showed constant diligence during the entire renovation. Next Attorney Jamie Veara, representing Donna Aliperti (the owner), said there were no deviations from the original plan and that Mr. Henchy had no private property interest (as in being a direct abutter) so he could not have a case. He went on to say “code governs over Zoning regulations.” The architect, J.F. Kelly, then said (much the same thing) that adjustments had been needed for the code requirements. He also claimed the building had grown only one or one and a half feet. John Reis, the builder, then spoke and mirrored Alexander, Veara, and Kelly i.e., code requirements, etc. Grace Page, a neighbor who lives at 634 Commercial Street spoke in opposition of the structure. She said it had changed the entire neighborhood and was certainly not an asset. Another woman who was an abutter said she felt the cupola looked ridiculous and was not attractive. Letters of support were read; they outnumbered the objection letters but were not all from the same neighborhood. Mrs. Henchey then spoke and aired her feelings. She wondered aloud why Warren Alexander was so positive about 623 Commercial Street?

#### **Committee Discussion:**

**Barbara Gard** asked what caused the July 28, 1998 change. John Reis and Warren Alexander once again citing FEMA rules as the culprit.

**Ken Janson**, for further clarification, asked, “So proportions are exactly the same and the change is in the foundation only?”

**Peter Bez** asked Mr. Henchy how 623 Commercial Street had aggrieved him. The reply was that a whole level of light has changed in his home. Peter continued, “and how many feet is the building from your home?” The answer was approximately 25 or 30 feet.

**Ray Boylan** pointing out that the plan as approved had been changed (due to FEMA regulations as they govern the velocity zone) suggested what had happened should raise a red flag in the whole system. He wondered why, when the elevation requirement had been found out, the project had not returned to Zoning?

**Gary Reinhardt** then asked Warren Alexander why the plan hadn’t been returned to Zoning? Warren stated it was a code issue and that supercedes anything Zoning can do.

Seamus Henchy was then asked if he’d like to sum up his appeal. Much of what has been reported was restated. Too high, lack of light, etc. He, too, wondered why the major adjustments had not come back to the Board for their review. Jamie Veara said the building was deemed to be O.K. because it was still under 33 feet. Mr. Henchy also said even though the proportions of the building had not changed, the building was still 14% taller than it had been!

**Conclusion:** The Henchy matter will be under Pending Decisions on September 9, 1999 during the work session. The Public Hearing closed at 8:40 p.m.

#### **WORK SESSION (resumed at 8:45 p.m.)**

**99-071 Hatches Harbor Condominium Association, Provincelands Rd. – postponed.**

**99-073 Marsha Ross, 398 Commercial Street** Attorney Veara presented the “hardship case” as he saw it. Gary Reinhardt, Peter Bez, Ray Boylan, Ken Janson, and Barbara Gard sat on the case. The property at 398 Commercial Street is the former Zoltan Gluck shop. It has been divided into two shops and the new owner is having difficulty renting the shop which is not accessed directly by the stairway. The variance requested would extend width of steps and have the steps run across most of the front of both shops. The Board suggested a solution which would require no variance might be to give each of the two shops its own separate stairway and landing. It would require cutting back the deck from five feet to three feet for code specific landings thereby giving each doorway its own stairway. **Peter Bez made a motion to deny the variance, it was seconded by Ray Boylan and was voted 5-0 to deny.**

**99-075 Robert A. O’Malley on behalf of Jay C. Anderson, 21 Center Street.** Peter Bez, Ray Boylan, Gary Reinhardt, Barbara Gard, and Ken Janson sat on the case. Bob was there primarily to address the changing of a gambrel roof line. **Ken Janson made a motion to grant the roof variance according to the revised plan. Peter Bez seconded the motion and it was approved unanimously (5-0).** The decision will be written by Ray Boylan and is due in two weeks.

**99-069 Edward Malone, 35 Conwell Street.** This project was revisited one more time. Once, again, there were many of the same concerns voiced but everyone was aware that Ted Malone was under a tough time constraint to make this project happen. **Barbara Gard made a motion to grant permission for 99-069 with several conditions:**

- 1) storm drains must be installed as recommended by the Cape Cod Commission’s letter of 8/25/99,**
- 2) the driveway into 35 Conwell Street must be at least 50 feet from any other driveway across the street,**
- 3) all trees depicted in the plan must remain, and**
- 4) the development will contain 6 units of affordable housing, 4 units of moderately-priced housing, and 8 units of market-priced housing.**

Ray Boylan seconded the motion and it passed unanimously. (5-0)

**DECISIONS:**

**99-063 Tran Family Nominee Trust, 179 Commercial Street.** The family wanted special permission from Zoning in order to allow outdoor dining. There was a public hearing on May 18, 1999 and they requested 50 inside seats and 25 outside. At that time the vote was 5-0 in favor of denying permission for outside dining. Letters from interested parties were received; two in favor and 7 against. **Motion: Peter Bez made a motion to accept the denial as written with Ken Janson seconding the motion. It passed unanimously.**

**99-072 Michael Valenti, 174 Commercial Street.** He appeared at the August 5, 1999 public hearing requesting a 3-story addition which would give him a new living and dining area and the ability to have a laundry in the basement. The hardship part was pled since he felt obliged to live off premises. **Motion: Steve Melamed made a motion that since substantial hardship had not been shown, he wanted to deny the application. Barbara Gard seconded the motion and it passed. Vote: (3-0-1).**

**99-052 83 Shankpainter Road, Binder Boland & Assoc. on behalf of Clem & Ursie Silva.** Peter Bez, Barbara Gard, Gary Reinhardt, Ray Boylan, and Ken Janson sat on the case. The parking lot was officially approved with signatures.

**Motion: A motion was made to approve the minutes of the August 5<sup>th</sup> meeting. It was seconded and passed unanimously.**

Gary Reinhardt told the Board he will be away the last two Thursdays in October. The Board discussed rescheduling one meeting or canceling it. It was decided to cancel the late October meeting.

**Motion to adjourn at 10:15 p.m. Vote was unanimous to adjourn.**

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

Respectfully submitted:

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Zoning Board of Appeals Signature

Title

Evelyn Rogers Gaudiano, On-call secretary