

TOWN OF PROVINCETOWN ZONING BOARD OF APPEALS

MEETING MINUTES

of

August 5, 1999

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Members Present: Gary Reinhardt (Chair), Peter Bez (Vice Chair), Barbara Gard (Clerk) (arrived at 6:52 P.M.), Ken Janson, Ray Boylan, Steve Melamed, Larry Mahan

Members Absent: None

WORK SESSION

Chair Gary Reinhardt called the Work Session to order @ 6:02 P.M.

PENDING DECISIONS -

99-058 185 Commercial Street, Roslyn Garfield on behalf of 185 Commercial Realty Trust, d/b/a Bubala's by the Bay - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Ray Boylan read the decision. Peter Bez moved to approve the decision as written, Ken Janson seconded, and it was so voted, 4-0, 1 absent (Barbara Gard).

99-060 24 Captain Bertie's Way, Sanjo Realty Trust - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Gary Reinhardt read the decision. Gary Reinhardt reported that the Planning Board had denied this application. Ray Boylan moved to approve the decision as written, Peter Bez seconded and it was so voted, 3-1 (Ken Janson), 1 absent (Barbara Gard).

PENDING CASES

99-070 17 Nelson Avenue, Jose M. Passos - Application is to appeal an enforcement order issued by the Building Commissioner on June 4, 1999, or, in the alternative, for a variance from lot area requirements to allow a third dwelling unit. Continued until the second Board meeting in August.

99-068 32 Conwell Street, Edward Malone - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. Mr Malone appeared to discuss the application. **Board discussion:** number and use of additional parking spaces; letter from Attorney Harriet Hobbs, concerning pedestrian egress from property onto Tiny's Way; location of 8 foot right of way; line-of-sight issues for vehicle drivers on Conwell Street; complexity of plan and safety concerns may require Cape Cod Commission review; impact of this application should be considered in conjunction with proposed development at 35 Conwell Street. Gary Reinhardt informed the applicant that the application would likely be referred to the Cape Cod Commission for review and asked the applicant if he would consider waiving the Board's time limitations in terms of making a decision. **Public Comment:** Gary Reinhardt read one new letter in favor. Gary Reinhardt read a letter from Zisson and Veara, Attorneys at Law, concerning objections to pedestrian access from the rear of the property. Gary Reinhardt read a letter with concerns about the Board's procedural steps for public input. Jim Dougherty rose to a point of order, stating that the Board has the right

to reopen an application to public statements. Gary Reinhardt stated that the issue of public input had been addressed at the last meeting, and that he had, in fact, allowed additional written public input. Taken under advisement.

Chair Gary Reinhardt postponed the Work Session until after the Public Hearing.

PUBLIC HEARING

Chair Gary Reinhardt convened the public hearing at 7:04 P.M. and explained the hearing procedures to the

audience. All seven members of the Board were present.

99-063 179 Commercial Street, Tran Family Nominee Trust, d/b/a Szechuan Chinese Restaurant - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case, which had been postponed from a previous meeting. Attorney Lester Murphy and Mr Tran appeared to present the application, which is to either overturn a decision of the Building Commissioner or for a special permit for outside dining (25 seats). **Presentation:** licensing status has historically included outdoor seats; use of outdoor seating has been sporadic and limited, but not abandoned. **Public Comment:** Mr Welch and Mr Berry spoke in favor. Attorney McCormick, representing other owners in the condominium association, spoke in opposition, distributing and referencing several documents. Building Commissioner Warren Alexander rose to a point of information, asking if the issue before the Board at this time is the request to overturn his decision and Gary Reinhardt confirmed that the appeal was the initial issue. Ms Hansen, a condominium unit owner, distributed copies of various documents in support of Mr McCormick's arguments. Ms Donato spoke in opposition. Mr Alexander, Building Commissioner, spoke in opposition to the appeal of his decision, reiterating that there had been a discontinuance of the outdoor dining use and referencing his report to the Board. Ms Schultz and Ms Hansen spoke in opposition. Gary Reinhardt read 1 letter in favor and 7 letters in opposition. Ray Boylan raised a point of order concerning which issue is before the Board and requested that only those letters be read which addressed the issue of the appeal of the Building Commissioner. Gary Reinhardt said that the issue was, in fact, the appeal of the decision, but that he did not know in advance what the letters contained. **Board discussion:** need to see and review the condominium documents; possibility of reducing the number of seats; Board's issue is use, not what is on the license; how growth management is a factor in consideration of the special permit. **Peter Bez moved to uphold the decision of the Building Commissioner, Ken Janson seconded and it was so voted, 5-0.** Peter Bez will write the decision. Mr Murphy asked if the application for the special permit could be withdrawn without prejudice and presented the Board with a written request to that effect. **Peter Bez moved to allow the application be withdrawn without prejudice, Ken Janson seconded and it was so voted, 5-0.**

99-072 174 Commercial Street, Kevin Bazarian on behalf of Michael Valenti, d/b/a White Wind Inn- Gary Reinhardt informed the applicants that three members of the Board had direct conflicts as guesthouse owners. Gary Reinhardt stated that he himself worked in a guesthouse, but had permission from the Selectmen to sit on guesthouse cases. Gary Reinhardt explained the options of either accepting a four person Board or of waiting until a five person Board was available. The applicants accepted a four person Board. Gary Reinhardt, Barbara Gard, Steve Melamed, Larry Mahan sat on case. Mr Towser, Mr Valenti and their architect, Mr Prodanau, appeared to present the application, which is for a variance to construct a three story addition. **Presentation:** have received approval from Historic Commission; owners intend to move into

and live in the Inn; number of rooms for rent to remain the same. **Public Comment:** Mr Weiss spoke in favor. No one spoke in opposition. There were seven letters in favor and three letters in opposition. **Board discussion:** height of building to remain the same; need to address § 4222 variance criteria. Mr Peters rose to a point of information, concerning what exactly was being added. Gary Reinhardt responded that the discussion would hopefully answer all questions. **Board discussion:** lot coverage, previous variance granted for penthouse; this variance required because of amount of exposed foundation makes basement a story; existing non-conformancies; possible conditions of approval. **Steve Melamed moved to grant with the following conditions: no more than 12 rooms, historical character of the building to be maintained; basement not to be used for principal use, but for storage and laundry only. Larry Mahan seconded, and the motion was denied, 3-1 (Gary Reinhardt).** Larry Mahan will write the decision.

99-073 398 Commercial Street, Edward E. Veara, Esq., on behalf of Marsha Ross - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Attorney Jamie Veara and Mr Grosso appeared to present the application, which is for a variance, or, in the alternative, a special permit, to allow extension of the front entry stairs within the required property line setback. **Presentation:** Mr. Veara distributed copies of a memo and discussed same. **Public Comment:** No one spoke in favor. Mr Newman spoke in opposition. There were no letters in file. **Board discussion:** distance from steps to front property line; whether step expansion

constitutes extension of non-conformancy or greater intrusion into setback. Mr Veara requested a legal opinion from Town Legal Counsel and, by consensus, the Board agreed to seek such an opinion.

99-074 19 Center Street, Robert O'Malley on behalf of Jay Anderson - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Peter Bez disclosed that he was included on the abutters' list, though he is neither an abutter nor an abutter to an abutter. Attorney Lester Murphy and Mr. O'Malley appeared to present the application, which is for a variance to allow construction of a second means of egress with the required property line setback and for maximum lot coverage requirements, and a special permit to reconstruct pre-existing non conforming structures, **Presentation:** Mr O'Malley asked to withdraw without prejudice the application for a variance for lot coverage. *Peter Bez moved allow withdrawal without prejudice, Ken Aanson seconded, and it was so voted, 5-0.* Property being converted to condominiums; hardship is the inability to create safe means of egress without encroaching into setback. **Public Comment:** No one spoke either in favor or in opposition. There was one letter expressing concerns about extending a fence along the property line. **Board discussion:** whether there were alternative locations for the egress; possibility of interior stairs; need to see a complete set of plans. Attorney Lester Murphy asked to withdraw the variance and special permit applications without prejudice. *Peter Bez moved to allow the applications be withdrawn without prejudice, Ken Janson seconded, and it was so voted, 5-0*

99-075 21 Center Street (a.k.a. 25 Center Street), Robert O'Malley on behalf of Jay Anderson - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Attorney Lester Murphy and Mr O'Malley appeared to present the application, which is for a special permit to reconstruct pre-existing non-conforming structures. **Presentation:** Historic Commission has given their approval; would result in three single family homes; number of bedrooms to remain the same; fence height to remain at three feet . **Public Comment:** No one spoke either in favor or in opposition. There was one letter expressing concerns about extending a fence along the property line. **Board discussion:** buildings to be on slab foundations; location of parking; non conformancies in all setbacks-, whether reconstruction will not be in accordance with any other

Zoning by-laws; whether Yd level of 2 1 A constitutes a story; whether gambrel roof will require a variance or a special permit; alteration of roof line could eliminate need to come before the Board. Taken under advisement,

Chair Gary Reinhardt closed the Public Hearing at 11:00 P.M.

WORK SESSION (continued)

Chair Gary Reinhardt reconvened the work session at 11:00 P.M~

PENDING CASES

99-068 32 Conweff Street, Edward Malone - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. **Board discussion:** whether a full review of both applications by the Cape Cod Commission is justified; what are issues to be sent to Commission for review. Ms Bloomingdale asked a point of information concerning whether any of the units were affordable housing under 40B. Gary Reinhardt responded that none of the units were under 40B. The Board decided that this application and application 99-069 be referred to the Cape Cod Commission for technical advice on transportation, wetlands and water resource issues.

99-069 35 Conwell Street, Edward Malone - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. See application 99-068, above.

99-071 75 Provincelands Road, Tom Graham on behalf of Hatches Harbor Condominium Association - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Continued until the next work session.

MINUTES

July 22, 1999 - Ken Janson moved to accept the minutes, Steve Melamed seconded and it was so voted unanimously.

ADJOURNMENT

Vpw Xfolamod made a motion to adjourn at 11:25 P.M. and it was so voted unanimously.

These minutes were approved by a vote of the Zoning Board Members present at their meeting on
5), 199-1

Respectfully Submitted:

Zoning Board of Appeals Signature

Title

R4acel T&Crosby, On-call secreta

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