

# TOWN OF PROVINCETOWN ZONING BOARD OF APPEALS

## MEETING MINUTES

of

**July 22, 1999**

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**Members Present:** Gary Reinhardt (Chair), Peter Bez (Vice Chair), Barbara Gard (Clerk), Ken Janson, Ray Boylan, Steve Melamed, Larry Mahan

**Members Absent:** None

## WORK SESSION

Chair Gary Reinhardt called the Work Session to order @ 6:00 P.M.

### MODIFICATIONS

Modification of the Stormy Harbor Restaurant special permit granted in 1995. Ms Melamed, representing Stormy Harbor, requested permission to allow amplification of the live entertainment by using the CD player's sound system. Ms Melamed reported that there have not been any noise violations, though they have been using the system for some time. *Ken Janson moved to modify the special permit to allow amplification of one entertainer without a new public hearing, Peter Bez seconded.* Mr Meads spoke as a representative of the Knights of Columbus, the property landlord, requesting that a public hearing on the modification be scheduled. **Board Discussion:** special permit is granted to property owner of record and owner of record does not want the modification; whether there is a more recent permit on file allowing amplification. *With the Board's permission, Ken Janson withdrew his motion.* By consensus, the Board decided that they could not grant the modification.

### PENDING DECISIONS -

**99-067** **303 Commercial Street, Phyllis Schlosberg d/b/a Post Office Cafe** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan sat on case. Ray Boylan read the decision. *Ken Janson moved to approve the decision as written, Barbara Gard seconded, and it was so moved, 4-0.*

### PENDING CASES

**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. Roslyn Garfield, William Rogers and Mr. Yingling appeared to discuss the application and presented a new seating plan and a septic plan. Gary Reinhardt referred to an opinion from Town Counsel, which stated that the new seats should be considered under Growth Management.

Gary Reinhardt also referred to a letter from Mr. Gools, Chief of the Water Pollution Control Section of the Massachusetts Department of Environmental Protection, stating the septic plan met with cuff ent standards. *Peter Bez moved to approve, Barbara Gard seconded.* **Board Discussion:** restaurant had always been before the Board with 167 seats; whether increased septic capacity automatically entitles owner to increase in seating; the seats are already in place;

booths can only be counted as two-tops; Board does not decide whether to bring increase to Growth Management (DRM makes that decision). After *discussion, the Board voted 4-1 (Ken Janson) to approve the application.* Ray Boylan will write the decision.

**99-060** **24 Captain Bertie's Way, Sanjo Realty Trust** - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Mr Jamie Veara, Mr Reis, Mr Silva and Mr Whitney appeared to discuss the application. Mr Veara presented revised plans and reported on the meeting with the Conservation Commission. Meeting between DPW Director and Mr Rogers will be arranged. **Board Discussion:** phasing of construction depends on number of permits obtained; possible referral to Cape Cod Commission; Growth Management By-Laws will address additional use Town services; possibility of well on property. Postponed until after Public Hearing.

99-063 179 Commercial Street, Tran Family Nominee Trust, d/b/a Szechuan Chinese Restaurant - Application is for a special permit for outside dining (25 seats). Postponed until August 5, 1999.

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

### PUBLIC HEARING

Chair Gary Reinhardt convened the public hearing at 7:01 P.M. and explained the hearing procedures to the audience. All seven members of the Board were present.

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. Gary Reinhardt read a letter from the applicant requesting a continuance. Continued until second Board meeting in August.

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. Tom Graham and Ms Lucas appeared to present the application, which is for a variance to allow a 16 square foot sign. No one spoke either in favor or in opposition. There was one letter in favor and none in opposition. **Board Discussion:** whether entrance is a deeded right of way; abutters' signs are large; need for additional site visit; need for a sign at tennis court entrance. Mr Digely spoke about his bicycle accident and the difficulty the ambulance had in finding Hatches Harbor; Applicant to research deeded rights. Applicant addressed variance criteria. Taken under advisement.

Chair Gary Reinhardt closed the Public Hearing at 7:28 P.M.

### WORK SESSION (continued)

Chair Gary Reinhardt reconvened the work session at 7:35 P.M.

99-060 24 Captain Bertie's Way, Sanjo Realty Trust - Gary Reinhardt, Peter Bez, Ken Janson, Barbara Gard, Ray Boylan sat on case. Mr Jamie Veara, Mr Reis, Mr Silva and Mr Whitney appeared to discuss the application. Peter Bez moved to grant, Ray Boylan seconded, and it was so voted, 4-1 (Ken Janson). Gary Reinhardt will write the decision. The Board considered placing conditions on the special permit and after discussion, agreed by consensus to let the vote stand.

99-065 50R Point Street, Deborah Paine, Inc. on behalf of Daniel Petrucci - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. Ms Paine and Mr Thompson appeared to discuss the application. Gary Reinhardt distributed copies of revised plans. Mezzanine floor and side shed have been eliminated. Gary Reinhardt read two letters in support, one with concerns. **Board discussion:** whether mezzanine still meets definition of story; Building Commissioner concurs it is not now a story. Ken Janson moved to view new design as not requiring a variance, Steve Metamed seconded and it was so moved, 5-0. Ms Paine presented a written request to withdraw the application without prejudice. Ken Janson moved to accept the withdrawal without prejudice, Barbara Gard seconded and it was so voted, 5-0.

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. Gary Reinhardt read a petition on Provincetown Aids Support Group stationary signed by 35 persons in favor. Gary Reinhardt read a letter from Attorney Jamie Veara, representing property owners on Tiny's Way, expressing their concerns. At Mr Malone's request, Mr Veara identified his clients. Mr Malone explained his concepts for pedestrian access from the rear of the property and stated that future plans will show the access. Mr Malone presented a Development Impact Statement and Environmental Reports. Gary Reinhardt discussed the difference between the Zoning Board's and the Planning Board's parking concerns. **Board discussion:** determine number of cars owned by low-to-moderate income persons; whether parking over zoning minimum can be rented. Gary

Reinhardt stated that because new information will be presented before the next work session, he will allow correspondence on the new information. Jim \_\_\_\_\_ rose to a point of order concerning the fact that public verbal comment cannot be made on new information and the fact that the new information requires further effort on the public's part. Gary Reinhardt explained the zoning regulations concerning public input. Taken under advisement.

**99-069 35 Conwell Street, Edward Malone** - Gary Reinhardt, Ken Janson, Barbara Gard, Ray Boylan, Steve Melamed sat on case. Mr Malone appeared to discuss the application. Gary Reinhardt read a letter from an abutter with concerns about wetlands. Mr Malone presented and explained revised plans and a Developmental Impact Statement and Environmental Reports. **Board Discussion:** number and location of parking spots; need to review material; increased traffic congestion-, percentage of affordable housing. Taken under advisement.

#### MINUTES

**July 8, 1999** - *Ken Janson moved to accept the minutes,,Steve Melamed seconded and it was so voted unanimously.*

#### MISCELLANEOUS

Steve Melamed asked for the Board to schedule a discussion of how affordable housing is considered by the Town. Barbara Gard and Ray Boylan inquired concerning the Board's authority to limit traffic congestion. Possibility of asking for help of Cape Cod Commission in answering difficult questions.

#### ADJOURNMENT

*Peter Bez made a motion to adjourn at 9:05 P.M. and it was so voted unanimously.*