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## ZONING BOARD OF APPEALS

# March 4, 1999

**Members Present:** Rick Murray, Ken Janson, Gary Reinhardt, Barbara Gard, Steve Melamed, Greg Lambrou

**Members Absent:** Peter Bez, Ray Boylan (excused)

## WORK SESSION

Chair Rick Murray called the Work Session to order @ 6:06 PM

### PENDING DECISIONS

**98-116**

**150 Bradford Street, Timothy McNulty, d/b/a McNulty=s 150 Marketplace** - Rick Murray, Ken Janson, Barbara Gard, Gary Reinhardt, Steve Melamed sat on case. Gary Reinhardt read the decision. *Steve Melamed moved to approve as written, Barbara Gard seconded, and it was so voted, 4-1, (Ken Janson). 5-0 LANGUAGE!*

**99-011**

**258 Commercial Street, Cape Tip Inn, Inc., d/b/a Euro Cafe and Antro** - Rick Murray, Ken Janson, Peter Bez, Gary Reinhardt, Ray Boylan sat on case. *Gary Reinhardt read the decision. Ken Janson moved to approve the decision as written, Gary Reinhardt seconded and it was so voted, 3-0, 2 absent (Peter Bez, Ray Boylan)*

**99-014**

**67 Commercial Street, Roslyn Garfield on behalf of the Center for Coastal Studies and Ruth Hiebert** - Ken Janson, Peter Bez, Greg Lambrou, Ray Boylan, Steve Melamed sat on case. Steve Melamed read the decision. *Greg Lambrou moved to approve the decision as written, Steve Melamed seconded, and it was so voted, 3-0, 2 absent (Peter Bez, Ray Boylan).*

**99-015**

**185 Commercial Street, 185 Commercial Street Realty Trust d/b/a Bubala=s By the Bay** - Rick Murray, Ken Janson, Peter Bez, Gary Reinhardt, Ray Boylan sat on case. Ken Janson read the decision. *Gary Reinhardt moved to approve the decision as written, Ken Janson seconded, and it*

*was so voted, 3-0, 2 absent (Ray Boylan , Peter Bez )*

**99-017**

**1 Commercial Street, Cape Associates on behalf of Provincetown Inn, Ltd, d/b/a Provincetown Inn** - Rick Murray, Barbara Gard, Gary Reinhardt, Steve Melamed, Greg Lambrou sat on case. Greg Lambrou read the decision. *Barbara Gard moved to approve with corrections, Gary Reinhardt seconded, and it was so voted, 5-0.*

## MODIFICATION

**99-001**

**262A Bradford Street** - Rick Murray, Ken Janson , Gary Reinhardt , Barbara Gard, Peter Bez sat on original case. Tom Boland appeared to discuss the modification, which is to install full-height basement. No principal use to be allowed in basement. *Ken Janson moved to approve the modification without another public hearing, Gary Reinhardt seconded and it was so voted, 4-0, 1 absent (Peter Bez).*

## PENDING CASES

**99-012**

**40A Nelson Avenue, Provincetown Heights, Inc. on behalf of Charlotte Nelson Rogel and Robin Garran** - Rick Murray, Ken Janson, Barbara Gard, Greg Lambrou, Gary Reinhardt sat on case. Public hearing previously continued until March 9, 1999.

**99-013**

**5 Somerset Road, E. James Veara on behalf of Mark W. Baker** - Rick Murray, Ken Janson, Gary Reinhardt, Barbara Gard, Greg Lambrou sat on case. Mr. Baker and Attorney Veara appeared to discuss the application. Rick Murray mentioned several new letters. Case continued from February 25, 1999 at Attorney Veara=s request - was prevented from attending due to weather. Board Discussion: reason why shed not originally placed on east side of house; nature of applicant=s hardship; Mr. Baker explained topographical problems, also explained financial hardship; Attorney Veara addressed issue of potential detriment to the public good; shed encroaches on roadway. Postponed until after public hearing.

Chair Rick Murray postponed the Work Session until after the Public Hearing.

## **PUBLIC HEARING**

Chair Rick Murray called the hearing to order at 7: 03 PM and informed the audience of the public hearing procedures. Six members of the Board were present at the start of the meeting.

Rick Murray assigned members to the various cases. Rick Murray discussed the lack of a quorum due to conflicts and absences on case #99-032, 293 Commercial Street, with Attorney Ed Patten, who asked if the Board could hear the case with only four members. Rick Murray declined, stating that Town Counsel had advised against sitting fewer than five members. Rick Murray said he would see if the case could be heard instead on March 9, 1999 and would contact Mr Patten.

#### **99-016**

**14 Prince Street, Edward Brady** - Rick Murray, Ken Janson, Barbara Gard, Gary Reinhardt, Steve Melamed sat on case. Edward Brady appeared to present the application, which is for special permit to install a bay window and dormer. No one spoke either in favor or opposition. There were no letters in file. Board Discussion: is a Goldhirsch case; dimensions of bay window; dormer roof pitch; no additional bedrooms; second building on plan will not be built; rear line setback non-conforming; building height under limit; will increase lot coverage; applicant advised to fill out application correctly; lack of floor plans. *Gary Reinhardt moved to grant under Goldhirsch with conditions, Ken Janson seconded, and it was so voted, 5-0.*

#### **99-026**

**44 Pleasant Street, Arthur Santos on behalf of Vaughn Cabral** - Rick Murray, Ken Janson, Gary Reinhardt, Barbara Gard, Steve Melamed sat on case. Arthur Santos and Vaughn Cabral appeared to present the application, which is for a special permit to construct an addition and dormer. Presentation: single-family dwelling; have installed Title V septic; have reduced size of garage; no impact on neighborhood. Rick Murray read report from Building Commissioner. No one spoke either in favor or in opposition. There was one letter in favor and none in opposition. Board discussion: there is no new first floor addition. *Steve Melamed moved to grant under Goldhirsch, Ken Janson seconded and it was so voted, 5-0.*

#### **99-027**

**80 Bradford Street, Adam Erenberg on behalf of Crowne Pointe Realty Trust** - Rick Murray, Barbara Gard, Gary Reinhardt, Greg Lambrou, Steve Melamed sat on case. Mr Erenberg appeared to present the application, which was for a variance for a second egress within the required setback and a special permit to construct a dormer, an addition and decks. *Steve Melamed moved to accept the applicant's withdrawal without prejudice for request for variance, Barbara Gard seconded and it was so voted, 5-0.* Presentation: new survey shows retaining wall within property lines; has been combined with abutting property, will only be at 29.4% lot coverage; reducing number of bedrooms, increasing number of bathrooms; building height to be 28 feet; scale calculations; special permit criteria, presents new certified plot plan. No one spoke either in favor or opposition. One letter in favor. One letter with line-of-sight concerns. Board Discussion: bedrooms being shifted to other building. *Steve Melamed moved to grant, Gary Reinhardt seconded, and it was so voted, 5-0. Gary Reinhardt will write the decision.*

#### **99-028**

**42 Conwell Street, Rod=s Realty Trust d/b/a Rod=s Texaco** - Rick Murray, Ken Janson, Barbara Gard, Gary Reinhardt, Steve Melamed sat on case. Attorney Lester Murphy and Mr. Mark Silva appeared to present the application, which is for a variance to allow construction of a canopy within the required setbacks. Presentation: has been a gas station for 40-50 years; canopy would be over existing gas pumps; was previously before the Board in 1990, when variance was granted - lapsed because canopy never constructed; variance criteria addressed; other gas canopies in town are much closer; presents letters in favor signed by abutters; will be beneficial to appearance of main town

entrance. No one spoke either in favor or in opposition. One letter in favor from 12 abutters. Board Discussion: would not be able to do self-serve without canopy; fire protection included in canopy; financial hardship - could not compete with self-service stations; whether gas company would even sell gas if not self-serve. Summation: greater detail of financial hardship; virtually impossible to relocate buildings, pumps, and/or gas storage tanks; State will not allow curb cutback for a different pump location. Taken under advisement.

#### **99-025**

**284B Commercial Street, David Eliseo and Martin Johnson** - Rick Murray, Ken Janson, Barbara Gard, Greg Lambrou, Gary Reinhardt sat on case. Attorney Veara, Mr Eliseo and Mr Johnson appeared to present the application, which is for a variance to allow construction of a front porch and arbor within required property line setback. Attorney Veara asked procedural question about previous application #99-007. Rick Murray replied that application was withdrawn without prejudice. Attorney Veara stated that he believes a variance is not needed, asks for Board=s indulgence in reinstating special permit application. Mr Veara asks how to proceed, whether to change current application or to revive previous application. By consensus, the Board stated that the application is properly for a variance. Mr Veara requested that the current application be withdrawn without prejudice, stated he may bring application back as either challenge of decision of Building Commissioner or as new special permit. Rick Murray said that he would advise applying for all three: special permit, variance, and challenge. Attorney Veara said he needed time to review Building Commissioner=s report/decision. *Ken Janson moved to accept withdrawal without prejudice, Gary Reinhardt seconded and it was so voted, 5-0.*

Chair Rick Murray called a ten minute recess at 8:31 PM.

Chair Rick Murray reconvened the hearing at 8: 40 PM.

#### **99-029**

**5C Arch Street, Michael Falco** - Rick Murray, Ken Janson, Barbara Gard, Greg Lambrou, Gary Reinhardt sat on case. Mr Falco and Ken Pomakis appeared to present the application, which is for a special permit to allow a second story on an existing cottage. Presentation: wants to expand living space; no change in footprint. No one spoke either in favor or opposition. One letter in opposition concerning parking. Board Discussion: two buildings on property, main house already has two stories with two units; non-conforming in setbacks and lot coverage; has permission from condominium association; Mr Falco now living in town year-round; need for site visit; if built new would have to be 12 feet from other buildings; potential for fire hazard; below scale requirements; unresolved issue with main house unit should not penalize other unit owners. Taken under advisement.

#### **99-030**

**14 Sandy Hill Lane, Joan Rogers and Charles Rogers** - Rick Murray, Ken Janson, Barbara Gard, Gary Reinhardt, Steve Melamed sat on case. Mr Rogers appeared to present the application, which is for a variance from the minimum lot frontage requirements to allow a third dwelling unit. Presentation: was prepared to discuss both variance and special permit, as written on application; a conforming residential use structure, though lot is non-conforming; structure going from conforming use to conforming use; Building Commissioner said is a pre-existing non-conforming use; Rick Murray referred to 1997 chart which indicates should be before Board as special permit; has a non-conforming lot, but structure conforms. Rick Murray advised Mr Rogers to proceed with application for special permit. Presentation: Mr Rogers reviewed history of structures and living units on

property; kitchen never installed in addition, but plumbing was constructed; could remove lot line with abutting property and have sufficient frontage and lot size sufficient for eight units; reviewed financial hardships and hardship owing to shape of land; claimed no public detriment; no septic problems; plenty of parking; reviewed special permit criteria. No one spoke in favor. Attorney Farber spoke in opposition on behalf of abutters. Lot does not meet dimensional requirements. Mr Farber displayed original sub-division plan. - frontage on Route 6 is illusory - claimed variance required because would not be allowed as new construction. Mr Farber presented precedent cases. Referred to potential issues with septic and increased traffic on Sandy Hill Lane. There were no letters in file. Board Discussion: no longer a pre-school; lot 4 has easement over Mr Rogers= property; Rick Murray said the structure is technically non-conforming in rear line setback; Title V septic now adequate for four bedrooms; Rick Murray referred again to 1997 opinion from Town Counsel Judith Cutler and said variance not required; abutting motel in operation on seasonal basis. Taken under advisement.

### **99-032**

**293 Commercial Street, Hake Nominee Trust, Richard Kelly, Trustee, d/b/a Provincetown Shores** - Attorney Ed Patten appeared to present the application, which is for a renewal of a special permit to operate a lounge and disco with dancing of patrons, live entertainment, service of alcoholic beverages and limited food service. Application continued because there were not five Board members present who did not have a conflict.

Rick Murray adjourned the Public Hearing at 9:43 PM

## **WORK SESSION (continued)**

Chair Rick Murray reconvened the work session at 9:44 PM

### **99-013**

**5 Somerset Road, E. James Veara on behalf of Mark W. Baker** - Rick Murray, Ken Janson, Gary Reinhardt, Barbara Gard, Greg Lambrou sat on case. Attorney Veara and Mr Baker appeared to discuss the application. *Ken Janson moved to deny, Barbara Gard seconded and 4-0, 1 abstain (Rick Murray). Gary Reinhardt will write the decision.*

### **99-021**

**49 Bradford Street, William Rogers II on behalf of Allen H. Green, d/b/a The Shamrock Motel** - Rick Murray, Gary Reinhardt, Steve Melamed, Ken Janson, Barbara Gard sat on case. Board reviewed revised plans submitted by applicant. *Gary Reinhardt moved to grant, Barbara Gard seconded and it was so voted, 5-0.* Steve Melamed will write the decision.

### **99-022**

**258 Commercial Street, Theodore Tine on behalf of Cape Tip Inn, Inc.** - Rick Murray, Ken Janson, Peter Bez, Gary Reinhardt, Ray Boylan sat on case. Ken Janson read letter he wrote to Health Agent asking for concurrence on proposed seating arrangement. Board of Health Chair Annie

Howard and Health Agent George Heufelder appeared to answer questions. Board: what are septic flows for various types of seating; bar in theatre will be service bar only, no seats at bar; no food to be served; Ken Janson pointed out that bar stools are shown at new bar location; Mr Heufelder said he would wait for final plan before calculating total flow; can remove bar stools if over capacity. Taken under advisement.

**99-019**

**291 Commercial Street, Hake Nominee Trust/Another Honbets-** Rick Murray, Ken Janson, Gary Reinhardt, Peter Bez, Ray Boylan sat on case. . Waiting for revised plans.

## **MINUTES**

**February 25, 1999 - *Ken Janson moved to approve , BG seconded and it was so voted, 6-0.***

## **MISCELLANEOUS**

99-012 Board briefly discussed the upcoming public hearing on March 9, 1999.

***Ken Janson made a motion to adjourn at 10:16 PM and it was so voted unanimously.***