

The following minutes are available on-line as a service and are not the official record due to changes in formatting for the Internet. The minutes may have attachments that are not included here in this format. The official, complete paper copy can be viewed during regular office hours, Monday - Friday: 8 a.m. to 5 p.m. in the Office of the Town Clerk, 260 Commercial St. Provincetown, MA 02657.

ZONING BOARD OF APPEALS

February 18, 1999

Members Present: Rick Murray, Ken Janson, Gary Reinhardt, Peter Bez, Barbara Gard, Ray Boylan, Steve Melamed, Greg Lambrou

Members Absent: None

WORK SESSION

Chair Rick Murray called the Work Session to order @ 6:00 PM

PENDING DECISIONS

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. After discussion, Steve Melamed agreed to rewrite the decision.

PENDING CASES

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. Rick Murray had called John Schmidt to determine if loading dock was part of original footprint. Building Commissioner Warren Alexander has no problem with replacing dock with second egress. Mr McNulty now wanted to withdraw his request for variance without prejudice. Now seeking special permit under section 2110. Tim McNulty appeared to discuss the application. Outside circular stairs are now inside. Scale calculations remain the same. Existing stairway decreased to legal minimum. Not intruding further into existing setbacks. Rick Murray read an affidavit from Mr McNulty concerning loading dock. Board discussion: use of building necessitates larger size. *Gary Reinhardt moved to grant under 2110, Steve Melamed seconded and it was so voted, 4-1, (Ken Janson). Gary Reinhardt will write the decision. Gary Reinhardt moved to accept the withdrawal of application for variance without prejudice, Steve Melamed*

seconded and it was so voted, 5-0.

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 February 25, 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. Postponed for two weeks so that applicant can be represented by counsel.

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. Board discussion: decision could open up new way of handling flexible seating; enforcement issues; entertainment brings people inside before outdoor seating is closed; could try more flexible arrangement for one year on trial basis. *Gary Reinhardt moved to grant with conditions, Ken Janson seconded and it was so voted, 5-0. Ken Janson to write the decision.*

MISCELLANEOUS

Rick Murray asked for input on material submitted about the Board the annual for the annual Town Report.

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

MINUTES

February 4, 1999- Gary Reinhardt voted to accept the minutes as written, Barbara Gard seconded and it was so voted unanimously.

January 21, 1999 - Peter Bez voted to accept the minutes as written, Ken Janson seconded and it was so voted with two abstentions (Gary Reinhardt & Ray Boylan)

PUBLIC HEARING

Chair Rick Murray called the hearing to order at 7: 00 PM and informed the audience of the public hearing procedures. All eight members of the Board were present at the start of the meeting.

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.

Henry Evans and Mark Kinnane appeared to present the application, which is for a special permit to construct two story decks and roof decks.. Presentation: have completed much work required by Town; need to pay for improvements; presented updated plans; side setback is non-conformancy; deck will be 25 feet from property line; have already gotten approval from Conservation Commission; decks will 6 feet wide and 78 feet long. No one spoke in favor or opposition. There were no letters in file. Board discussion: applicant provided deed; need certified plot plan showing proposed decks; location of doors; possible need to see floor plan for entire building; inside will remain the same; no stairs from second floor decks to first floor; doors on first floor will provide second egress; lot coverage increasing by 1125 square feet (22% total); could condition decision upon receipt of floor plan and certified plot plan. ***Greg Lambrou moved to approve with conditions, Steve Melamed seconded, and it was so voted, 5-0. Greg Lambrou will write the decision.***

99-016

14 Prince Street, Edward Brady - Rick Murray, Ken Janson, Peter Bez, Gary Reinhardt, Steve Melamed sat on case. Applicant did not appear. ***Peter Bez moved to wait, Gary Reinhardt seconded and it was so voted.***

99-019

291 Commercial Street, Another Honbets, Inc. on behalf of Hake Nominee Trust d/b/a Steve=s Alibi- Rick Murray, Ken Janson, Gary Reinhardt, Peter Bez, Ray Boylan sat on case. Attorney Ed Patten appeared to present the application, which is for a special permit to modify and expand the areas of service. Presentation: summary memo of proposal; letters in favor in four parts signed by several people; this is the first in a series of three applications; expand into upper floor with additional 71 seats; also asking for flexible seating arrangement; up to 50 seats will be allowed on proposed deck on top of flat roof; no entertainment; not a restaurant; after 7:30 PM, seats would move inside; interior activities would include entertainment, dancing, video and games; no food service; would be within septic limits. Mary Lou Monk spoke about the appropriate by-law. No one spoke in favor. Hal Winard spoke in opposition with concerns about noise and privacy, also need for structural engineer and handicap access. Letters: four letters in favor with 57 signatures. One letter in opposition. Board Discussion: how number of seats determined; one apartment to be eliminated, providing unused septic capacity for 11 seats; also, 60 seats to be eliminated from basement lounge at 293 Commercial Street and moved to this upper floor; Rick Murray commented that the Building Commissioner considers 291 and 293 Commercial as one entity for zoning purposes; outside food service of grilled hotdogs, hamburgers, cold sandwiches; will need modification of common victualers liquor license to serve food upstairs; review of special permit for 291 Commercial Street - Board did not want to have two restaurants at 291-293 Commercial, special permit did not allow food service; how many of 71 seats apply to growth management; Attorney Patten maintained that growth management did not apply, because overall use of property is not changing; growth management not mentioned in Commissioner=s report; need to follow up with Commissioner; outdoor seating plan needs more detail; need to also show location of inside seats; need letter from owner releasing 60 seats from basement lounge; Board only addressing issue of use at this meeting; possibly condition special permit with building structural improvements; plans need to be redone showing existing versus proposed; are altering more than 2000 square feet of property, possible change of use; more than 3 businesses on property, will need site review; need report from Board of Health; deck needed to precede application for special permit; possible need for site visit. Public will be allowed input on any new plans or other new information; discussion to be held open for a total of four weeks. Taken under advisement.

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. Rick Murray reviewed need for rule of necessity to allow Ken Janson to sit - three members own guesthouses and Greg Lambrou is direct abutter. Gary Locke appeared to present the application, which is for a

special permit to extend a second floor deck and reconfigure the existing stairs. Presentation: extending deck by four feet in depth to allow easier access to rooms; replacing railings; roofline remaining the same; are encroaching further into sideline setback; adding more to footprint, one percent more in lot coverage. No one spoke either in favor or opposition. One letter in favor, none in opposition. Board discussion: variance is needed due to further intrusion into setback; applicant will need to either withdraw and reapply or amend plans. Applicant agreed to amend plans to eliminate intrusion. Rick Murray asked about reconfiguration of cottage on property without Board approval. Mr Locke explained that Building Commissioner agreed to reconfiguration because relocation put building within setbacks. Also explained other details of changes. Rick Murray expressed concerns about change of use from one rental unit to two. Rick Murray requested copy of letter written by Building Commissioner on this issue.

Barbara Gard left the meeting after the previous case was heard.

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. Steven Schnitzer appeared to present the application, which is for a special permit to modify the areas of service. Presentation: reviews history of property and seating arrangements; difficult to control seating arrangement on upper floor; water usage determined number of seats; trying to regain status prior to upgrading property; give up 6 seats from ice cream store; will shorten and move bar in theatre to minimize alcohol presence; want to add 21 permanent seats to inside; different water usage between theatre use versus restaurant use; would wind up with 245 live theatre seats inside; will also have 90 seats outdoors for dining. Mary Jo Avellar asked several questions and, after discussion, expressed no objections. Another abutter was also in favor. No one spoke in opposition. There were no letters in file. Board discussion: which use takes precedence, theatre or bar; Board of Health made suggestion to give up seats, expressed support for new water usage definition; previous theatre capacity was 105; Board of Health has not yet given official approval, but suggested changing indoor use from restaurant to theatre; letter from Board of Health is not definitive; Rick Murray read from letter he sent to Board of Health on this issue; need to get approval from Board of Health of applicant's numbers; ice cream seats are considered restaurant seats; matinee shows would require closing restaurant seats; live theatre requires 3 gallons and movie theatre requires 5 gallons of water usage; how will eliminate seating on deck in evenings; will stay within 2000 gallons; possible approval with condition that Board of Health give approval; does live theatre usage take into account the fact that drinks would be served; whether growth management is involved; Ken Janson agreed to write letter to Board of Health requesting clarification. Taken under advisement.

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. Theodore Tine appeared to present the application, which is for a renewal of a special permit to allow live theatre and patrons to dance. Presentation: review of permit history. Steven Schnitzer, and Mark Freedman spoke in favor. Howard Wiener asked questions about installation of air conditioning and soundproofing. Mr Wiener stated that he had lost guests and money due to noise. Mary Jo Avellar also spoke with concerns about noise. Mr Schnitzer spoke about proposed soundproofing improvements. There were no letters in file. Rick Murray commented that the license was suspended for two days in 1998. Violations concerning inside/outside seating will no longer be applicable if Board grants new seating configurations. Rick Murray suggests installing locked, alarmed rear door. Board Discussion: kitchen doors no longer open because food no longer served inside; whether nightclub will be under same management; what guarantees can applicant offer; condition approval for one year. Taken

under advisement.

99-023

8 Aunt Sukey=s Way, Lower Cape Cod CDC on behalf of Kathryn Livelli - Rick Murray, Ken Janson, Gary Reinhardt, Peter Bez, Greg Lambrou sat on case. Michael Bunn appeared to present the application, which is for a special permit to allow a principal use (a dwelling unit) in the walk-out basement. Presentation: owner participating in LCCCDC affordable housing loan program. No one spoke either in favor or in opposition. Three letters in favor and none opposed. Board Discussion: is becoming a three story building; can grant under Goldhirsch; question of whether certified plot plan is needed; exterior altered by addition of furnace room; living unit to be affordable for ten years; possibly make affordability decision condition; basement configuration is current non-conformancy, therefore already three stories. *Gary Reinhardt moved to grant under Goldhirsch with condition, Ken Janson seconded and it was so voted, 5-0.*

99-024

77A Commercial Street and 79 Commercial Street, Deborah Paine, Inc. on behalf of Ann Maguire, Harriet Gordon and James O=Connor - Rick Murray, Gary Reinhardt, Peter Bez, Steve Melamed, Ray Boylan sat on case. Deborah Paine appeared to present the application, which is for a special permit to elevate the structure at 77A Commercial Street and to construct a foundation at 79 Commercial Street.

Presentation: 79 Commercial Street - change from a two family to a one family; non-conforming in setbacks, frontage and lot coverage; same number of bedrooms; necessary to comply with FEMA due to cost of construction; increase building height by 2 feet; enclose existing exterior stairs. Three letters in favor, none in opposition. No one spoke either in favor or opposition. Board Discussion: have received Conservation Commission approval; can approve under Goldhirsch; pilings not required in this FEMA zone. *Peter Bez moved to grant under Goldhirsch, Ray Boylan seconded and it was so voted, 5-0.*

Presentation: 77A Commercial Street - raise foundation and building by four feet; non-conforming in setbacks, frontage and lot coverage; need to comply with FEMA due to construction costs; increase building height by four feet; will be usable year-round; Board of Health still has a few issues with septic system, submitted septic plans, but are in amnesty program. No one spoke either in favor or opposition. There were three letters in favor and none in opposition. Board Discussion: the pier is both the lot and the structure, so no increase in non-conformancy. *Peter Bez moved to grant under Goldhirsch, Ray Boylan seconded and it was so voted, 5-0.*

Rick Murray adjourned the Public Hearing at 10:20 PM

WORK SESSION (continued)

Chair Rick Murray reconvened the work session at 10:20 PM

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. *Ken Janson moved to grant until 12/31/99, Gary Reinhardt seconded and it was so voted, 5-0.* Gary Reinhardt will write the decision.

Rick Murray moved to go into Executive Session at 10: 27 to discuss legal issues, Gary Reinhardt seconded and it was so voted unanimously by roll-call vote (Barbara Gard absent).

The Board emerged from Executive Session at 10:34 PM

Peter Bez made a motion to adjourn at 10:35 PM and it was so voted.