

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF APRIL 6, 2000

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

Members Absent: None

Others Present: Warren Alexander (Building Commissioner), Rachel Crosby (Recording Secretary)

PUBLIC HEARING

Chair Gary Reinhardt convened the public hearing at 3:05 P.M. and explained the public hearing procedures to the public present. Six members of the Board were present and none were absent

2000-12 Marine Specialties – Gary Reinhardt, Peter Bez, Ray Boylan, Barbara Gard, Larry Mahan sat on case . This case was continued from March 16 and March 23, 2000. Attorney Chris Snow appeared to present the application, which is to appeal the decision of the Building Commissioner on January 13, 2000 regarding reconstruction of a pre-existing non-conforming structure at **237-241 Commercial Street, d/b/a Whaler's Wharf.**

Applicant Presentation: Mr. Snow read an affidavit, prepared by Gary Reinhardt, and signed by Board members (including Gary Reinhardt and Peter Bez) on January 6, 2000, detailing the Board's recollection of their discussion of the sideline setbacks agreed to for the reconstructed Whalers' Wharf . Mr. Snow also read from a newspaper article, allegedly quoting Chair Gary Reinhardt concerning the shell shop area. Mr. Snow questioned the ability of Gary Reinhardt and Peter Bez to sit impartially on this current appeal application and also questioned earlier hearing notice procedures and agenda postings. Gary Reinhardt explained the origin and rationale of the affidavit and said he did not have a conflict of interest and that he intended to sit on the case. Peter Bez said he also felt capable of sitting impartially on the application.

Mr. Snow also questioned how the affidavit was placed on the January 6, 2000 Zoning Board of Appeals agenda with such short notice. Mr. Murray rose to a point of information, questioning Mr. Snow's continued grilling of the Board members. Ms Binder said that the Whaler's Wharf had been on the agenda for January 6, 2000 for another matter.

Mr. Snow presented the Board with a Memorandum of Support for the application. Mr. Snow read from minutes of earlier Zoning Board of Appeals meetings when the reconstruction of the Whalers' Wharf was being considered. Mr. Snow also read from the Board's official decision. Mr. Snow said the applicant was insisting upon enforcement of the sideline setbacks as shown in a site plan displayed on a nearby stand. Mr. Snow referred to alleged physical damage done to the Marine Specialties as a result of the reconstruction of Whalers' Wharf. He also referred to damage done to Marine Specialties as a result of the fire.

Mr. Snow read from an engineering certificate/letter, prepared by William Rogers, which noted Mr. Rogers' perceived non-conformance of the sideline setback and which referred to a discussion with the Zoning Board of Appeals on the setbacks. Mr. Snow requested that the Board order the reconstruction project stopped and that the requirements and limitations of the Board's original decision be enforced.

Mr. Snow then raised the issue of building scale, claiming that scale had not been considered by the Board in its deliberations on the original application. Gary Reinhardt explained that the Board had determined that the scale of the proposed reconstruction was actually less than that of the original structure and that therefore scale had not been considered. Gary Reinhardt said that the appeal period for questioning scale had passed and that the Board was not willing consider the issue of scale at the current

hearing. Mr. Snow and Gary Reinhardt discussed whether it was still possible to appeal the issue of scale. Gary Reinhardt initially denied Mr. Snow's request to have the Board take a vote on whether to consider the issue of scale at this hearing. *Ray Boylan moved that the Board not consider the issue of scale in discussing the current appeal, Larry Mahan seconded and it was so voted, 5-0.*

Public Comment: Mrs. Patrick and Pat Patrick spoke in favor of the appeal application, discussing setback and scale issues. Mr. Murray (previous Chair of the Zoning Board of Appeals) spoke in opposition, referring to the Board's deliberations on the original application and recommended that the Board consider the issue of scale. Mr. Alexander, Building Commissioner, spoke in opposition, discussing the history of the setback issue and stated that it was his decision that the reconstruction met the spirit and intent of the Board's decision. Mr. Alexander provided the Board with copies of his prepared statement and read same. Mr. Alexander referred to a photograph provided him by a media photographer. Mr. Ross spoke in opposition and read a prepared statement. Ms Brown asked about the damages to Marine Specialties as a result of the fire. Mr. Grunz spoke in opposition, mentioning that setback measurements should be taken from the center of the side wall, not the exterior. There were three letters in favor and three letters in opposition. There was a petition in opposition with 28 signatures.

Whaler's Wharf Presentation: Mr. Smith and Ms Binder appeared to rebut the material presented by the applicant. Mr. Smith distributed a memo and discussed the issues therein. Mr. Snow confirmed that he had not waived the issue of potential property trespass. Mr. Smith stated that the building was being constructed per the plans and that damage to the Marine Specialties building caused by construction was being addressed. Mr. Smith said that Whalers' Wharf, as a pre-existing non-conforming structure, could have been reconstructed much closer to the sidelines. Mr. Smith asked that Mr. Wagner's memo be entered into the record. Mr. Snow requested that Mr. Melo's report be also entered into the record. Chair Gary Reinhardt agreed to both requests.

Board Discussion: Gary Reinhardt said that the sideline setbacks do not conform to the plans signed by the Zoning Board of Appeals and said the issue was whether the difference in setback is sufficient to overturn the decision of the Building Commissioner. Gary Reinhardt said the original decision language should have been more precise and should have specified that the pre-existing, non-conforming setback encroachment was to be removed by the reconstruction (as opposed to "reduced"). Mr. Hayes, Whalers' Wharf architect, explained his understanding of how the building was built, especially concerning the sideline setbacks. Ms Binder claimed that that she had explained the sideline setback differences to the Board at a Work Session. Mr. Alexander distributed copies of his report on the current application. The Board referred to a certified site plan drawn by William Rogers, Surveyor/Engineer, so as to determine the current setbacks for the building as-built. Mr. Hayes explained the height of the new building, claiming that it conformed with Zoning By-laws. Mr. Hayes could not provide the percentage of area coverage in the top half-story and explained his understanding of the roof overhang projections. Mr. Hayes referred to a drawing showing the overhangs and said that the setback dimension was calculated from the foundation footprint. Gary Reinhardt referred to a previous meeting's minutes which specified the percentage of coverage in the top floor. The Board questioned why the overhang was not on the plans and Mr. Hayes explained why the overhang was architecturally necessary. Peter Bez explained that the motivation behind the affidavit had not been sinister and reiterated that the appeal period on the original decision had passed.

Building Commissioner Presentation: Warren Alexander explained how he reached his decision to deny the request for enforcement filed by the applicant. Mr. Alexander said he did not remember exactly the reason for drawing up and signing the affidavit. In response to a question from Barbara Gard, Mr. Alexander confirmed that the reconstruction plans had been readily available for public review. In response to a question from Gary Reinhardt, Mr. Alexander said he had seen previous instances where a building was not constructed exactly to plan and that many of those instances were returned to the Zoning Board of Appeals for review.

Applicant Rebuttal: Mr. Snow discussed the issue of intensification of non-conformancies, claiming that the previously vacant space occupied by the new building constituted an intensification. In response to a question from Mr. Snow, Mr. Alexander explained how the previously referenced photograph provided by a local reporter could have figured in Mr. Alexander's deliberations. Mr. Alexander also confirmed that he considered the current building to be only two and one-half stories. Mr. Alexander said he had also seen Mr. Rogers' calculations of the original footprint per a site plan, but that the plan was dated in 1978 and that there had been construction on the building since then. Mr.

Snow and Mr. Alexander discussed whether there had been any building permits for the property which allowed extending the building seaward. Mr. Alexander said that he may not have had building permits in town files for all the construction seaward. Mr. Snow presented a drawing/plan, dated 10/27/98, showing the 5' setback. Mr. Snow also disputed the measurements of the current setbacks and roof overhangs. In response to a question from Gary Reinhardt, Mr. Snow stated that the intent of the appeal was to have a tear-down ordered.

Board Discussion: other buildings have, as a result of construction methods, not been built to plan; overhang in sideline setback is too high to present safety issue; building could have been rebuilt to previous non-conforming setback; reconstruction meets special permit criteria; current setback provides public walkway to beach; Marine Specialties' damage claims should be settled quickly by new Whalers' Wharf owner. *Peter Bez moved to uphold the decision of the Building Commissioner and to deny the application, Ray Boylan seconded, and it was so voted, 5-0.* Peter Bez will write the decision.

Chair Gary Reinhardt closed the public hearing at 5:57 P.M.

WORK SESSION

Chair Gary Reinhardt convened the Work Session at 6:00 P.M.

REQUEST FOR MODIFICATIONS

99-038 **3 Kings Way, Thomas Edwards** – Gary Reinhardt, Barbara Gard, Peter Bez, Larry Mahan, Ray Boylan sat on the modification request. Mr. Edwards appeared to ask to move the swimming pool a few feet further away from the house, while remaining within the setbacks. Mr. Edwards presented revised plans. Shed will now be alongside the pool. *Peter Bez moved to allow the modification without an new public hearing, Larry Mahan seconded and it was so voted, 5-0.*

PENDING DECISIONS

2000-05 **185 Commercial Street, John Yingling, d/b/a Bubala's** – Gary Reinhardt, Ray Boylan, Peter Bez, Larry Mahan sat on this modification request. Peter Bez read the decision. *Larry Mahan moved to approve the decision as written, Ray Boylan seconded, and it was so voted, 4-0.*

PENDING CASES:

2000-006 **38 Conwell Street, John C. Gainey** – Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Barbara Gard sat on case. *Peter Bez moved to deny the application, Barbara Gard seconded, and it was so voted, 5-0.*

2000-0011 **26 Bradford Street, Richard Golon and John Peternell, d/b/a The Archer Inn** – Gary Reinhardt, Barbara Gard, Larry Mahan, Steve Melamed sat on case. The applicant has asked to withdraw without prejudice. *Steve Melamed moved to accept the withdrawal without prejudice, Barbara Gard seconded, and it was so voted, 5-0.*

MINUTES:

March 16, 2000 – *Peter Bez moved to approve as written, Larry Mahan seconded, and it was so voted, 3-0, 3 abstain (Barbara Gard, Ray Boylan, Steve Melamed).*

March 23, 2000 – *Peter Bez moved to approve as written, Steve Melamed seconded, and it was so voted, 4-0, 2 abstain (Barbara Gard, Steve Melamed).*

ADJOURNMENT

Peter Bez made a motion to adjourn at 6:15 P.M. and it was so voted unanimously.

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These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on \_\_\_\_\_, 2000

Respectfully Submitted:

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Zoning Board of Appeals Signature      \_\_\_\_\_  
Title      Rachel Crosby  
On-call secretary

