

TOWN OF PROVINCETOWN

ZONING BOARD OF APPEALS

MEETING MINUTES OF September 21, 2000

Meeting Place: Judge Welsh Room in Town Hall

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Members Present: Gary Reinhardt (Chair), Peter Bez (Vice Chair), Ray Boylan (Clerk), Barbara Gard, 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 7:00 P.M. and explained the public hearing procedures to the public. Six members of the Board were present and none were absent

2000-065 522 Commercial Street, Jane Dyson - Gary Reinhardt, Peter Bez, Barbara Gard, Ray Boylan, Larry Mahan sat on case. Ms Dyson appeared to present the application, which is due to the applicant being aggrieved by the inability to obtain zoning enforcement. **Presentation:** complaining about fence erected at 522 Commercial; no permit issued for fence; wants one panel lowered to 6 feet. **Public Comment:** No one spoke in favor. No one spoke in opposition. There were no letters in file. **Building Commissioner's Statement:** Mr. Alexander submitted a site plan, highlighting the location of the fence. Question of whether grade at 522 Commercial has been artificially built up. Owner not prohibited from increasing grade unless in high elevation district or is building/reconstructing a home. The owner of 522 Commercial Street apparently built the retaining wall upon which the fence is built. Mr. Alexander submitted a photo showing the pre-fence grade at 522 Commercial Street. Height of wooden fence is six feet, which is allowed under bylaws to be built without permit. Mr. Alexander expressed concerns about a piecemeal decision affecting only a section of the fence. Mr. Alexander said the Building Department was looking to the Zoning Board of Appeals for guidance in how to deal with similar situations involving artificially increased grade. **Board Discussion:** last post on fence is approximately nine feet tall; applicant is getting runoff from area of increased grade; applicant feels fence blocks light and view; question of whether retaining wall could be considered a structure; no permit for retaining wall, though none was required. By consensus, the Board agreed to conduct a group site visit at 5:30 on October 5, 2000.

2000-066 82 Bradford Street, Thomas Walter – The applicant accepted a four member Board because Peter Bez and Ray Boylan had to step down with conflicts. Gary Reinhardt, Barbara Gard, Steve Melamed , Larry Mahan sat on case. Attorney Jamie Veara and Mr. Walter appeared to present the application, which is for a special permit for a swimming pool. **Presentation:** pools are permitted accessory use with a special permit; pools of 4,000 gallons or less are not considered structure; pool will not be within setbacks; is 20 feet from septic system; pool will be filled by contractor, not from public water supply; no lifeguard required; will be fenced in; requests quick decision to begin construction before winter **Public Comment:** No one spoke in favor. No one spoke in opposition. There was one favorable letter in file. **Board Discussion:** applicant plans flagstone patio around part of pool; Building Commissioner report says that a public or semi-public pool requires a four foot walkway around entire pool; applicant agreed to build required walkway and will supply revised site plan showing walkway; walkway can extend into rear setback. *Steve Melamed moved to approve with the condition that new site plan be*

submitted showing the four foot walkway and that the water to fill the pool be supplied by a source other than the public water supply, Larry Mahan seconded and it was so voted, 4-0. Steve Melamed will write the decision.

2000-067 290A Commercial Street, David and Nancy Guertin – Gary Reinhardt, Peter Bez, Ray Boylan, Barbara Gard, Larry Mahan sat on case. The applicant has submitted a letter requesting the application be withdrawn without prejudice. *Peter Bez moved to accept the withdrawal without prejudice, Larry Mahan seconded and it was so voted, 4-0.*

2000-068 654-656 Commercial Street, Scott A. Pare on behalf of Todd Henning –Gary Reinhardt, Peter Bez, Barbara Gard, Ray Boylan, Larry Mahan sat on case. Mr. Pare appeared to present the application, which is for a Special Permit to alter, extend or change a pre-existing non-conforming use. **Presentation:** wants to extend the use to automobile sales, while continuing to repair automobiles, as well as establishing a State inspection station. **Public Comment:** Mr. Clifford and Mr. Hochard spoke in favor. Mr. Steinberg, Mr. Wolfman, Ms McCannell(?), Ms Springer, Ms Fabian(?), Ms McKown, and Ms Berry spoke in opposition. An unidentified member of the audience read an opposition statement from Ms Evans. There were fifteen letters in opposition. There were two emails in opposition. There was one email with concerns and questions. There was one letter with questions. There were no letters in favor. **Board Discussion:** Gary Reinhardt referenced a letter from the Building Commissioner and reviewed under what conditions the Zoning Board of Appeals may grant a change of use. Parking problem discussed; applicant is open to limiting number of cars on lot and how they should be parked; whether plan shows sidewalks; whether water was used to wash cars; special permit would run with the property and next owner might not be responsible; applicant is incorporated in California and will incorporate in Massachusetts to become auto dealer; whether street parking allowed on Commercial Street side of property; whether there is an official curb cut; Mr. Steinberg provided a point of information about the curb cut on Commercial Street. **Board Discussion:** Where property entrance was when Mr. Henning operated business; Mr. Wolfman provided a point of information about parking on the Commercial Street side and access to the walkways across Bradford and Commercial Streets. **Board Discussion:** Whether Mr. Henning sold cars at this property; how signage would change; how applicant would limit number of cars on lot; whether change of use would trigger parking space requirements. Mr. Alexander said the special permit could be conditioned to require parking. Mr. Alexander clarified the process for implementing and appealing a cease-and-desist order, how fines were and could be levied and denied the applicant's allegations of how the cease-and-desist order originated. **Board Discussion:** possibly grant conditional one-year permit. An unidentified audience member asked about parking for other purposes and Gary Reinhardt explained how the permit would be conditioned and enforced. **Board Discussion:** move entrance to Bradford Street; whether cars can be parked legally on Commercial Street side up to light; applicant should provide a site plan showing sufficient customer parking spots, entrance on Bradford Street, and spaces for vehicles under repair. Ms Wolfman and Mr. Steinberg asked points of information concerning the Board's procedures and the appeal process. Gary Reinhardt provided information about procedures and clarified that the applicant would have to stop selling cars while the Board's decision was under appeal. Taken under advisement.

2000-069 491 Commercial Street, Units 6,7 and 8, Ella Paul, Frank Wormuth, Barbara Scarcella and Carol Adelman –Applicants are aggrieved by the inability to obtain zoning enforcement and by a decision of the Building Commissioner. **Postponed until the meeting of October 19, 2000 at applicant's request.**

Chair Gary Reinhardt closed the Public Hearing at 9:21 P.M.

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 9:22 P.M.

PENDING DECISIONS

None.

PENDING CASES

2000-055 494 Commercial Street, Howard Davis, III - Gary Reinhardt, Peter Bez, Barbara Gard, Ray Boylan, Larry Mahan sat on case. **Board Discussion:** case was postponed until entire Board could be present; whether entertainment is a customary accessory use for this business. *Ray Boylan moved to grant the special permit under section 1260 to allow unamplified entertainment in the second floor Manso Room,*

Larry Mahan seconded, 4-1 (Peter Bez). Ray Boylan will write the decision.

2000-068 654-656 Commercial Street, Scott A. Pare on behalf of Todd Henning –Gary Reinhardt, Peter Bez, Barbara Gard, Ray Boylan, Larry Mahan sat on case. **Board Discussion:** abutters have claimed visual ownership of property and parking spots; whether five casual auto sales are allowed; whether auto sales really constitutes change of use (is under same bylaw); inspection station would be a benefit to the Town. Taken under advisement.

MINUTES

September 7, 2000 – *Peter Bez moved to approve as written, Steve Melamed seconded, and it was so voted, 5-0, 1 abstain (Larry Mahan).*

MISCELLANEOUS

- ⌘ Next meeting will be on Thursday, October 5, 2000 at 5:30 P.M. (beginning with site visit).
- ⌘ Gary Reinhardt referred to a memo from the Cape Cod Commission concerning updating the Regional Policy Plan
- ⌘ Mr. Kent Edwards has brought suit against the Board.
- ⌘ The Board discussed Department of Regulatory Management’s changes to various forms used by the Board.
- ⌘ In the future, Board should be provided copies of letters of complaint appealing decisions of Building Commissioner.

ADJOURNMENT

Peter Bez made a motion to adjourn at 9:40 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:

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