

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF NOVEMBER 30, 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), Larry Mahan, Steve Melamed, Peter McDonough.

Members Absent: Barbara Gard (excused)

Others Present: Rachel Crosby (Recording Secretary)

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:30 P.M.

PENDING CASES

2000-078 111 Race Point Road, Lisa Casselano on behalf of Joseph Borgesi - Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Steve Melamed sat on case. Ms Casselano appeared to discuss the application, referring to a letter and a new site plan, which shows the paddock, fence and shed. **Board Discussion:** plan does not show abutting buildings; carriage dimensions and whether carriages can fit in garage; space required per horse; whether applicant would consider increasing horse shed size to 12' X 18'; safety of horses is not issue before the Board; no trees will be cut down to create paddock; may install an electric fence around paddock; whether Town Transfer station accepts horse manure (yes); how urine odor would be dealt with; during the summer, horses are brought into Town at approximately 11:00 AM and return at 11:00 PM (weather dependent); Race Point Road is patrolled by Town Police and National Seashore Rangers; whether permit can be conditioned for one year; horses' health will be monitored by other authorities; feed storage area is adequate. *Steve Melamed moved to grant with conditions: daily manure and waste removal, and, within the paddock, greenery removed to be limited to shrubs and underbrush (no trees to be cut down within the paddock), Peter Bez seconded and it was so voted, 4-1 (Gary Reinhardt).* Steve Melamed will write the decision.

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

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 one was absent.

2000-075 290A Commercial Street, David and Nancy Guertin – Gary Reinhardt, Larry Mahan, Peter Bez, Ray Boylan, Steve Melamed sat on case. Steve Melamed disclosed he had a potential conflict of interest, but that he felt comfortable sitting on the case. Mrs. Guertin appeared to present the application, which is to extend a nonconformity that is substantially not more detrimental. **Presentation:** Mrs. Guertin read a prepared statement, detailing the history of the deck/patio and referring to correspondence from the Building Commissioner. Mrs. Guertin also asked about the exact nature of the abutters' complaint. **Public Comment:** Mr. Martin, Mr. Snow, Mr. Edwards and Mr. Martin (#2) spoke in favor. Mr. Veara spoke in opposition, representing abutters (Peter Warnock and John Culver), saying the case had been decided in a previous application, upon which the Board had already ruled. Mr. Veara stated that the

Board's earlier ruling, that a variance was required, disqualified the applicant from seeking a special permit. Mr. Veara stated that the applicant had ignored the order from the Board and several orders from the Building Commissioner to remove the structure. Mr. Veara claimed that the applicant was receiving preferential treatment. There were no letters in file. **Board Discussion:** special permit criteria to extend a nonconformity; moving an additional structure into the setback requires a variance; application may not be properly before the Board; applicant will start accumulating fines if application denied; remedy would be to lower fence and deck to within legal limits; applicant was advised by persons unnamed to seek a special permit; whether Board can decide that application is not properly before the Board; applicant will withdraw the application if given sufficient time to get a contractor. To be discussed in Work Session.

2000-080 **441 Commercial Street, Joel Jeffrey Ouellet** - Attorney Chris Snow appeared to present the application, which is because the applicant is aggrieved by the cancellation of a variance and building permit and by an issued Stop Work Order by the Building Commissioner. Mr. Snow requested postponement until January 18, 2001, when a sister application will be included. The Board granted the postponement and did not open the public hearing.

2000-081 **6 School Street, Joseph Pallant** – Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Steve Melamed sat on case. Gary Reinhardt disclosed that he was on the abutters' list, but that he is not an abutter nor an abutter to an abutter. Mr. Pallant appeared to present the application, which is for a variance to erect a structure within the rear line setbacks. **Presentation:** Town cut ivy hedge and eliminated privacy on Mechanic Street side; property is approximately two to four feet below level of street; wants to install some sort of privacy fencing. Mr. Pallant referred to a memo from the Building Commissioner which says that the fence will be higher than six feet from grade to top. Building Commissioner said that the fence is not a structure. Mr. Pallant said he felt that the Board could grant due to topographic hardship. **Public Comment:** No one spoke either in favor or opposition. There were no letters in file. **Board Discussion:** variance criteria; nature of hardship (lack of privacy); applicant wants fence to angle upward as street rises; fence will only be on Mechanic Street; Town owns retaining wall and metal fence; possibility of growing a green privacy barrier. ***Peter Bez moved to grant a variance for a wooden privacy fence with a height not to exceed more than six feet above the street at any point, Ray Boylan seconded and it was so voted, 5-0.*** Ray Boylan will write the decision.

2000-082 **21 Tremont Street, Harry Brock** – Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Steve Melamed sat on case. Gary Reinhardt disclosed that he was on the abutter's list, but that he is not an abutter nor an abutter to an abutter. Mr. Brock appeared to present the application, which is to alter a pre-existing, non-conforming structure by raising the roof pitch. **Presentation:** wants to increase height of cottage to match the other cottage; cottage is a single unit. **Public Comment:** Ms Neal asked questions and listed several concerns from her condominium association. No one spoke either in favor or opposition. There was one letter in favor in file. **Board Discussion:** cottage has been used for rental purposes, but will be used by owners after renovations; will remain a studio cottage; is within sideline setback; roof pitch would become conforming; may rule under Goldhirsch. ***Steve Melamed moved to grant under Goldhirsch, Larry Mahan seconded and it was so voted, 5-0.*** Peter Bez wrote the decision using the standard Goldhirsch decision form.

Chair Gary Reinhardt postponed the Public Hearing at 8:23 P.M. and reconvened the Work Session to allow time for an attorney to appear for the last two Public Hearing applications.

WORK SESSION

PENDING DECISIONS

2000-076 **237-241 Commercial Street, Paul DeRuyter on behalf of Whalers' Wharf, LLC** –Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan sat on case. Ray Boylan read the decision. ***Peter Bez moved to approve as written, Larry Mahan seconded and it was so voted, 4-0.***

2000-077 **323 Commercial Street, Old Colony Tap, Inc. represented by Leonard Enos, Jr. on behalf of Luco Realty** - Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan sat on case. Peter Bez read the decision. ***Ray Boylan moved to approve as written, Larry Mahan seconded and it was so voted, 4-0.***

2000-079 **89 Shank Painter Road, James M. Costa** –Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Steve Melamed sat on case. Larry Mahan read the decision. Cannot vote on decision language until letter from received from Fire Chief.

2000-075 **290A Commercial Street, David and Nancy Guertin** – Gary Reinhardt, Larry Mahan, Peter Bez, Ray Boylan, Steve Melamed sat on case. Mrs. Guertin appeared to discuss the application. **Board Discussion:** whether application is not properly before the Board; Board may not have legal right to postpone enforcement measures; whether, if Board votes that application is not properly before them, a written decision will be required; once case is opened in a Public Hearing, application cannot be dismissed without a decision or via applicant withdrawal; previous decision and enforcement orders would still stand; whether Board could make recommendation to Building Department to not enforce until applicant has opportunity to remove/alter structure; Board needs to avoid appearance of preferential treatment. Continued until after remainder of Public Hearing.

PUBLIC HEARING

Chair Gary Reinhardt reconvened the Public Hearing at 8:53 P.M.

2000-083 **177 Commercial Street, Stephen Melamed** – Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Peter McDonough sat on case. Steve Melamed left the room. Mr. Jamie Veara, as the applicant’s attorney, appeared to present the application, which is for a special permit for entertainment. **Presentation:** Mr. Veara presented a letter from the Chief of Police and twenty-five letters in favor. Two areas of entertainment proposed, but entertainment will not occur in both areas simultaneously. Entertainment will be primarily in off-season. Will be amplification and up to four entertainers at one time. Will have proper ventilation and doors and windows will be kept closed. Lighting will be controlled via blackout curtains. Ten noise complaints at another establishment owned by applicant, but none of the complaints were substantiated. **Public Comment:** There were no comments in favor. Mr. Baird, Ms Charles, Mr. Boyle, Ms Balkavic, Mr. Gordon, Mr. Valenti, Mr. Tosner and Ms Hansen spoke in opposition. There was one letter from the Police Chief concerning noise complaints. There was one letter in opposition. There were 25 letters in favor. **Board Discussion:** electronic games will be on bar; applicant in process of purchasing the building; special permit could be limited to the applicant; permit would lapse after one year; applicant’s “track record” is in question; details of proposed amplification. **Point of Order:** Mr. Snow rose to a point of order, questioning why the applicant was absent from the room. Gary Reinhardt clarified that the applicant had been offered the opportunity to have his wife present, but had chosen to have only Mr. Veara speak for him. **Board Discussion:** where the exits are; whether there is any soundproofing; whether amplification is necessary; special permit criteria; no precedent considered in zoning cases – each case is taken individually; environmental degradation (due to noise) is the problem. *Peter Bez moved to deny, Larry Mahan seconded and it was so voted, 5-0.* Peter Bez will write the decision.

Chair Gary Reinhardt postponed the Public Hearing at 10:10 P.M. to reconvene the Work Session.

WORK SESSION

2000-075 **290A Commercial Street, David and Nancy Guertin** – Gary Reinhardt, Larry Mahan, Peter Bez, Ray Boylan, Steve Melamed sat on case. The applicant submitted a letter requesting to withdraw the application without prejudice. *Peter Bez moved to accept the withdrawal without prejudice, Larry Mahan seconded, and it was so voted 4-0, 1 absent (Steve Melamed).*

PUBLIC HEARING

Chair Gary Reinhardt reconvened the Public Hearing at 10:15 P.M

2000-084 **291 Commercial Street, Stephen Melamed** - Gary Reinhardt, Peter Bez, Ray Boylan, Larry Mahan, Peter McDonough sat on case. Steve Melamed remained out of the room. Mr. Jamie Veara, as the applicant’s attorney, appeared to present the application, which is for renewal of a special permit for entertainment. **Presentation:** conditional permit to be limited to only this applicant; only one noise violation on record, which was thrown out in court; otherwise only one verbal warning. **Public Comment:** Mr. Boyle spoke in favor. **Board Discussion:** applicant, as member of Zoning Board of

Appeals, should be extra aware of requirement to keep doors closed; permit to be conditioned for only one year. *Peter Bez moved to grant with conditions that permit be limited to this applicant and expires December 31, 2001, Larry Mahan seconded and it was so voted, 5-0.* Peter Bez will write the decision.

Chair Gary Reinhardt closed the Public Hearing at 10:26 P.M.

WORK SESSION

MISCELLANEOUS

- ◆ Gary Reinhardt read a letter from Judith Oset, Permit Coordinator, concerning an opportunity for training of Board members. By consensus, the Board agreed to hold the training in January 2001 prior to a meeting with a short agenda.

MINUTES

November 2, 2000 – *Peter Bez moved to approve as written, Ray Boylan seconded, and it was so voted, 4-0, 1 absent (Barbara Gard), 1 abstain (Peter McDonough).*

May 9, 2000- *Peter Bez moved to approve as written, Larry Mahan seconded, and it was so voted, 3-0, 2 absent (Barbara Gard, Steve Melamed), 1 abstain (Peter McDonough).*

MISCELLANEOUS

⌘ Next meeting will be on Thursday, December 14, 2000 at 7:00 P.M.

ADJOURNMENT

Ray Boylan made a motion to adjourn at 10:35 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:

\_\_\_\_\_  
Zoning Board of Appeals Signature

\_\_\_\_\_  
Title

*Rachel Crosby*  
On-call secretary