

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

MEETING MINUTES OF MAY 2, 2002

MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt (Chair), Peter Bez (Vice Chair), Larry Mahan (Clerk), Estherann Czyoski, Peter Page, Steve Melamed.

**Members Absent:** Peter McDonough (unexcused).

**Others Present:** Warren Alexander (Building Inspector), Ellen C. Battaglini (Recording Secretary).

### PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order 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.

**2002-032      220A Commercial Street, I Beam Enterprises, LLC, d/b/a Venture Athletics, on behalf of D&K Realty Trust -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks a Special Permit under Article II, Section 2110 of the Zoning By-Laws for the outdoor display of merchandise.

**Presentation:** Elisabeth Richter and Carlos Verde appeared to present the application. The applicants seek to display two inflatable kayaks at the premises.

**Public Comment:** No one spoke either in favor or in opposition. There were two letters on file in support of the application, one from Diana Robertson, of D&K Realty Trust, and one from Will Coons.

**Board Discussion:** None.

*Peter Bez moved to grant a Special Permit under Article II, Section 2110 of the Zoning By-Laws for the outdoor display of merchandise at the property located at 220A Commercial Street, Larry Mahan seconded and it was so voted, 5-0.*

**2002-033      50 Bradford Street, Gregory Lambrou on behalf of Fifty Bradford Street Realty Trust -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter Page sat on the case. The applicant seeks a Special Permit under Article II, Section 2110 of the Zoning By-Laws to extend a preexisting, nonconforming structure up and along a nonconforming dimension and a Special Permit under Article VII, Section 7102E of the Zoning By-Laws to deviate from the neighborhood allowed building scale.

**Presentation:** Gregory G. Lambrou appeared to present the application.

**Public Comment:** No one spoke either in favor or in opposition. There was one letter on file from Richard Baumgartner in support of the application.

**Board Discussion:** In regard to the Special Permit under Article I, Section 2110, Warren Alexander was asked his opinion of the project. The Board discussed the application and questioned Mr. Lambrou. The Board concluded that Mr. Lambrou's application was incomplete. The applicant was informed that a complete application would include: a letter from the Health Agent stating that the project will not result in an increase in the septic flow on the premises; a new site plan that would include revised, proposed elevations and showing means of egress; and the existing and the proposed floor plans.

In regard to Article VII, Section 7102E, the Board questioned Mr. Lambrou about the application. The Board discussed the scale of the neighborhood and how the scale of the proposed addition related to the Local Comprehensive Plan.

The Board determined that the case would be continued until the Work Session on May 16, 2002, so the applicant could complete his application.

**2002-034**

**368 Commercial Street, Donald LaFlamme and Mary Devine on behalf of Lenore Luttinger –** Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski and Steve Melamed sat on the case. The applicant seeks a Special Permit under Article II, Section 2420 of the Zoning By-Laws for the outdoor display of merchandise.

**Presentation:** Donald LaFlamme and Mary Devine appeared to present the application. The applicants would like to have leather ottomans, throw pillows and a transglow display outside their store in order to attract the attention of shoppers on Commercial Street.

**Public Comment:** No one spoke either in favor or in opposition. There were no letters on file.

**Board Discussion:** The Board discussed the setbacks on the property, as the applicants had not presented a site plan indicating where they were located. Warren Alexander was asked his opinion on the setbacks. The Board recommended to the applicants that when they renewed the Special Permit in the future that they include a site plan with their application.

*Peter Bez moved to grant a Special Permit under Article II, Section 2420 of the Zoning By-Laws for the outdoor display of merchandise at the property located at 368 Commercial Street, Larry Mahan seconded and it was so voted, 5-0.*

**2002-035**

**21 Hobson Avenue, Lee W. White on behalf of Toni Hadi –** Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski, Peter Page sat on the case. The applicant seeks a Special Permit under Article II, Section 2110 of the Zoning By-Laws to extend a preexisting, nonconforming structure up and along a nonconforming dimension.

**Presentation:** Lee W. White appeared to present the application.

**Public Comment:** No one spoke either in favor or in opposition. There was a letter on file from Deborah Elliston and Linda Daniels, abutters to the project, who expressed their concern about the timing of the construction. They stated that they would experience financial hardship if the construction occurred during the summer season as they rented out their premises on a weekly basis. They claimed that their weekly tenants could not peacefully enjoy the premises with the noise from a construction job going on next door. They may have other concerns, but have not seen a complete set of plans yet.

**Board Discussion:** The Board questioned Mr. White about the project, including whether he had sought the approval of the Board of Health yet. Warren Alexander commented that there was a deed restriction for four bedrooms on the property so that the number of bedrooms could not be increased. The Board then questioned Mr. White about his construction schedule. Mr. White conferred with his client, Toni Hadi, who then stated her opinions concerning the schedule and indicated a willingness to postpone construction until the fall. The Board suggested that Mr. White and Ms. Hadi contact the abutters who expressed the concern about schedule to see if they could work out a solution. Otherwise, the applicant risks an appeal of the Board's decision by the abutters. The Board determined that they would consider the decision under the *Goldhirsh v. McNear* ruling.

*Peter Bez moved to grant a Special Permit under Article II, Section 2110 of the Zoning By-Laws to extend a preexisting, nonconforming structure up and along a nonconforming dimension for the property located at 21 Hobson Avenue, Estherann Czyoski seconded and it was so voted, 5-0.*

**2002-036**

**High Pole Road, Chuck Turley, Executive Director, on behalf of the Cape Cod Pilgrim Memorial Association –**

Chair Gary Reinhardt recused himself because of a conflict of interest and Peter Bez chaired the case. Peter Bez, Larry Mahan, Peter Page, Estherann Czyoski, Steve Melamed sat on the case. The applicant seeks a Special Permit under Article I, Section 1240 of the Zoning By-Laws to operate a paid parking lot with a booth and attendants.

**Presentation:** Chuck Turley appeared to present the application. Mr. Turley stated two issues that concerned the Cape Cod Pilgrim Memorial Association; better control over their property and a pressing need for the revenue that would be generated by a paid lot. They have undertaken many costly renovations at the Monument and expect more in the future in order to maintain and upgrade the Monument and the Museum. The Association would also like to cut down on vandalism at the lot. They have made several changes to the application that was presented to the Board, and later withdrawn, earlier this year. The Association scheduled a meeting with the neighbors in order to address their concerns about the lot.

**Public Comment:** Mark Silva, Jeffrey Morris, Ruth Hiebert, Christopher J. Snow, and Charles Silva, all members of the Cape Cod Pilgrim Memorial Association spoke in favor of the application. Michael LaBelle and Laurel Guadazno, both staff members at the Monument, and Bill Gordon also spoke in favor. Katheryn Fair, an abutter to the project, expressed her concern about the disruption of peace and quiet in the neighborhood that she felt would accompany the parking lot and the bright lights that would shine onto her property. John Drews, of the Elliot House on Gosnold Street, voiced his concern about the increase in traffic at the corner of Bradford and Winslow Streets and recommended that the Board grant the Special Permit for one year. There were letters on file from the Building Inspector addressing the concern of bright lights emanating from the lot, from the Chief of Police enumerating several suggestions about easing the flow of traffic in the area and from the Fire Chief who didn't foresee any traffic flow problems on Winslow Street. Also on file were letters of support from David Guertin, John Cicero, Mark Leach, Gabriel Brooke and Stan Klein, all abutters to the project, in addition to a letter from the Vice President of the CCPMA. Fourteen letters from abutters were written to the Board expressing opposition to the lot. Lisa Tate and James L. Fleming, also abutters, stated their opposition because of their concern about an increase in noise and traffic in the area.

**Board Discussion:** The Board discussed the lighting issue and the issue of parking spaces, specifically how many would need to be reserved for visitors to the Monument and the Museum. The applicant was asked to return to the next Work Session of the Board, on May 16, 2002, with a revised parking plan.

**FINDINGS OF FACT:**

- **The lot is located in the Class W Zone;**
- **There is already a parking lot with a parking capacity of 146 spaces;**
- **The lot is currently unattended;**
- **The Cape Cod Pilgrim Memorial Association currently provides seven year-round jobs and eight seasonal positions and this proposal would add three or four more positions.**

*Steve Melamed moved to grant a Special Permit under Article I, Section 1240 of the Zoning By-Laws to operate a paid parking lot with a booth and attendants at the property located at High Pole Road with the following conditions:*

- *The lot be in full compliance with Article II, Sections 2441 and 2442 of the Zoning By-Laws governing the illumination and overspill of light from the lot;*
- *An attendant be present on the lot until 1:00 A.M. ;;*
- *The hours of operation for profit will be from 9 A.M. until 9 P.M.;*
- *The Special Permit expire 1 year from the date of issuance;*
- *All outside Lessees be bound by the same conditions;*
- *There will be no off-premises signage advertising paid parking;*
- *No waiting on Winslow Street will be allowed;*

- *Cars will be ticketed entering the lot and will pay on the way out of the lot, Peter Page seconded and it was so voted, 5-0.* Estherann Czyoski will write the decision.

2002-037

**837 Commercial Street, Attorney Christopher J. Snow on behalf of Clancy Realty Trust for WAC, Inc. -**

Gary Reinhardt, Larry Mahan, Estherann Czyoski and Peter Page sat on the case. Peter Bez and Steve Melamed recused themselves because of conflicts of interest. Attorney Snow was advised that since there was a four member Board, their decision would have to be unanimous in order to approve the application. He consulted with his client and they decided to move ahead with the application. The applicant seeks a Special Permit under Article I, Section 1260 of the Zoning By-Laws for the seasonal sale and service of beer and wine.

**Presentation:** Attorney Christopher J. Snow, representing the Gordon family, appeared to present the application.

**Public Comment:** Pauline Sanders addressed the Board with questions about the areas and times of service and any change in management. Mary Ellen Serena, an abutter, opposed the application because of her concern that noise and traffic would increase in the area. There were two letters from abutters in opposition to the project and three letters from abutters in favor.

**Board Discussion:** The Board discussed the application with Attorney Snow and questioned him concerning the areas of service and if that area would extend to the pool area.

**FINDINGS OF FACT:**

- **The property enjoys the benefit of an inn holder's license;**
- **The property currently houses a restaurant;**
- **The seating area will not change and there will be not be an addition of a bar.**

*Estherann Czyoski moved to grant a Special Permit under Article I, Section 1260 of the Zoning By-Laws for the seasonal sale and service of beer and wine with the condition that the hours of operation of service would be 10:00 A.M. until 1:00 A.M., at the property located at 837 Commercial Street, Larry Mahan seconded and it was so voted, 4-0.* Peter Page will write the decision.

2002-038

**10 Alden Street, Steven Page on behalf of J&S Realty Trust -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski and Steve Melamed sat on the case. The applicant seeks a Special Permit under Article II, Section 2110 of the Zoning By-Laws to remove and reconstruct a preexisting nonconforming dwelling and to extend said dwelling up and along a nonconforming dimension.

**Presentation:** James Anderson and Steven Page appeared to present the application. The applicants are putting a dormer on the north side of the building.

**Public Comment:** No one spoke either in favor or in opposition. There was a letter on file from the Board of Health indicating that no increase in septic flow would result from the construction.

**Board Discussion:** The Board determined that the decision would come under the *Goldhirsh v. McNear* ruling.

*Steve Melamed moved to grant a Special Permit under Article II, Section 2110 of the Zoning By-Laws to remove and reconstruct a preexisting nonconforming dwelling and to extend said dwelling up and along a nonconforming dimension at the property located at 10 Alden Street, Larry Mahan seconded and it was so voted, 5-0.*

Chair Gary Reinhardt closed the Public Hearing at 10:45 P.M.

## WORK SESSION

Chair Gary Reinhardt convened the Work Session at 10:45 P.M.

**2002-026 36 Shank Painter Road, #10, Brian Alexander on behalf of R&C Realty Trust -**

Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski and Peter Page. Peter Page read the decision. *Peter Bez moved to accept the language as written, Estherann Czyoski seconded and it was so voted, 5-0.*

## **MINUTES**

**April 18, 2002 – Peter Bez moved to approve the minutes as written, Estherann Czyoski seconded and it was so voted, 5-0-1 (Steve Melamed abstain).**

## **ADMINISTRATIVE CHANGE**

Dennis Clark, director of the Community Center, appeared before the Board. Last July, he came to ask the Board for a skateboard park to be located at the Community Center. The Board granted a Special Permit in Case # 2001-055, but only for a limited amount of time. The equipment for the skateboard park never arrived in time to implement the project within the time parameters set by the Board. Mr. Clark requested that the Board extend the trial period for the skateboard park because the equipment has now arrived. He asked that the time period expire on September 1, 2002. Gary Reinhardt, Peter Bez, Larry Mahan, Estherann Czyoski and Peter McDonough sat on the original case. **Peter Bez moved to hear the request as an Administrative Change, Larry Mahan seconded and it was so voted, 4-0. Estherann Czyoski moved to grant the Administrative Change for Case # 2001-055, Larry Mahan seconded and it was so voted, 4-0.**

## **NEXT MEETING**

The next meeting will be a Work Session and a Public Hearing on May 16, 2002.

## **ADJOURNMENT**

**Peter Bez moved to adjourn at 11:20 P.M. and it was so voted unanimously.**

These minutes were approved by a vote of the Zoning Board of Appeals at their meeting on May 16, 2002.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

\_\_\_\_\_  
*Title*

Ellen C. Battaglini  
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*On-call secretary*