

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

MEETING MINUTES OF September 19, 2002

### MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt (Chair), Peter Bez (Vice Chair), Larry Mahan (Clerk), Peter Page (arrived at 7:10 P.M.) and Steve Melamed.

**Members Absent:** None.

**Others Present:** Attorney Katherine Goree Doyle (Kopelman and Paige, P.C.), Ellen C. Battaglini (Recording Secretary).

### PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:00 P.M. Four members of the Board were present and one was absent.

**2002-069        8 Commercial Street, Alix Ritchie – (continued to October 3, 2002)**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood average building scale and/or to amend a previously approved Special Permit building plan by removing one proposed addition, and replacing it with an alternated addition to the structure.

**2002-070        3 King's Way, Thomas A. Edwards –**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood average building scale with the construction of a six-foot by fourteen-foot one story kitchen addition on the dwelling structure. Mr. Edwards had not yet arrived at the Public Hearing.

**2002-071 232-232R Bradford Street, Nextel Communications of Mid-Atlantic, Inc., d/b/a Nextel Communications (“Nextel”) -**

The applicant seeks a Variance under Article 7, Section 7070, Subsections L & M.3 (Location Class/Type 4), 500-foot horizontal setback requirement; Section 7110, Monitoring and Elevation Compliance; Section 7130, Indemnification, insurance and Fees; and Section 7140, Terms of Special Permit of the Zoning By-Laws to install a Wireless Telecommunication Facility with 6 antennas to be camouflaged inside a cupola, together with an underground 10-foot by 20-foot equipment room on land owned by Richard P. Wrigley. Chair Gary Reinhardt explained to the applicant that there were only four members of the Board present at the moment, but that the fifth was expected shortly. Mr. Reinhardt went on to explain the implications of a four member Board; if the applicant chose to proceed with his application he would need a unanimous vote for approval. The applicant also had the option to wait until the fifth member of the Board arrived in order for his application to be heard. The applicant chose the latter option.

**2002-072 4 Atwood Avenue, Robert Valois Residential Design on behalf of Dr. G. Bruce Head III -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a preexisting, nonconforming dwelling cottage. Mr. Valois chose to wait for the fifth member of the Board to arrive.

Chair Gary Reinhardt postponed the Public Hearing at 7:05 P.M. to wait for Mr. Page to arrive.

### PUBLIC HEARING

Chair Gary Reinhardt reconvened the Public Hearing at 7:10 P.M. Five members of the Board were present and none were absent.

**2002-070 3 King's Way, Thomas A. Edwards –**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood average building scale with the construction of a six-foot by fourteen-foot one story kitchen addition on the dwelling structure. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case.

**Presentation:** Thomas A. Edwards appeared to present the application.

**Public Comment:** Eileen Brady spoke in support of the application. John Conlon, of 41 Pleasant Street, also spoke in support of the application. There was one letter on file in favor of the project.

**Board Discussion:** The Board questioned Mr. Edwards about the project.

**FINDINGS OF FACT:**

- The neighborhood average building scale is 58.68 Scale Units;
- A variation of 25% above the neighborhood average, allowable without a Special Permit, is 73.35 S.U.;
- The applicant's existing structure is 114.91 S.U.;
- The applicant proposes to add 3.88 S.U. for a total of 118.79 S.U.;
- The neighborhood has several very small accessory buildings appearing to bring down the average neighborhood building scale.

*Peter Bez moved to approve a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood average building scale with the construction of a six-foot by fourteen-foot one story kitchen addition on the dwelling structure located at 3 King's Way, Larry Mahan seconded and it was so voted, 5-0. Peter Bez will write the decision.*

**2002-071 232-232R Bradford Street, Nextel Communications of Mid-Atlantic, Inc., d/b/a Nextel Communications ("Nextel") -**

The applicant seeks a Variance under Article 7, Section 7070, Subsections L & M.3 (Location Class/Type 4), 500-foot horizontal setback requirement; Section 7110, Monitoring and Elevation Compliance; Section 7130, Indemnification, insurance and Fees; and Section 7140, Terms of Special Permit of the Zoning By-Laws to install a Wireless Telecommunication Facility with 6 antennas to be camouflaged inside a cupola, together with an underground 10-foot by 20-foot equipment room on land owned by Richard P. Wrigley. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case.

**Presentation:** Attorney Steven E. Grill, John Lawless, Peter Labrecque, Tammy Smith and Deborah B. Haskell appeared to present the application. Chair Gary Reinhardt announced at the outset that the health issues surrounding the topic of wireless communication would not be discussed as part of the application. Attorney Grill outlined the legal issues that related to the Nextel application. The project specialist, Mr. Lawless, made a detailed presentation of the various facets of the application, following closely the sections contained in the Nextel application notebook that each Board member received. Tammy Smith, an RF Engineer, spoke briefly about the expanded area of coverage that Nextel would provide if allowed to site their antennae in Mr. Wrigley's house. Ms. Haskell spoke of the impact on property values of real estate in close proximity to wireless antennae installations. Dr. William Irwin, an Associate Radiation Safety Officer, was introduced by the Attorney Grill to speak about the health issues surrounding the wireless technology, but Chair Gary Reinhardt reiterated that the health concerns of wireless technology were not at issue at this meeting.

**Public Comment:** There were 17 letters on file in opposition to the application and 1 letter, from Health Agent George Heufelder, indicating that the Growth Management By-Law did not apply to the application. 20 members of the public raised their hands in opposition to the application. No one raised his or her hand in favor. Edward Domijan said he saw no reason why the application should not be approved. Anne Mahoney, an abutter to Mr. Wrigley, spoke against the project, as did Elizabeth and Patrick Patrick, both abutters to the property. Sal Del Deo voiced his opposition as well.

**Board Discussion:** The Board discussed the project and came to the conclusion that the criteria for a Variance had not been met.

**FINDINGS OF FACT:**

Peter Bez will establish the Findings of Fact with the assistance of Town Counsel, Katharine Goree Doyle

*Peter Bez moved to deny the Variance under Article 7, Section 7070, Subsections L & M.3 (Location Class/Type 4), 500-foot horizontal setback requirement; Section 7110, Monitoring and Elevation Compliance; Section 7130, Indemnification, insurance and Fees; and Section 7140, Terms of Special Permit of the Zoning By-Laws to install a Wireless Telecommunication Facility with 6 antennas to be camouflaged inside a cupola, together with an underground 10-foot by 20-foot equipment room on land owned by Richard P. Wrigley at 232-232R Bradford Street, Larry Mahan seconded and it was so voted, 5-0. Peter Bez will write the decision.*

Chair Gary Reinhardt postponed the Public Hearing for a recess at 9:34 P.M. and reconvened the Hearing at 9:36 P.M.

**2002-072 4 Atwood Avenue, Robert Valois Residential Design on behalf of Dr. G. Bruce Head III -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a preexisting, nonconforming dwelling cottage Peter Bez recused himself from the case because of a conflict of interest. Chair Gary Reinhardt, who lives in the neighborhood, stated that he was neither a direct abutter, nor a direct abutter to an abutter and thus would remain seated on the case. He also explained the implications of a four member Board and the applicant agreed to proceed with the application. Gary Reinhardt, Larry Mahan, Peter Page and Steve Melamed sat on the case.

**Presentation:** Robert Valois appeared to present the application.

**Public Comment:** No one spoke in favor or in opposition to the application. There was one letter in favor on file.

**Board Discussion:** After a brief discussion, the Board determined that the case would be considered under the *Goldhirsh v. McNear* ruling

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a preexisting, nonconforming dwelling cottage at 4 Atwood Avenue, Peter Page seconded and it was so voted, 5-0.*

**2002-074 149A Commercial Street, Robert Valois Residential Design on behalf of Laura Rood –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a preexisting, nonconforming two-family dwelling building, to include an addition and second means of egress. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case.

**Presentation:** Robert Valois and Laura Rood appeared to present the application.

**Public Comment:** Anita Baglaneas, a trustee of the condominium association at the property, spoke in favor of the application. Mike McCabe, a condominium unit owner at 149A Commercial Street, also expressed his support of the project. Jack Yandrisovitz, of 5 Conant Street, voiced his opposition to the application, as did a representative of Edward Aruda, an abutter to the project. There were 6 letters on file; 4 in opposition and 2 in favor.

**Board Discussion:** After a brief discussion the Board determined that they would consider the application under the *Goldhirsh v. McNear* ruling.

*Steve Melamed moved to consider the application under the Goldhirsh v. McNear ruling, Larry Mahan seconded and it was so voted, 5-0.*

*Steve Melamed moved to approve a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a preexisting, nonconforming two-family dwelling building, to include an addition and second means of egress at 149A Commercial Street, Peter Bez seconded and it was so voted, 5-0.*

**2002-073 149A Commercial Street, Robert Valois Residential Design on behalf of Laura Rood -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood average building scale. The subject building is a two-family dwelling structure. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case.

**Presentation:** Robert Valois and Laura Rood appeared to present the application.

**Public Comment:** Anita Baglaneas, a trustee of the condominium at the property, spoke in favor of the application. Mike McCabe, a condominium unit owner at 149A Commercial Street, also expressed his support of the project. Jack Yandrisovitz, of 5 Conant Street, voiced his opposition to the application. Mary Beth Caschetta and Meryl Cohn, both abutters at 148 Commercial Street, spoke against the application. Attorney Robin B. Reid, representing a condominium unit owner at 149A Commercial Street, spoke against the project. There were 7 letters on file; 5 in opposition and 2 in favor.

**Board Discussion:** The Board questioned Mr. Valois about the renovations.

**FINDINGS OF FACT:**

- The neighborhood average building scale is 92.51 Scale Units;
- The allowable building scale is 106.39 S.U.;
- The structure under construction is attached via decks to two other structures, thereby having an existing building scale, including all three structures and decks, of 217.27 S.U.;
- The proposed scale of all three buildings and decks is 241.56 S.U.;
- If the building in question were considered separate, its existing building scale would be 34.07 S.U. and its proposed building scale would be 58.36 S.U.;
- Taken by itself, the building in question is well under the average neighborhood building scale.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood average building scale. The subject building is a two-family dwelling structure located at 149A Commercial Street, Larry Mahan seconded and it was so voted 5-0. Peter Page will write the decision.*

**2002-075 8 Atwood Avenue, Neal Kimball on behalf of Thomas Roberts -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a preexisting, nonconforming single-family dwelling structure with an addition of a screened porch and a chimney. Chair Gary Reinhardt, who lives in the neighborhood, is neither a direct abutter nor a direct abutter to an abutter and thus will remain seated on the case. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Steve Melamed sat on the case.

**Presentation:** Neal Kimball appeared to present the application.

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

**Board Discussion:** The Board determined that the case would be considered under the *Goldhirsh v. McNear* ruling.

*Steve Melamed moved to approve a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a preexisting, nonconforming single-family dwelling structure with an addition of a screened porch and a chimney at 8 Atwood Avenue, Larry Mahan seconded and it was so voted, 5-0.*

**2002-076 16 Howland Street, Michael Peregon –**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the average neighborhood building scale with the construction of a two-family dwelling structure. Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page, and Steve Melamed sat on the case.

**Presentation:** Michael Peregon appeared to present the application.

**Public Comment:** Patrick Patrick spoke in favor of the application. There were no letters on file.

**Board Discussion:** The Board questioned Mr. Peregon about the project and determined that he was planning on constructing a third structure on the premises, which he is not allowed to do. They suggested that he construct an addition on one of the structures. Mr. Peregon agreed and will submit new plans to the Board before their next meeting.

**FINDINGS OF FACT:**

- The average neighborhood building scale is 68.90 Scale Units;
- The maximum allowable Scale Units without a Special Permit is 86.12 S.U.;
- The proposed structure is 100.88 S.U.;
- The neighborhood consists of both large and small structures interspersed;

*Larry Mahan moved to approve a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the average neighborhood building scale with the enlargement of the dwelling structure located at 16 Howland Street, pending submission of new site plans, Steve Melamed seconded and it was so voted, 5-0. Peter Page will write the decision.*

Chair Gary Reinhardt closed the Public Hearing at 11:27 P.M.

## **WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 11:27 P.M.

### **2002-065 315A-319 Commercial Street, Leonard Enos on behalf of Luco Realty Trust, Inc. -**

Gary Reinhardt, Peter Bez, Larry Mahan, Peter Page and Estherann Czyoski sat on the case. Peter Page read the decision. *Larry Mahan moved to accept the language as written, Peter Bez seconded and it was so voted, 4-0-1 (absent).*

### **MINUTES:**

**August 15, 2002** – *Steve Melamed moved to approve the minutes as written, Larry Mahan seconded and it was so voted, 5-0.*

**September 5, 2002** – *Larry Mahan moved to approve the minutes as written, Peter Bez seconded and it was so voted, 5-0.*

### **NEXT MEETING**

The next meeting will be on October 3, 2002 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

### **ADJOURNMENT**

*Steve Melamed moved to adjourn at 11:35 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 October 3, 2002.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

Ellen C. Battaglini