

**TOWN OF PROVINCETOWN**  
**ZONING BOARD OF APPEALS**

**MEETING MINUTES OF April 24, 2003**

**MEETING HELD IN TOWN HALL**

**Members Present:** Gary Reinhardt (Chair), Peter Page (arrived at 6:24 P.M.), Steve Melamed, Howard Weiner and Lynne Davies.

**Members Absent:** None.

**Others Present:** Jonathan Silverstein (Town Counsel), Warren Alexander, Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 5:35 P.M.

**PENDING CASES:**

**122 Bradford Street (Residential 3 Zone), CHR Meadow Road, LLC and Edward “Ted” Malone –**

**Presentation:** Ted Malone, Michael Bunn, Mark MacKenzie, Mario DiGregorio appeared to discuss the case. Mario DiGregorio, a professional wetlands scientist, was present to give a report summarizing his study of the wetlands and species habitat aspects of the project and to answer any lingering questions that the Board may have had pertaining to those issues of concern. Mr. DiGregorio stated that he had more than 20 years experience with wetlands in Provincetown. He proceeded to give his presentation citing his February 22, 2003 report of the wetland area in question, a August 9, 2001 report that he had written about the delineation of the wetlands while he was studying a project directly adjacent to the one in question and a January 20, 2003 mitigation report, written by Gordon Peabody, that dealt with the issue of storm water drainage. The conclusions he presented were, according to him, scientifically and regulatorily supportable. He concluded that:

- the area in question was an isolated vegetative wetland regulated solely under the local wetland by-law and not subject to state wetland regulations;
- the calculations of Mark MacKenzie, Mr. Malone’s engineer, indicated that the area was not subject to flooding;
- no alteration of the wetland was to occur as a result of this project;
- there was no hydraulic connection between the wetland in question and any other body of water;
- there would be no impact to the habitat of rare species in the area because the project would not impact the wetland;
- the three-tiered mitigation report referred to in Mr. DiGregorio’s report was thorough, indicating no short term or long term impact on the wetland;
- all structures in the project were outside the wetland delineation;
- there would be no fill or displacement occurring within the wetland; and
- the state sanitary code was being met with the proposed upgrade of the septic system serving the project.

**Board Discussion:** The Board questioned Mr. DiGregorio and Mr. MacKenzie further about the project. The Board wanted to know if the nitrogen impact on the environment would be greater or less than at present and discussed Mr. Peabody’s three-tiered mitigation report in more detail, particularly in regard to erosion, sedimentation control, impact from heavy machinery and drainage from Telegraph Hill Road.

Chair Gary Reinhardt read another letter from the Cape Cod Commission, the third from the Commission written concerning this project, into the record. The letter addressed their meeting with Mr. Malone to deal with some of the Commission’s concerns about the project.

**Public Comment:** Orin Donegan spoke of her concerns about building near a wetland. Alix Ritchie spoke in support of the project.

**Board Discussion:** The Board discussed the issue of hiring an environmental consultant to advise them about the project in order to assure the public that they had exercised diligence and that the interests of everyone were being

protected. Mr. Malone's counsel responded that this would result in undue delay and cost for his client. After discussing the issue further and in light of the fact the affordable housing issue is currently a major priority for the Town of Provincetown, they decided to proceed with their decision without further delay.

#### **FINDINGS OF FACT:**

- the report of the Building Commissioner expressed no objection to the project;
- the report of the Director of Community Development expressed full support of the project;
- the report of the Deputy Director of Community Development expressed full support of the project;
- a January 23, 2003 report of the Conservation Commission expressed a lack of support for the project;
- the Board of Selectmen voted to negate the January 23, 2003 report of the Conservation Commission report on the grounds that it was flawed, having been filed 2 months before Mr. Malone's Chapter 40B application was filed;
- the report from the Director of Public Works and the Sewer and Water Superintendent expressed no opposition to the project;
- the report from the Health Agent expressed a small concern, most of which has since been resolved;
- the Board of Health issued a report expressing support for the project;
- the report from the Police Chief expressed no opposition to the project;
- the report from the Fire Chief expressed no opposition to the project;
- a series of 3 letters from the Cape Cod Commission expressed concerns, but the Commission later had those concerns answered by the applicant at a site visit;
- the proposed project furthers the local need of the Town of Provincetown with respect to affordable housing;
- the effects of this project, if any, on the wetland resource area was shown to be minimal;
- the effects of the project, if any, on the traffic in the area, has been demonstrated to be minimal;
- the issue of drainage on the site has been adequately addressed by the applicant and the issue of drainage from off the site is currently being addressed by the Department of Public Works. Further, the applicant has made a generous offer to the Town, that it may pursue in the future, regarding additional drainage on the site for easement purposes; and
- the aforementioned effects, if any, on the wetland resource area, of traffic and drainage are outweighed by the severe local need of the community for affordable housing.

*Steve Melamed moved to grant a Comprehensive Permit pursuant to M.G.L. Chapter 40B, Section 21, to construct on a previously developed, 5.17 acre parcel of land: 15 buildings, consisting of 13 dwellings for affordable home ownership; 5 dwellings for affordable rental housing; 18 dwellings for market rate home ownership; and 5 non-residential principal use artist studios granted all waivers requested, including a Special Permit for an Artist Studio located in the Residential 1 Zoning District, for the property located at 122 Bradford Street (Res 3 Zone), Lynne Davies seconded and it was so voted 5-0.*

Chair Gary Reinhardt postponed the Work Session at 7:10 P.M.

### **PUBLIC HEARING**

Chair Gary Reinhardt called the Public Hearing to order at 7:10 P.M. and explained the Public Hearing procedures to the public. Five members of the Board were present and none were absent.

#### **PENDING CASES:**

**2003-011**

**8 Montello Street (Residential 3 Zone), Leslie Burrell on behalf of Hilda Neilly-**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend along a non-conforming dimension, a pre-existing, non-conforming two-family dwelling. Peter Page recused himself because of a conflict of interest. Chair Gary Reinhardt informed the applicant that there would be a four member Board seated on the case, meaning that a unanimous decision would need to be reached in order for a Special Permit to be granted, and asked if she would like to proceed with the application. She assented. Gary Reinhardt, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Leslie Burrell appeared to present the application. The applicant wishes to enclose the area beneath a second floor deck.

**Public Comment:** None. There were no letters on file.

**Board Discussion:** The Board briefly discussed scale and requested Warren Alexander's opinion on the issue.

*Steve Melamed moved to consider the case under the Goldhirsh v. McNear ruling, Howard Weiner seconded and it was so voted, 4-0.*

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend along a non-conforming dimension, a pre-existing, non-conforming two-family dwelling for the property located at 8 Montello Street (Res 3 Zone), Lynne Davies seconded and it was so voted, 4-0.*

**2003-012 293 Commercial Street (Town Commercial Center Zone), Stephen J. Boggess on behalf of Hake Nominee Trust -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide 10 outdoor public seats (5 tables, 2 chairs each), behind the building proposed to contain 3 fast food operations. Steve Melamed recused himself because of a conflict of interest. Chair Gary Reinhardt explained the implications of a four member Board and inquired if the applicant would like to proceed with the case. The applicant assented. Gary Reinhardt, Peter Page, Howard Weiner and Lynne Davies sat on the case.

**Presentation:** Stephen J. Boggess appeared to present the application.

**Public Comment:** None. There were no letters on file.

**Board Discussion:** The Board questioned Mr. Boggess.

**FINDINGS OF FACT:**

- the building located at 293 Commercial Street is proposed to contain 3 fast food establishments;
- adjacent to the building is a town comfort station and a regional bus stop;
- the proposed seating will likely be available to patrons of the fast food establishments within the building as well as the general public; and
- the maintenance of the tables and chairs as well as the surrounding area is the responsibility of the applicant and his tenants.

*Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide 10 outdoor public seats (5 tables, 2 chairs each), behind the building proposed to contain 3 fast food operations for the property located at 293 Commercial Street (TCC Zone), Howard Weiner seconded and it was so voted, 4-0. Howard Weiner will write the decision.*

**2003-013 293 Commercial Street (Town Commercial Center Zone), Thomas E. Roberts on behalf of Hake Nominee Trust -**

The applicant seeks a Special Permit under Article 2, Section 2440, B8, footnote 12 and Article 5, Section 5300 of the Zoning By-Laws to operate a fast food establishment containing more than 500 square feet and 10 seats. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Thomas E. Roberts appeared to present the application.

**Public Comment:** Robert Burns, captain of the Bay Lady, spoke in favor of the application. There were no letters on file

**Board Discussion:** The Board briefly questioned Mr. Roberts.

**FINDINGS OF FACT:**

- the applicant is proposing 10 indoor seats; this is in addition to the 10 seats approved by the Board for the owner of the property, for the use of the tenants in the building and the general public;
- the applicant has agreed to be responsible for policing the cleanliness of the area along with the other tenants in the building; and
- the proposed use of space is consistent with the use of that building.

*Peter Page moved to grant a Special Permit under Article 2, Section 2440, B8, footnote 12 and Article 5, Section 5300 of the Zoning By-Laws to operate a fast food establishment containing more than 500 square feet and 10 seats at the property located at 293 Commercial Street (TCC Zone), Lynne Davies seconded and it was so voted, 4-0. Peter Page will write the decision.*

**2003-014 374 Commercial Street (Town Commercial Center Zone), Leslie Burrell on behalf of Klaus Betten -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend, up and along a non-conforming dimension, a pre-existing, non-conforming residential/office building. There was a letter on file requesting a withdrawal without prejudice.

*Lynne Davies moved to grant the request for a withdrawal without prejudice, Steve Melamed seconded and it was so voted, 5-0.*

**2003-019 16 Thistlemore Road (Residential 3 Zone), Attorney Robin B. Reid on behalf of Greg Anton and others**

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Gary Reinhardt and Steve Melamed recused themselves from the case. There was a request on file to continue the case. The case will be heard on May 15, 2003.

Chair Gary Reinhardt adjourned the Public Hearing at 7:56 P.M.

**WORK SESSION**

Chair Gary Reinhardt reconvened the Work Session at 7:56 P.M.

**REQUEST FOR ADMINISTRATIVE AMENDMENT:**

**2002-012 291-293 Commercial Street, Joy Cuming of Architect's Studio on behalf of Hake Nominee Trust -**

Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Page, Howard Weiner and Lynne Davies sat on the case.

**Presentation:** Joy Cuming appeared to present the application. The applicant wants to amend the façade of the building at the location.

**Board Discussion:** The Board briefly questioned Ms. Cuming.

*Howard Weiner moved to consider the case as an Administrative Amendment, Lynne Davies seconded and it was so voted, 4-0.*

*Peter Page moved to approve the Administrative Amendment, Howard Weiner seconded and it was so voted, 4-0.*

**REQUEST FOR SPECIAL PERMIT TIME EXTENSION:**

**2001-036 345A Commercial Street, Robert Valois on behalf of Charles Collins, Robert E. Nee and the Fish and Yee Condominium -**

Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Robert Valois appeared to present the application. The applicants wish to enclose an area beneath a deck. The project has been delayed by the applicants changing their minds about the project, as well as by Chapter 91 and Historic District issues.

*Steve Melamed moved to grant an extension of 90 days for Case # 2001-036, Peter Page seconded and it was so voted, 5-0.*

**BOARD REORGANIZATION:**

A new Chairman and Clerk needed to be elected, as this was the first meeting of the Zoning Board of Appeals following the Annual Town Meeting.

*Steve Melamed moved to nominate Gary Reinhardt as Chairman of the Zoning Board of Appeals, Lynne Davies seconded and it was so voted, 5-0.*

*Howard Weiner moved to nominate Peter Page as Clerk of the Zoning Board of Appeals, Steve Melamed seconded and it was so voted, 5-0.*

**PENDING DECISIONS:**

**2003-016 14 Court Street (Residential 3 Zone), Gary Palochko -**

Gary Reinhardt, Peter Page, Steve Melamed and Lynne Davies sat on the case. Lynne Davies read the decision.

*Steve Melamed moved to accept the language as written, Peter Page seconded and it was so voted, 4-0.*

**PENDING CASES:**

**2003-015 9 Conwell Street (Residential 3 Zone), Thomas Capizzi, Jr. on behalf of Mike Vitualano -**

There was a letter on file from the applicant stating that they are not ready to submit new plans because they need the permission of the condominium owners to have them drawn up.

**MINUTES:**

**April 3, 2003 – Lynne Davies moved to accept the language as written, Peter Page seconded and it was so voted, 4-**

*0-1 (abstain).*

**NEXT MEETING**

The next meeting will be on May 1, 2003 and will consist of a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT**

*Peter Page moved to adjourn at 8:30 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 1, 2003.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

Ellen C. Battaglini