

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF May 1, 2003

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt (Chair), Peter Page (arrived at 6:38 P.M.), Steve Melamed, Howard Weiner (arrived at 6:21 P.M.) and Lynne Davies.

Members Absent: None.

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

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:17 P.M.

PENDING DECISIONS:

2003-018 122 Bradford Street (Residential 3 Zone), CHR Meadow Road, LLC and Edward “Ted” Malone – Gary Reinhardt, Peter Page, Steve Melamed, Howard Weiner and Lynne Davies sat on the case. Gary Reinhardt read the decision. *Lynne Davies moved to accept the decision as written, Howard Weiner seconded and it was so voted, 5-0.*

ADMINISTRATIVE AMENDMENT

2001-050 16 Macmillan Wharf, Expedition Whydah Sea-Lab and Learning Center –
Presentation: Ken Kinkor appeared to present the Administrative Amendment. The applicant wants to sell pre-packaged food items and foods prepared off site, in addition to what is usually sold.
Board Discussion: The Board briefly discussed whether the Special Permit the applicant already held included these additional items under the category of “assorted sundries”. The Board decided to take no action on this matter. They advised the applicant to consult with the Department of Community Development for further clarification.

Chair Gary Reinhardt postponed the Work Session at 7:09 P.M.

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:09 P.M. and explained the Public Hearing procedures to the public. Five members of the Board were present and none were absent.

PENDING CASES:

2003-020 7 Masonic Place (Residential 3 Zone), Eliot W. Denault, III -
The applicant seeks a Variance from Article 2, *Permitted Principal Use Schedule*, Section 2440, b4f and Article 5, Section 5222 of the Zoning By-Laws to change the use in a portion of the first floor of a single family dwelling into retail sales.

2003-021 7 Masonic Place (Residential 3 Zone), Eliot W. Denault, III -
The applicant seeks a Variance from Article 2, Section 2560, *Dimensional Schedule* and Article 5, Section 5222 of the Zoning By-Laws to deviate from the side yard setback of 6 feet and the front yard setback of 20 feet or average required in the Res 3 Zoning District for the construction of a covered porch.

Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on both cases.
Presentation: Eliot W. Denault, III and Roger Keene appeared to present the applications. The

applicant wants to put an antique store on the first floor of the single family dwelling and to build a covered porch.

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

Board Discussion: The Board discussed the “substantial hardship” criteria for granting a Variance and asked Warren Alexander his opinion on the case. The Board determined that the applicant failed to meet the criteria for a Variance. The Board made a suggestion to the applicant that he might want to place an article on the warrant of the next Town Meeting in order to try and change this Zoning District to a Town Commercial Center designation, where a retail store would be allowed. The Board then gave the applicant two choices: he could allow the Board to vote or he could withdraw the two applications without prejudice. He chose the latter.

Steve Melamed moved to accept the request for withdrawal without prejudice of Case # 2003-020, Peter Page seconded and it was so voted, 5-0.

Howard Weiner moved to accept the withdrawal without prejudice of Case # 2003-021, Lynne Davies seconded and it was so voted, 5-0.

2003-022

14 Thistlemore Road (Residential 1 Zone), Constantine A. Pappas -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming single family dwelling up and along a non-conforming dimension with the installation of a roof parapet guardrail system. Gary Reinhardt, Peter Page, Howard Weiner and Lynne Davies sat on the case.

Presentation: Attorney Lester J. Murphy and Constantine A. Pappas appeared to present the application. The applicant wants to install a glass and aluminum railing on the top of his house for safety reasons. This design used seeks to lessen the visibility of the rail system, thus minimizing the interruption of the views of Mr. Pappas’ abutters. The project will not increase the non-conformancy.

Public Comment: None. There was one letter on file from an abutter who supported the application.

Board Discussion: The Board briefly questioned Mr. Murphy. They decided to consider the case under the *Goldhirsh v. McNear* ruling.

Steve Melamed moved to consider the Case under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 4-0-1 (absent).

Steve Melamed moved to grant Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming single family dwelling up and along a non-conforming dimension with the installation of a roof parapet guardrail system at the property located at 14 Thistlemore Road (Res 1 Zone) under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 4-0-1 (absent).

2003-023 6 Telegraph Hill Road (Residential 1 Zone), Attorney Lester J. Murphy on behalf of Thomas J. Bombardier -

The applicant seeks a Special Permit under Article 2, Section 2450, G12, *Permitted Accessory Uses*, of the Zoning By-Laws to install a swimming pool. Gary Reinhardt disclosed that he was on the abutter’s list for this property, but that he was neither a direct abutter, nor an abutter to an abutter, and will, therefore, sit on the case. Peter Page disclosed that he shares friends with the applicant, but as the applicant had no objection to this disclosure, Mr. Page will sit on the case. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

Presentation: Attorney Murphy, Kurt Raber, architect, and John Fowler, representing Thomas J. Bombardier, appeared to present the application. The pool will contain approximately 11,108 gallons of water that will be trucked in from out of town. The applicant worked with a landscape designer and consulted with his abutter to the east, William Gordon, who has approved of the plan.

Public Comment: None. There was 1 letter on file from an abutter who had no objections to the application.

Board Discussion: The Board briefly questioned Mr. Murphy.

FINDINGS OF FACT:

- The applicant is proposing to install a swimming pool with a capacity of 11,108 gallons of water;
- The swimming pool will be constructed of concrete over steel; and
- The water will be trucked in from out of town.

Lynne Davies moved to grant a Special Permit under Article 2, Section 2450, G12, Permitted Accessory Uses, of the Zoning By-Laws to install a swimming pool at the property located at 6

Telegraph Hill Road (Res1 Zone), Howard Weiner seconded and it was so voted, 5-0. Peter Page will write the decision.

2003-024 277 Commercial Street (Town Commercial Center Zone), Jude A. Maria on behalf of St. Peter's Club – The applicant seeks to renew a Special Permit under Article 3, Section 3420, *Outside Display*, to display a total of up to 44 items outdoors.

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

Presentation: Jude A. Maria appeared to present the application. She wants to add 10 more items, 6 windwheels and 4 flags to her current outside display.

Public Comment: None. There were no letters on file

Board Discussion: The Board briefly questioned Ms. Maria.

Steve Melamed moved to grant a renewal of a Special Permit under Article 3, Section 3420, Outside Display, to display a total of up to 44 items outdoors at the property located at 277 Commercial Street (TCC Zone), Lynne Davies seconded and it was so voted, 5-0.

2003-025 17 Carnes Lane (Residential 3 Zone), Arthur J. Santos on behalf of Peter Kassel and Tom Tostenguard

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The applicant seeks a Special Permit under Article 3, Section 3340E, *Building Scale*, to deviate from the allowed neighborhood average scale by 10.57 Scale Units.

Presentation: Arthur J. Santos and Tom Tostenguard appeared to present the application. The applicants want to build a roof deck.

Public Comment: None. There were 3 letters in support of the application and none opposed.

Board Discussion: The Board informed the applicant that plans showing proposed and existing elevations would need to be submitted.

FINDINGS OF FACT:

- The neighborhood consists of a mixture of very large and very small structures; and
- The addition of a roof deck would make the structure more harmonious rather than less harmonious with the rest of the neighborhood.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3340E, Building Scale, to deviate from the allowed neighborhood average scale by 10.57 Scale Units for the property located at 17 Carnes Lane (Res 3 Zone), Steve Melamed seconded and it was so voted, 5-0. Lynne Davies will write the decision.

2003-026 258 Commercial Street (Town Commercial Center Zone), Theodore Tine on behalf of Cape Tip Inn -

The applicant seeks a Special Permit under Article 3, Section 3110, *Change, Alterations*, and Section 3340E, *Building Scale*, of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure with the installation of roofed overhang above a walkway on the west side of the structure and to further deviate from the neighborhood allowed scale average building scale with an increase of 37.40 Scale Units. Howard Weiner disclosed that he is not a direct abutter, but an abutter to an abutter and will not sit on the case. Steve Melamed disclosed a conflict of interest and will not sit on the case. The application cannot be heard because of a lack of a quorum. The case will be continued until the June 5, 2003 Work Session at 6:30 P.M.

2003-027 558 Commercial Street (Residential 2 Zone), Thomas Edwards on behalf of Marcy Dagostine –

The applicant seeks a Special Permit under Section 3340E, *Building Scale*, of the Zoning By-Laws to further deviate from the neighborhood allowed average building scale with an increase of 5.66 Scale Units.

Presentation: James Tasha appeared to present the application. The applicant to add a screened porch for summer use only.

Public Comment: None. There was 1 letter on file supporting the application.

Board Discussion: The Board briefly discussed the case.

FINDINGS OF FACT:

- This is a neighborhood of rather large structures; and
- The addition of a screened porch is proposed for the rear of the building, will not be visible from the street and therefore will not affect the building's harmony with the surrounding area.

Lynne Davies moved to grant a Special Permit under Section 3340E, Building Scale, of the Zoning By-Laws to further deviate from the neighborhood allowed average building scale with an increase of 5.66 Scale Units for the property located at 558 Commercial Street (Res 2 Zone), Howard Weiner seconded and it was so voted, 5-0. Lynne Davies will write the decision.

Chair Gary Reinhardt adjourned the Public Hearing at 9:00 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 9:00 P.M.

Ted Malone proposed some changes to the decision in Case # 2003-018 that was written by Town Counsel, Jonathan Silverstein. The Board went through each change.

Lynne Davies amended the motion to accept the language as amended, Howard Weiner seconded and it was so voted, 5-0.

PENDING DECISIONS:

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

Gary Reinhardt, Peter Page, Howard Weiner and Lynne Davies sat on the case. Howard Weiner read the decision.

Lynne Davies moved to approve the language as written, Peter Page seconded and it was so voted, 4-0.

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

Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case. Peter Page read the decision. *Howard Weiner moved to approve the language as written, Lynne Davies 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 -

The applicant is seeking permission for a waiver from time constraints.

OTHER BUSINESS:

There was an appeal in Barnstable Superior Court from a decision in Case # 2002-010 of the Zoning Board of Appeals. There has been a settlement in the case. The Board needs to vote to allow a voluntary dismissal of the case.

Peter Page moved that the Zoning Board of Appeals vote to authorize a voluntary dismissal of litigation known as Katherine E. Fair v. Zoning Board of Appeals et al., Barnstable Superior Court Docket No. CV 02 333, Steve Melamed seconded and it was so voted, 4-0-1 (abstain).

MINUTES:

April 24, 2003 – *Steve Melamed moved to accept the language as amended, Lynne Davies seconded and it was so voted, 4-0-1 (abstain).*

NEXT MEETING

The next meeting will be on May 15, 2003 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M. Gary Reinhardt will not be in attendance at this meeting and Peter Page will chair.

ADJOURNMENT

Howard Weiner moved to adjourn at 9:45 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 15, 2003.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini