

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF June 5, 2003

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt, Peter Page, Steve Melamed, Howard Weiner 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 6:30 P.M.

PENDING CASES:

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

(continued from May 15, 2003) –

Peter Page, Lynne Davies and Howard Weiner sat on the case. The Zoning Board of Appeals, on advice from Town Counsel, chose to proceed with only three members seated, although Attorney Robin B. Reid had requested that her client's appeal be heard by a full Board of five members. Ms. Reid objected to the advice of Town Counsel and stated that it was the right of her clients to choose not to proceed with only three members seated. She stated further that the Building Inspector had recently requested that new "as built" plans be submitted by Mr. King, which could clarify a lot of the issues in dispute at the property.

FINDINGS OF FACT:

- The Zoning Board of Appeals currently has five seated members, two of whom recused themselves in this case, leaving a Board of only three members, which is an administrative quorum, but not a super majority;
- The Board was given advice by Town Counsel advising them that the only proper action for them to take was to uphold the decision of the Building Inspector and allow the case to go forward on appeal to a higher Court; and
- The applicants object to the Board following the advice of Town Counsel.

Lynne Davies moved to uphold the decision of the Building Inspector in Case

2003-019, Howard Weiner seconded and it was so voted, 3-0. Howard Weiner will write the decision.

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

(continued from May 15, 2003) -

Steve Melamed recused himself from the case because of a conflict of interest. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case. Gary Reinhardt explained the implications of a four-member Board to the applicant. In order to grant a Special Permit, the applicant would need a unanimous vote from the Board. The Chair then asked if the applicant would like to proceed with the hearing and he agreed.

Presentation: Steve Schnitzer and Theodore Tine appeared to present the application. The applicant submitted new plans for the project.

Public Comment: None. There were two letters on file in support of the project and none in opposition.

Board Discussion: The Board briefly questioned Mr. Schnitzer.

FINDINGS OF FACT:

- The proposed overhang on the walkway on the southwest side of the Euro Café will continue to be an emergency means of egress for the restaurant;

- The existing scale of the structure is 532.18 Scale Units, with a proposed addition of 37.22 S.U., for a total, for the proposed project, of 569.40 S.U. The allowed scale for the neighborhood is 219.91 S.U.; and
- The proposed addition will, for the most part, not be seen from a public way and therefore the structure will continue to be harmonious with the rest of the neighborhood.

Lynne Davies moved to grant 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 a roofed overhang above the walkway on the west side of the structure and to further deviate from the neighborhood allowed scale average building scale with an increase of 37.22 Scale Units at the property located at 258 Commercial Street (TCC Zone), Howard Weiner seconded and it was so voted, 4-0. Peter Page will write the decision.

PENDING DECISIONS:

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

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming second story egress landing of a two family dwelling unit. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

Presentation: Aaron Roderick, representing Thomas Capizzi, Jr., appeared to present the application, submitting new plans to the Board.

Board Discussion: The Board discussed the new plans and whether they were adequate enough for the Board members to understand the project. The Board decided to move forward with their decision, but would like to see further revised plans.

FINDINGS OF FACT:

- The widening of the stairs leading to the second means of egress would only increase the public safety in case of emergency.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming second story egress landing of a two family dwelling unit at the property located at 9 Conwell Street (Res 3 Zone), pending the submission of revised plans before the next Zoning Board of Appeals hearing on June 19, 2003, Peter Page seconded and it was so voted, 5-0. Lynne Davies will write the decision.

Chair Gary Reinhardt postponed the Work Session at 7:15 P.M.

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:15 P.M. Five members of the Board were present and none were absent.

2003-033 540 Commercial Street (Residential 3 Zone), Attorney Lester J. Murphy on behalf of Provincetown Hospitality, LLC -

Steve Melamed recused himself from the case because of a conflict of interest. Chair Gary Reinhardt asked Attorney Murphy if his client would like to proceed with a four-member Board. Attorney Murphy requested further time from the Board in order to contact his client.

2003-034 42 Bradford Street (Residential 3 Zone), John Lisbon on behalf of William Meadows -

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

Presentation: William Meadows and John Lisbon appeared to present the application.

Public Comment: Kevin Soyt spoke in support of the project. Tim Wallace, Janet Calis, Joyce Bailey and John Davidson all spoke in opposition to the project, stating concerns about the obstruction of light and views that would occur if the project were allowed. There were 3 letters on file in support of the project and 5 in opposition.

Board Discussion: The Board questioned Mr. Meadows and Mr. Lisbon about the project, asking specifically for the applicant to explain how the project would be consistent with the objectives of the Local Comprehensive Plan. The Board inquired as to whether the applicant would consider scaling the project down. The Board decided that they would like to view the site and suggested that the applicant meet with his neighbors in order to see if an adjustment to the plans could be arrived at that would suit

both sides. The case will be discussed further at the next ZBA Work Session at 6:00 P.M. on June 19, 2003.

2003-033 540 Commercial Street (Residential 3 Zone), Attorney Lester J. Murphy on behalf of Provincetown Hospitality, LLC -

Attorney Lester J. Murphy stated that his client would like to wait to be heard before a five-member Board and in the meantime would meet with his neighbors to try and resolve some issues.

2003-035 21 Tremont Street (Residential 3 Zone), Harry Brock -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a pre-existing, non-conforming accessory structure. Gary Reinhard disclosed that he is on the abutter's list for this property, but he is neither an abutter nor an abutter to an abutter and will therefore sit on the case. Gary Reinhardt, Steve Melamed, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: Harry Brock appeared to present the application. The applicant wants to remove an accessory building and build an artist's studio.

Public Comment: Rachel White and Shari Kadison spoke in support of the project. There were no letters on file.

Board Discussion: The Board briefly discussed the case.

FINDINGS OF FACT:

- The increase in scale of the addition is within the allowed building scale for the neighborhood;
- The existing building is pre-existing, non-conforming by virtue of its encroachment into the side yard setback;
- The structure is an accessory building in use as an artist's studio and the applicant proposes to make it more usable on a year-round basis; and
- The town has a rich heritage as an artist's colony and it is one of the goals of the Local Comprehensive Plan that artist's have acceptable spaces in which to work.

Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a pre-existing, non-conforming accessory structure at the property located at 21 Tremont Street (Res 3 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 8:20 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 8:20 P.M.

2003-030 183-185 Commercial Street (Town Center Commercial Zone), Shari Kadison on behalf of John Yingling -

The applicant seeks a Special Permit under Article 3, Section 3420, "outdoor display", of the Zoning By-Laws for the display and retail sale of locally grown and organic produce, bedding plants and other associated items.

Steve Melamed recused himself from the case because of a conflict of interest.

Gary Reinhardt explained the implications of a four-member Board to the applicant and asked if she would like to proceed. She agreed to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: Shari Kadison appeared to present the application. She would like to sell organic vegetables outside of the premises. She farms the vegetables herself and would only be selling them three afternoons a week. Warren Alexander gave his opinion on the outdoor display by-law. His interpretation of the by-law includes the allowance of retail sales out of doors.

2003-031 17 Pearl Street (Residential 3 Zone), Roxane Pratten -

The applicant seeks a Variance from Article 2, Section 2560, "dimensional schedule", pursuant to Article 5, Section 5222 of the Zoning By-Laws to construct friendship egress stairs within the required front yard setback on a 3 unit dwelling.

The applicant requested a withdrawal of the application. Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

Steve Melamed moved to accept the withdrawal of Case # 2003-031, Lynne Davies seconded and it was so voted, 4-0.

2003-032 17 Pearl Street (Residential 3 Zone), Roxane Pratten -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a pre-existing, non-conforming utility building and to reconstruct a pre-existing, non-conforming deck to include the addition of friendship stairs within the required front yard setback.

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

Presentation: Attorney Robin B. Reid appeared and submitted new plans to the Board per their request. She also submitted a written decision for the Board to consider.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove and reconstruct a pre-existing, non-conforming utility building and to reconstruct a pre-existing, non-conforming deck to include the addition of friendship stairs within the required front yard setback at the property located at 17 Pearl Street (Res 3 Zone), Steve Melamed seconded and it was so voted, 4-0.

Lynne Davies read the decision submitted by Attorney Reid.

Steve Melamed moved to accept the language as amended, Howard Weiner seconded and it was so voted 4-0.

PENDING DECISIONS:

2003-029 1 High Pole Hill (Residential 3 Zone), Cape Cod Pilgrim Memorial Association –

Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case. Lynne Davies read the decision. *Howard Weiner moved to approve the language as written, Steve Melamed seconded and it was so voted, 4-0.*

MINUTES:

May 15, 2003 – *Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 4-0-1 (abstain).*

NEXT MEETING

The next meeting will be on June 19, 2003 and will consist of a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT

Howard Weiner moved to adjourn at 9:15 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 June 19, 2003.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini