

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

**MEETING MINUTES OF June 19, 2003**

**MEETING HELD IN TOWN HALL**

**Members Present:** Gary Reinhardt, Peter Page, Steve Melamed (arrived at 6:04 P.M.), 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 6:00 P.M.

**PENDING DECISIONS:**

**2003-015**      **9 Conwell Street, (*Residential 3 Zone*), Thomas Capizzi, Jr. on behalf of Mike Vitualano -**  
Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case. The applicant submitted revised plans to the Board. Lynne Davies read the decision. *Howard Weiner moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*

**2003-026 258 Commercial Street (*Town Commercial Center Zone*), Theodore Tine on behalf of Cape Tip, Inc. -**  
Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case. Peter Page read the decision. *Lynne Davies moved to accept the language as written, Howard Weiner seconded and it was so voted, 4-0.*

**2003-019 16 Thistlemore Road (*Residential 3 Zone*), Attorney Robin B. Reid on behalf of Greg Anton et al. -**  
Peter Page, Lynne Davies and Howard Weiner sat on the case. Howard Weiner read the decision. *Peter Page moved to accept the language as written, Lynne Davies seconded and it was so voted, 3-0.*

**PENDING CASES:**

**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. The applicant seeks a Special Permit under Article 3, Section 3340E, *Building Scale*, of the Zoning By-Laws to deviate from the allowed neighborhood average building scale by increasing the scale of a pre-existing, non-conforming structure.

**Presentation:** William Meadows and John Lisbon appeared to present the application. The applicant has met with his neighbors and has revised the project plans as a result of their input. He will submit those plans to the Board as soon as they are available.

**Public Comment :** Tim Wallace and John Davidson spoke in favor of the revised project. No one spoke in opposition. There was 1 new letter on file that was opposed to the project, but the letter has been written before the plans were revised.

**Board Discussion:** The Board requested scale calculations for the revised plans from the applicant and informed him that their decision could not be written until these were received. The case will be

**PENDING CASES:**

**2003-035**     **21 Tremont Street (Residential 3 Zone), Harry Brock -**  
Gary Reinhardt, Steve Melamed, Peter Page, Lynne Davies and Howard Weiner sat on the case. Lynne Davies read the decision. *Steve Melamed moved to accept the language as written, Howard Weiner seconded and it was so voted, 5-0.*

**CONTINUED HEARINGS:**

**2003-033**     **540 Commercial Street (Residential 3 Zone), Attorney Lester J. Murphy on behalf of Provincetown Hospitality, LLC -**  
Attorney Lester J. Murphy appeared to inform the Board that his client would like to continue the case until a five member Board is seated.

**ADMINISTRATIVE AMENDMENT:**

**2002-087**     **16 Jerome Smith Road, Provincetown Recreation Commission on behalf of the Town of Provincetown -**  
Gary Reinhardt, Peter Page, Steve Melamed and Howard Weiner sat on the case. Bob Cahill and Treg Kaeselau appeared to present the amendment. There needs to be a slight adjustment in the siting of the new skate park. The footprint will be smaller and the park will be moved to the east of its original proposed site.  
*Steve Melamed moved to accept the change as an Administrative Amendment, Howard Weiner seconded and it was so voted, 4-0.*  
*Steve Melamed moved to grant the change in Case # 2002-087 as an Administrative Amendment, Howard Weiner seconded and it was so voted, 4-0.*

## MINUTES:

June 5, 2003 – *Howard Weiner moved to accept the language as written, Steve Melamed seconded and it was so voted, 5-0.*

## OTHER BUSINESS:

Steve Melamed has requested that he be excused from all Zoning Board of Appeals hearings during the months of July and August.

Chair Gary Reinhardt postponed the Work Session at 6:45 P.M.

## WORK SESSION

Gary Reinhardt reconvened the Work Session at 6:58 P.M.

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

*Peter Page moved to amend the language of the decision in Case # 2003-019 to remove the word “excuse” and replace it with “recuse”, Lynne Davies seconded and it was so voted, 3-0.*

Gary Reinhardt adjourned the Work Session at 7:00 P.M.

## 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. Five members of the Board were present and none were absent.

**2003-036**      **139 Commercial Street (Town Commercial Center Zone), Robert A. O’Malley on behalf of Jay C. Anderson -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to unite 2 pre-existing, non-conforming, single-family dwelling cottages into 1 single-family building, by extending the existing buildings up and along a non-conforming dimension at the proposed point of unification. Steve Melamed disclosed that he has had previous business dealings with Mr. O’Malley, but has no financial interest in the outcome of the case and can render a decision without prejudice. Peter Page recused himself because of a conflict of interest. Chair Gary Reinhardt explained the implications of a four-member Board to the applicant. The applicant would need a unanimous vote from the Board in order to be granted a Special Permit. He also has the option to continue the case until a five-member Board was seated. The applicant chose to proceed. Gary Reinhardt, Lynne Davies, Steve Melamed and Howard Weiner sat the case.

**Presentation:** Attorney Lester J. Murphy and Robert A. O’Malley appeared to present the application. The plans for the project were revised after input from the Department of Environmental Protection and the Provincetown Conservation Commission. These new plans will reduce the density of the project and make it more aesthetically pleasing. There will be a minimal increase in height and a minimal increase in the non-conformity.

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

**Board Discussion:** The Board discussed the project, including whether they would consider this case under the *Goldhirsh v. McNear* ruling.

*Lynne Davies 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 unite 2 pre-existing, non-conforming, single-family dwelling cottages into 1 single-family building, by extending the existing buildings up and along a non-conforming dimension at the proposed point of unification at the property located at 139 Commercial Street (TCC Zone) under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 4-0.*

2003-037

**10 Court Street (Residential 3 Zone), Neal Kimball on behalf of Sandra Anderson -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a 20 by 16 foot addition to the existing single-family dwelling building, to include a proposed porch on the left side, which will intrude into the required side yard setback by 6 feet. The proposed addition will reduce the current separation between the residential building and an accessory utility building from 24 feet to 5 feet. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Neal Kimball and Sandra Anderson appeared to present the application. There are two amendments to the application. The building will intrude on the side yard setback by 4 feet 6 inches, and the separation between the residential building and the accessory utility building will be reduced from 24 feet to 6 feet.

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

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

*Steve Melamed moved to consider the case under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 5-0.*

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a 20 by 16 foot addition to the existing single-family dwelling building, to include a proposed porch on the left side, which will intrude into the required side yard setback by 4 feet 6 inches under the Goldhirsh v. McNear ruling. The proposed addition will reduce the current separation between the residential building and an accessory utility building from 24 feet to 6 feet at the property located at 10 Court Street (Res 3 Zone), Lynne Davies seconded and it was so voted, 5-0.*

2003-032

**9-11 Carver Street (Residential 3 Zone), Kelly Weiss on behalf of Carver Street Trust, James Foss, Trustee -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to install a sit-down bar for the service of alcoholic beverages upon the outdoor patio restaurant of an inn. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case. Chair Gary Reinhardt explained the implications of a four-member Board and asked the applicant if she would like to proceed with the application. She agreed.

**Presentation:** Kelly Weiss and Mary Devine appeared to present the application. The applicant would like to put a bar on the patio outside the restaurant located at 11 Carver Street. The applicant stated that the bar would only be operational during the months of July and August and would not serve beyond 11:00 P.M.

**Public Comment:** Joe Hayley, an abutter, expressed concern about the noise level that may result. David Sanford was concerned that the patrons of Purgatory will use the bar after the hour of 11:00 P.M. There was 1 letter on file in opposition to the bar.

**Board Discussion:** Chair Gary Reinhardt asked Warren Alexander his opinion on the case. After a brief discussion, the Board decided to grant a one-year Special Permit. At the end of the year, the Board will gauge any reaction from the neighborhood, and then decide whether to extend the Special Permit further. The Board would also limit the hours of service from 5:00 P.M. until 11:00 P.M.

**FINDINGS OF FACT:**

- The outdoor area of service, which has an existing seating capacity of 84, is being proposed with a reduction to 58 seats; 48 at tables and 10 at the newly proposed bar;
- The Special Permit will be granted with the following conditions:
  - i. the hours of operation will be from 5:00 P.M until 11:00 P.M.;
  - ii. service at the bar will be limited to 10 patrons;
  - iii. the bar is for the exclusive use of dining patrons only; and
  - iv. the Special Permit will expire on June 30, 2004;
- The existing outdoor area has not only food service, but also alcohol service.

*Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to install a sit-down bar for the service of alcoholic beverages upon the outdoor patio restaurant of the inn located at 9-11 Carver Street (Res 3 Zone) with the conditions listed in the Findings of Fact, Howard Weiner seconded and it was so voted, 4-0. Lynne Davies will write the decision.*

2003-039 13 Pilgrim Heights Road (Residential 1 Zone), John Semple on behalf of David MacRae -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate further from the neighborhood average building scale allowed, with the addition of one-half story living area above the garage and first floor, on a structure pre-existing the scale by-law. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** John Semple and David MacRae appeared to present the application.

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

**Board Discussion:** The Board asked Mr. Semple to state his reasons to justify the scale increase.

**FINDINGS OF FACT:**

- The scale of the existing structure is 181.83 scale units;
- The allowed scale is 142.32 s.u.;
- The proposed structure is 206.05 s.u.;
- Pilgrim Heights Road is a neighborhood comprised of very large single-family houses; and
- The proposed enlargement would be in keeping with the character of the neighborhood.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate further from the neighborhood average building scale allowed, with the addition of one-half story living area above the garage and first floor, on a structure pre-existing the scale by-law at the property located at 13 Pilgrim Heights Road (Res 1 Zone), Peter Page seconded and it was so voted, 5-0. Peter Page will write the decision.*

**2003-040 78 Bradford Street (Residential 3 Zone), Eliot F. Parkhurst, Attorney, on behalf of David M. Sanford -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood building scale and 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 single-family structure. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Eliot F. Parkhurst and David M. Sanford appeared to present the application. The roof height, footprint and lot coverage all will be reduced.

**Public Comment:** None. There were 5 letters on file in support of the application and none opposing.

**Board Discussion:** The Board questioned Attorney Parkhurst and Mr. Sanford. The Board was concerned about the residence remaining a single-family structure and asked the applicant if he would agree to a deed restriction. Attorney Parkhurst told the Board that he would need to contact his client's lender in order to respond to that request.

**FINDINGS OF FACT:**

- The existing structure is 79.4 scale units;
- The proposed structure is 99.9 s.u.;
- The allowable scale is 84.55 s.u.;
- The neighborhood is comprised of numerous buildings which are as large as the proposed structure, including 80 and 82 Bradford Street, 9-11 Carver Street and 4 Prince Street, in addition to a number of smaller structures;
- The building footprint is being reduced from 1,203 to 1,157 square feet;
- The lot coverage is being reduced from 40.5% to 38.72%; and
- The proposed structure will have little effect on the character of the surrounding neighborhood.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood building scale at the property located at 78 Bradford Street (Res 3 Zone), Steve Melamed seconded and it was so voted 5-0. Lynne Davies will write the decision. Steve Melamed moved to consider the request for a Special Permit under Article 3, Section 3110 of the Zoning By-Laws under the Goldhirsh v. McNear ruling, Howard Weiner seconded and it was so voted, 5-0.*

*Steve Melamed moved to grant 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 single-family dwelling structure at the property located at 78 Bradford Street (Res 3 Zone) under the Goldhirsh v. McNear ruling, Howard Weiner seconded and it was so voted, 5-0.*

**2003-041 78 Bradford Street (Residential 3 Zone), Eliot F. Parkhurst, Attorney, on behalf of David M. Sanford -**

The applicant seeks a Variance from Article 2, Section 2560, *Dimensional Schedule*, of the Zoning By-Laws to extend a conforming gambrel roof height from 28 feet to 24 feet six inches, on a pre-existing,

non-conforming single-family dwelling structure. The applicant requested a withdrawal without prejudice.

*Lynne Davies moved to accept the withdrawal without prejudice of Case # 2003-041, Steve Melamed seconded and it was so voted, 4-0-1 (Howard Weiner absent).*

**2003-042 322 Commercial Street (Town Commercial Center Zone), Jeffrey Turkel -**

The applicant seeks a Special Permit from Article 3, Section 3420 of the Zoning By-Laws for the display of merchandise outdoors in a display case 1.5 feet by 2 feet in dimension. Gary Reinhardt, Steve Melamed, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Jeffrey Turkel appeared to present the application.

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

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

*Howard Weiner moved to grant a Special Permit from Article 3, Section 3420 of the Zoning By-Laws for the display of merchandise outdoors in a display case 1.5 feet by 2 feet in dimension at the property located at 322 Commercial Street (TCC Zone), Lynne Davies seconded and it was so voted, 5-0.*

**2003-043 34-36 Conwell Street (General Commercial Zone), Edward "Ted" Malone -**

**Malone -**

The applicant seeks a Special Permit from Article 3, Section 3340E to deviate from the allowed neighborhood building scale on two vacant lots. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Ted Malone and Michael Bunn appeared to present the application.

**Public Comment:** None. There was one letter of support on file.

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

**FINDINGS OF FACT:**

- The lot is currently vacant and the neighborhood average building scale is 85.81 scale units;
- The allowable scale is 107.27 s.u.;
- The applicant proposes two structures, each with a scale of 190 s.u.;
- The GC Zoning District in which these structures are located has a mixture of large commercial and small residential structures; and
- The proposed structures will be in keeping with the character of the surrounding neighborhood.

*Lynne Davies moved to grant a Special Permit from Article 3, Section 3340E to deviate from the allowed neighborhood building scale on two vacant lots located at 34-36 Conwell Street (GC Zone), Howard Weiner seconded and it was so voted, 5-0. Howard Weiner will write the decision.*

**NEXT MEETING**

The next meeting will be on July 10, 2003 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT**

*Howard Weiner moved to adjourn at 9:30 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 July 10, 2003.

Respectfully submitted,

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Zoning Board of Appeals Signature

Ellen C. Battaglini