

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

**MEETING MINUTES OF  
JULY 10, 2003**

**MEETING HELD IN TOWN HALL**

**Members Present:** Gary Reinhardt, Peter Page, Howard Weiner and Lynne Davies.

**Members Absent:** Steve Melamed (excused).

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

**WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 6:32 P.M.

**PENDING DECISIONS:**

**2003-038 9-11 Carver Street (Residential 3 Zone), Kelly Weiss on behalf of Carver Street Trust, James Foss, Trustee -**

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

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

Gary Reinhardt, Peter Page, Steve Melamed, 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, 4-0-1 (absent).*

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

Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case. Lynne Davies read the decision concerning the scale issue. *Peter Page moved to accept the language as written, Howard Weiner seconded and it was so voted, 4-0-1 (absent).*

Chair Gary Reinhardt read a letter from Attorney Eliot F. Parkhurst stating that the applicant's lender did not have a problem with placing a deed restriction on the property, but inquired as to whether the restriction could be limited to 10-20 years instead of 'in perpetuity' as the Board had requested. The Board agreed to limit the deed restriction on the property to 20 years. The language of the Board's decision was amended to reflect that decision. *Howard Weiner moved to accept the language as amended, Lynne Davies seconded and it was so voted, 4-0-1 (absent).*

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

**Malone -**

Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case. Howard Weiner read the decision. *Lynne Davies moved to accept the language as amended, Peter Page seconded and it was so voted, 4-0-1 (absent).*

Albert Proia, who is a prospective member of the Zoning Board of Appeals was in attendance to observe the hearing.

**MINUTES:**

**June 19, 2003 – Lynne Davies moved to accept the language as amended, Howard Weiner seconded and it was so**

*voted, 4-0-1 (absent).*

Chair Gary Reinhardt adjourned the Work Session at 6:55 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. Four members of the Board were present and one was absent.

### **2003-044      6 School Street (*Residential 3 Zone*), John Lisbon on behalf of Joseph Pallant -**

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

**Presentation:** John Lee Lambrou, representing John Lisbon, and Attorney Robin B. Reid, representing Joseph Pallant, appeared to present the application. The deck that is the subject of the Special Permit request has already been constructed at the premises.

**Public Comment:** None. There was 1 letter of support on file.

**Board Discussion:** The Board questioned Mr. Lambrou and Attorney Reid concerning how the deck got built without a proper building permit. Warren Alexander then requested that when the applicant picks up the attested copy of the Board's decision at the Town Clerk's office after the 20-day appeal period has expired and before that decision is then filed with the Barnstable County Registry of Deeds, the Building Permit must be picked up, paid for and placed on the structure.

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

- The neighborhood average building scale is 72.98 scale units;
- The scale of the existing structure prior to the deck was 89.17 s.u.;
- The allowed scale in the neighborhood is 83.93 s.u.;
- The completed project has a scale of 103.98 s.u.;
- The applicant has agreed to pick up and pay for the Building Permit prior to filing this decision with the Barnstable County Registry of Deeds; and
- The Board has determined that the deck as proposed is in keeping with the character of the neighborhood and is, therefore, well within the spirit of the Local Comprehensive Plan.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood allowed building scale of a pre-existing, non-conforming, single-family dwelling at the property located at 6 School Street (Res 3 Zone) with the condition that the Building Permit be placed on the structure before the Special Permit takes effect, Howard Weiner seconded and it was so voted, 4-0. Peter Page will write the decision.*

### **2003-045      MacMillan Pier (*Harborfront Overlay District of the Town Commercial Center Zone*), Bay State Cruise Company on behalf of the Town of Provincetown -**

The applicant seeks a Variance from Article 3, Section 3230 of the Zoning By-Laws to install a sign in excess of 16 square feet. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case. Chair Gary Reinhardt explained the implications of a four-member Board to the applicant. The applicant has an option of moving forward with his application, in which case he would need a unanimous vote from the Board in order to have a Variance granted. Or he has the option to continue the case until a five-member Board is seated. The applicant chose to proceed.

**Presentation:** Michael Glasfeld appeared to present the application. He is not requesting to place a larger sign out on the Pier to generate business, but to direct business. The public sometimes has a hard time figuring out where to catch the ferry.

**Public Comment:** Rex McKinsey, the President of the Pier Corporation, spoke in favor of the application, believing a larger sign would alleviate the confusion of the public when searching for the ferry. There were no letters on file.

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

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

- MacMillan Pier is located in the Harborfront Overlay District of the Town Commercial Center

Zone District;

- MacMillan Pier has a number of unique issues within its Zoning District that affect the visibility of the various businesses located on it; and
- Within the next year, the Pier Corporation will be establishing guidelines for signage on MacMillan Pier and the applicant has agreed to work with the Pier Corporation to further these goals.

*Lynne Davies moved to grant a Variance from Article 3, Section 3230 of the Zoning By-Laws to install a sign in excess of 16 square feet on property located on MacMillan Pier (Harborfront Overlay District of the TCC Zone), Howard Weiner seconded and it was so voted, 4-0.* Howard Weiner will write the decision.

**2003-046**

**9 Ryder Street Extension (Harborfront Overlay District of the Town Commercial Center), Chris Townsend on behalf of Townsend Lobster & Seafood Market and Cabral Enterprises, Inc. –**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to install 35 seats for patrons. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case. Chair Gary Reinhardt explained the implications of a four-member Board to the applicant. The applicant chose to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Chris and Rebecca Townsend appeared to present the application. The applicant wishes to extend his season and to provide shelter for his patrons in case of inclement by installing indoor seating. The Town of Provincetown has already agreed to hook up the property to the sewer system as a 35-seat restaurant.

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

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

**FINDINGS OF FACT:**

- The applicant has been in business for 1 year as a seafood market with a take-out component; and
- The addition of restaurant seats will only add to servicing the public and enhancing the waterfront character of the town.

*Howard Weiner moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to install 35 seats for patrons for the property located at 9 Ryder Street Extension (Harborfront Overlay District of the TCC Zone), Lynne Davies seconded and it was so voted, 4-0.* Lynne Davies will write the decision.

**2003-047 335 Commercial Street (Town Commercial Center Zone), Sara Cole and Ciaran Dunne on behalf of Clipper Ventures Realty Trust -**

The applicants seek a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to alter a current seating plan to include 12 outside second floor deck seats. Chair Gary Reinhardt explained the implications of a four-member Board to the applicants. The applicants chose to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Sara Cole, Ciaran Dunne, John Sousa and Tom Thompson appeared to present the application. The applicants are looking to grow their business by implementing a flex-seating plan for 12 seats on the existing deck at the premises.

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

**Board Discussion:** The current capacity sign at the premises states the capacity is 64 seats is incorrect. The Board requested that the applicants post the correct capacity of the restaurant as 59. The Board also reminded the applicants that it will be up to them to police the number of seats in the restaurant when they are using the deck area. The Board requested that the applicants submit a plan showing 59 seats.

### **FINDINGS OF FACT:**

- The restaurant currently has a capacity of 59 seats. The new configuration allows for 59 seats; 47 dedicated for dining and 12 dedicated for the bar area;
- 12 of the seats dedicated to dining will be allowed on a flexible basis to be used on the second floor deck at which time there will be 12 seats removed from the indoor dining area; and
- The second floor outside deck will be in use from 11:00 A.M. until 10:00 P.M. daily.

*Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to alter a current seating plan to include 12 outside second floor deck seats at the property located at 335 Commercial Street (TCC Zone), Peter Page seconded and it was so voted, 4-0. Lynne Davies will write the decision.*

### **2003-048 206-208 Commercial Street (Town Commercial Center Zone), Hal Winard -**

The applicant seeks a Special Permit under Article 3, Section 3100 of the Zoning By-Laws to extend a pre-existing, non-conforming structure along non-conforming dimensions to facilitate the addition of a shed dormer and accessible and second means of egresses. Chair Gary Reinhardt explained the implications of a four-member Board to the applicant. The applicant chose to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** John Sousa, Tom Thompson and Hal Winard appeared to present the application.

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

**Board Discussion:** Warren Alexander addressed the growth management issue. The Board requested that a plot plan be submitted along with new plans.

### **FINDINGS OF FACT:**

- The existing property contains dwelling units with a total of 5 bedrooms;
- The structure is pre-existing, non-conforming to the required front yard setback and the east side yard setback;
- The proposed structure will contain 2 dwelling units with a total of 2 bedrooms, 2 retail spaces and 3 office spaces with the possibility that 1 of those offices spaces will be converted into a retail space; and
- The proposed structure will increase the non-conformancy by being built within the setback within the existing footprint, thereby extending the non-conformancy along the non-conforming dimension.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3100 of the Zoning By-Laws to extend a pre-existing, non-conforming structure along non-conforming dimensions to facilitate the addition of a shed dormer and accessible and second means of egresses at the property located a 206-208 Commercial Street (TCC Zone), Howard Weiner seconded and it was so voted, 4-0. Peter Page will write the decision.*

### **2003-049 368 Commercial Street (Town Commercial Center), Mary Ellen Otto -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the display of merchandise outdoors on the top, front step as well as the area in the courtyard facing Arch Street. Chair Gary Reinhardt explained the implications of a four-member Board to the applicant. The applicant chose to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Mary Ellen and Bob Otto appeared to present the application.

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

**Board Discussion:** The Board briefly questioned Mr. and Mrs. Otto.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-laws for the display of merchandise outdoors on the top, front step as well as the area in the courtyard facing Arch Street at the property located at 338 Commercial Street (TCC Zone), Howard Weiner seconded and it was so voted, 4-0.*

### **PENDING CASES:**

### **2003-033 540 Commercial Street (Residential 3 Zone), Attorney Lester J. Murphy on behalf of Provincetown Hospitality, LLC (continued from June 19, 2003) -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to allow outdoor service of food and alcoholic beverages, poolside and on the patio outside the existing

restaurant/lounge. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

**Presentation:** Attorney Lester J. Murphy and Elaine Quigley appeared to present the application. After numerous discussions with the neighbors, Attorney Murphy's client has decided to ask only for alcoholic beverage service in the pool and patio area adjacent to the lounge. The applicant requests flex-seating for 15 seats to alternate between the lounge, the pool and the patio area.

**Public Comment:** Gail Bliss spoke of her concerns about the ability of the area in question to be monitored properly. Klaus Betten spoke of his concern about the possibility of excessive noise in the pool area. George Mizner and Marsel Marsulam spoke of their concern as to how the areas in question will be monitored. There were 6 letters on file opposed to the application and 1 from an abutting condominium association who had no objections to the application.

**Board Discussion:** The Board question Attorney and Ms. Quigley.

**FINDINGS OF FACT:**

- The hours of operation are: 12:00 P.M. – 5:00 P.M. in the pool area, 12:00 P.M. – 7:00 P.M. in the patio area, 7:00 A.M. – 11:00 P.M. for food service in the lounge and 12:00 P.M. – 1:00 A.M. for alcoholic beverage service in the lounge;
- A total of 12 seats are allowed for service of food and alcoholic beverages in the 3 areas with an understanding that food service will only occur in the indoor lounge;
- There will be a total of 15 seats with the option of using 12 seats outdoors, either in the pool or patio area, on a flexible seating basis; and
- The Special Permit will expire on December 31, 2004.

*Howard Weiner moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to allow outdoor service of food and alcoholic beverages, poolside and on the patio outside the existing restaurant/lounge at the property located at 540 Commercial Street (Res 3 Zone), Peter Page seconded and it was so voted, 4-0. Lynne Davies will write the decision.*

**OTHER BUSINESS:**

The Board spoke to Albert Proia about his willingness to become an alternate member of the Board.

*Gary Reinhardt moved to appoint Albert Proia as an alternate member of the Zoning Board of Appeals with a term to expire on December 31, 2004, Lynne Davies seconded and it was so voted, 4-0.*

**NEXT MEETING**

The next meeting will be on July 24, 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 24, 2003.

Respectfully submitted,

\_\_\_\_\_  
Zoning Board of Appeals Signature

\_\_\_\_\_  
Ellen C. Battaglini