

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
August 7, 2003

MEETING HELD IN TOWN HALL

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

Members Absent: Steve Melamed (excused) and Albert Proia (excused).

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

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:45 P.M.

PENDING DECISIONS:

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

PENDING CASES:

2003-034 40 Bradford Street (Residential 3 Zone), John Lisbon on behalf of William Meadow -
The applicant seeks a Special Permit under Article 3, Section 3340E, *Building Scale*, to deviate from the allowed neighborhood average building scale by increasing the scale of the pre-existing, non-conforming structure. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.
Presentation: John Lisbon appeared before the Board. He is waiting for new plans and new scale calculations from the applicant.

FINDINGS OF FACT:

- The existing structure has a scale of 114.03 scale units;
- The proposed scale of the project is 137.70 s.u.;
- The allowed scale of the neighborhood, as per the Assessor's data, is 78.01 s.u.;
- The Board found that the proposal would be in keeping with the character of the surrounding neighborhood and, therefore, in keeping with the intent of the Local Comprehensive Plan; and
- The Board further found that the benefits of the proposal would outweigh any hazard, congestion or environmental degradation.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3340E, Building Scale, to deviate from the allowed neighborhood average building scale by increasing the scale of the pre-existing, non-conforming structure at the property located at 42 Bradford Street (Res 3 Zone), Howard Weiner seconded and it was so voted, 4-0.

ADMINISTRATIVE ACTION:

2002-071 232-232R Bradford Street, Nextel Communications -

The applicant sought a Variance under Article 7, Section 7070, Subsections L and M.3 (Location/Class Type 4), 500-foot horizontal setback requirement; Section 7110, Monitoring and Elevation Compliance; Section 7130, Indemnification, Insurance and Fees; and Section 7140, Terms of Special Permit of the Zoning By-Laws to install a wireless Telecommunication Facility with 6 antennas to be camouflaged inside a cupola, together with an underground 10-foot by 20-foot equipment room on land owned by

Richard P. Wrigley. The applicant was denied a Variance by the Board. The applicant then appealed the decision to Federal District Court and the Court subsequently ordered that the Town of Provincetown provide Nextel with all the permits that they had requested.

Gary Reinhardt read the decision written by Town Counsel. *Peter Page moved to grant a Variance under Article 7, Section 7070, Subsections L and M.3 (Location/Class Type 4), 500-foot horizontal setback requirement; Section 7110, Monitoring and Elevation Compliance; Section 7130, Indemnification, Insurance and Fees; and Section 7140, Terms of Special Permit of the Zoning By-Laws to install a wireless Telecommunication Facility with 6 antennas to be camouflaged inside a cupola, together with an underground 10-foot by 20-foot equipment room on land owned by Richard P. Wrigley, Lynne Davies seconded and it was so voted, 4-0.*

ADMINISTRATIVE AMENDMENT:

2002-077 586 Commercial Street, Eric E. Dray -

Eric Dray and Mark Kinane appeared to present the Amendment. The pitch of the roof on a third floor dormer is being decreased in order to increase the ceiling height. New plans were submitted by the applicant.

Lynne Davies moved to grant an Administrative Amendment, Peter Page seconded and it was so voted, 4-0.

MINUTES:

July 24, 2003 – Howard Weiner moved to accept the language as written, Gary Reinhardt seconded and it was so voted, 3-0-1 (abstain).

Chair Gary Reinhardt adjourned the Work Session at 7:07 P.M.

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:07 P.M. and explained the Public Hearing procedures to the public. Four members of the Board were present and two were absent.

2003-051 508 Commercial Street (Residential 3 Zone), Paul and Susan Van Apeldoorn -

The applicant seeks a Special Permit under Article 3, Section 3100 of the Zoning By-Laws to erect a 21 x 4 ½ foot second story deck, which will extend into the front yard setback, upon a pre-existing, non-conforming single-family structure. Chair Gary Reinhardt explained the implications of a four-member Board. The applicant would need a unanimous decision in order to have a Special Permit granted. He asked if the applicant would like to proceed or wait for a five-member Board to be seated and the applicant chose to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner, sat on the case.

Presentation: Paul and Susan Van Apeldoorn appeared to present the application.

Public Comment: None. There was one letter in favor of the project on file.

Board Discussion: The Board briefly discussed the case.

Lynne Davies moved to consider the decision as a finding under the Goldhirsh v. McNear ruling, Peter Page seconded and it was so voted, 4-0.

Howard Weiner moved to grant a Special Permit under Article 3, Section 3100 of the Zoning By-Laws to erect a 21 x 4 ½ foot second story deck, which will extend into the front yard setback, upon a pre-existing, non-conforming single-family structure located at 508 Commercial Street (Res 3 Zone) as a finding under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 4-0.

2003-052 323-323 ½ Commercial Street (Town Commercial Center), William N. Rogers, P.E., R.L.S., on behalf of Luco Realty Trust -

The applicant seeks a Special Permit under Article 3, Section 3100 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure. Chair Gary Reinhardt explained the implications of a

four-member Board and asked the applicant if he would like to proceed and he assented. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: Billy Rogers, Gary Locke, Leonard Enos and Leonard Enos, III appeared to present the application. The applicant wants to renovate an old building to bring it more into conformity with the historical character of other structures in Town. He wants to replace the rotting portions of the building and install a basement.

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

Board Discussion: The Board briefly discussed the case.

FINDINGS OF FACT:

- The existing structure is a pre-existing, non-conforming mixed use commercial building with a bar/restaurant, retail space and a two bedroom apartment;
- The building is a non-conforming in its front yard and east yard setbacks;
- The proposed renovation will bring the building into compliance with both the State and FEMA requirements;
- The proposed structure will, therefore, improve public safety and will be less of a fire risk; and
- The proposal successfully maintains an historic structure within the Town's Historic District with integrity.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3100 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming structure located at 323-323 ½ Commercial Street (TCC Zone), Howard Weiner seconded and it was so voted, 4-0.

2003-053

2 Browne Street (Residential 3 Zone), William P. Hamlin and Ramon S. Alcolea -

The applicant seeks a Special Permit under Article 3, Section 3110 to alter and extend a pre-existing, non-conforming single-family structure with an addition of a garage/artist workspace. Chair Gary Reinhardt explained the implications of a four-member Board and asked if the applicant would like to proceed and he assented. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: William P. Hamlin and Ramon S. Alcolea appeared to present the application.

Public Comment: None. There were 3 letters on file in favor of the project and none against.

Board Discussion: The Board briefly discussed the project.

Lynne Davies moved to consider the decision as a finding under the Goldhirsh v. McNear ruling, Peter Page seconded and it was so voted, 4-0.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3110 to alter and extend a pre-existing, non-conforming single-family structure with an addition of a garage/artist workspace at the property located at 2 Browne Street (Res 3 Zone), Howard Weiner seconded and it was so voted, 4-0.

2003-054 460 Commercial Street (Residential 3 Zone), Provincetown Art Association and Museum -

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 museum structure and a Special Permit under Section 3340E of the Zoning By-Laws to deviate from the neighborhood allowed building scale. Chair Gary Reinhardt explained the implications of a four-member Board and asked if the applicant would like to proceed and she assented. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: Chris McCarthy, Executive Director of the Provincetown Art Association and Museum, Mike LeBlanc, architect, and Burt Wolfman appeared to present the application. The museum seeks to undertake some changes and general repairs to the building, including an expansion of storage space underground, repairing a leaking roof and locating a school on the second floor of the building. The museum also has a tentative agreement with the Town to locate public bathrooms within the proposed new structure.

Public Comment: Rosemarie Consoli, an abutter, expressed concerns about the scale of the project, the parking issues, the HVAC system and the sewage system, in light of the addition of public restrooms. Candy Silva, an abutter, also expressed concerns about the scale of the project, the traffic that may be generated, the noise and the parking issue. Klara Muller, an abutter, echoed the concerns of the previous speakers. There were no letters on file.

Board Discussion: The Board discussed the scale issues and concluded after further discussion that they would like to take another look at the neighborhood to try and better understand the objections of the various abutters. The Board would like to consider what the museum proposal offers to the Town as opposed to what is being taken away from the neighborhood. The case will be continued until the

September 4, 2003 Work Session at 6:00 P.M.

2003-055 80-82 Bradford Street and 4 Prince Street (Residential 3 Zone), Eliot Parkhurst, Attorney, on behalf of Boutique Hospitality, Inc. -

The applicant seeks a Special Permit under Section 2460, pursuant to Section 5330 of the Zoning By-Laws for the service food and alcoholic beverages to the guests only of an inn.

2003-056 80-82 Bradford Street and 4 Prince Street (Residential 3 Zone), Eliot Parkhurst, Attorney, on behalf of Boutique Hospitality, Inc. -

The applicant seeks a Variance under Article 1, *Definition of Inn*, and Section 2470, *Parking Requirements*, of the Zoning By-Laws for the operation of an inn located on more than one lot and without the required number of parking spaces. Chair Gary Reinhardt explained the implications of a four-member Board and asked if the applicant if he would like to proceed. The applicant assented. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: Tom Walter and Attorney Eliot Parkhurst appeared to present the application. The applicant would like to expand his business to include food and alcohol service to his guests only.

Public Comment: Betty Newman, an abutter, spoke against the application. Mary-Jo Avellar is concerned about the ability of the inn to control whom it serves and about the increase in sewage usage. She further expressed concern about the service of alcohol in such close proximity to a church and a school. Rose Steele, an abutter to the premises also expressed concerns about the negative impacts on the neighborhood. Attorney Thomas Johanson, representing St. Peter's Church, spoke against the project. There was a petition signed by 19 people and 3 letters in opposition to the application.

Board Discussion: The Board discussed the issue of a change in use and the need for a seating plan to show where the tables and chairs will be located. They also discussed whether this application would be subject to the Growth Management by-law. The Board feels that the applicant need to apply for a change of use and get into the Growth Management queue. Warren Alexander expressed his opinion on the issue. The Board decided to continue the discussion of the application at the September 4, 2003 Work Session at 6:00 P.M.

NEXT MEETING

The next meeting will be on September 4, 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 10:00 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 September 4, 2003.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini