

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
September 4, 2003

MEETING HELD IN TOWN HALL

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

Members Absent: Albert Proia (excused).

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

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:02 P.M.

ADMINISTRATIVE ACTION:

- 99-012 Community Housing Resources – Provincetown Heights, Inc. -**
Gary Reinhardt, Peter Page, Steve Melamed and Howard Weiner sat on the case. Michael Bunn, representing Community Housing Resources and Provincetown Heights, Inc., appeared to request the Administrative Action. The applicant requests change in the wording of the decision rendered by the Zoning Board of Appeals in Case # 99-012. The language of the original decision was too restrictive and the change would put the language in conformance with Massachusetts state law.
Steve Melamed moved to consider the request in Case # 99-012 as an Administrative Amendment, Howard Weiner seconded and it was so voted, 5-0.
Steve Melamed moved to approve the request for an Administrative Amendment in Case # 99-012, accepting the language as amended, Peter Page seconded and it was so voted, 4-0.

PENDING DECISIONS:

- 2003-034 42 Bradford Street (Residential 3 Zone), John Lisbon on behalf of William Meadow -**
Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case. Howard Weiner read the decision. *Steve Melamed moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*

Chair Gary Reinhardt postponed the Work Session at 6:18 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 6:23 P.M.

PENDING CASES:

- 2003-050 795 Commercial Street (Residential 1 Zone), Attorney Brian J. Wall on behalf of Craig E. Lyon -**
Gary Reinhardt, Peter Page, Lynne Davies, Howard Weiner, and Albert Proia sat on the case. The Board had not obtained any new information from the Health Agent. They discussed their review of the building files pertaining to the case, concluding that the previous owner of the property had never applied for the addition of any bedrooms.

FINDINGS OF FACT:

- In the building file, there are a number of applications for construction at 795 Commercial Street, including an application for Permit # 1494, dated August 8, 1982. This application is for an addition to the second story in which an additional bedroom could be added. On the application it states that the structure has one bedroom and that “there will be no bedroom added”;
- An application for construction dated February 11, 1987, lists the structure as having one bedroom;
- In the building file, there are no applications for the addition of a second, third or fourth bedroom; and
- At this time, additional bedrooms might be added through the granting of a Growth Management permit.

Lynne Davies moved to deny the applicant’s appeal pursuant to M.G.L. c. 40A, s. 8 and Article 5, Section 5223 of the Zoning By-Laws, thereby upholding the decision of the Building Commissioner that the application for a building permit would convert an existing dwelling, containing one bedroom, to four bedrooms, without a required Growth Management permit, Howard Weiner seconded and it was so voted, 4-0-1 (absent). Lynne Davies will write the decision.

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

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

Chris McCarthy and Peter Watts, of the Provincetown Art Association and Museum, and Mike LeBlanc, architect, appeared before the Board. The Board discussed the case and felt that the project’s use as a museum requires it to be large in scale and that the benefit that the improvements will bring to the Town outweigh any adverse effects on the neighborhood.

FINDINGS OF FACT:

- The proposed improvements to the Provincetown Art Association and Museum will enhance the public appreciation of the artistic heritage of the Town;
- The addition of classroom space will be a benefit to the Town and to the year-round economy;
- The Provincetown Art Association and Museum has served the community since 1914 and the requested proposal is required in order to maintain its legitimacy;
- By making available safe vaults for its collection of artwork, as well as environmentally controlled display spaces, the Provincetown Art Association and Museum is protecting the artistic heritage of the Town; and
- The clear benefits to the Town outweigh any adverse effects, such as congestion or environmental degradation.

Lynne Davies moved to grant 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 at the property located at 460 Commercial Street (Res 3 Zone), Howard Weiner seconded and it was so voted, 4-0. Howard Weiner will write the decision.

2003-055 80-82 Commercial Street, 4 Prince Street, Eliot F. Parkhurst on behalf of Boutique Hospitality, Inc. -

2003-056 80-82 Commercial Street, 4 Prince Street, Eliot F. Parkhurst on behalf of Boutique Hospitality, Inc. –

Attorney Eliot F. Parkhurst could not attend the hearing due to transportation issues and requested an extension. The Board briefly discussed some of the issues involved in the case and then continued it until the October 1, 2003 Work Session.

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 one was absent.

2003-057 17 Somerset Road (Residential 1 Zone), Attorney Lester J. Murphy on behalf of Salvatore DeRose -

The applicant seeks a Variance under Article 2, Section 2560, *Dimensional Schedule*, of the Zoning By-Laws for the construction of retaining wall structures within front and side yards. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

Presentation: Attorney Lester J. Murphy, William N. Rogers, and Richard Perry appeared to present the application. The lot has a steep and significant slope to it, with 20-26 feet existing between the street and the proposed location of the house, necessitating the construction of a long, steep driveway.

Retaining walls need to be constructed along the length of the driveway, between it and the building setbacks. The retaining walls are necessary in order that the abutting wetland, adjoining properties and the septic system will be protected. In addition, the retaining walls are necessary in the interest of the safety of the inhabitants of the house and any emergency vehicles that may have to access the property. The retaining walls will not cause any environmental degradation, hazard or congestion to the neighborhood. Attorney Murphy feels that due to this situation, the applicant has proved that he will suffer a hardship, owing to the shape and topography of the lot, and therefore should be granted a Variance.

Public Comment: Cynthia Gast, an abutter, voiced her concerns about the project and felt that the need for a Variance was self-imposed. There was one letter in favor and one letter against the project on file.

Board Discussion: The Board questioned Attorney Murphy and Mr. Rogers. The Board asked whether the applicant would be willing to lower the height of one of the retaining wall, the north-facing one. The applicant agreed. The Board requested a new set of plans reflecting the change in height of the north-facing retaining wall.

FINDINGS OF FACT:

- The proposed property is in the Residential 1 Zoning District and has a minimum front yard setback of 30 feet and a minimum side yard setback of 15 feet;
- The property qualifies under Article 2, Section 2530 of the Zoning By-Laws as for an 'isolated

lot' exemption;

- A literal enforcement of the by-law would create a substantial hardship, namely a lack of safe vehicular access, there by jeopardizing convenience and public safety;
- This hardship is owing to the unique shape of the lot, an extreme topographical grade from the property line down to the proposed house location and a close proximity to wetlands; and
- Relief may be granted without substantial detriment to the public good or substantial derogation from the intent or purpose of the by-law.

Steve Melamed moved to grant a Variance under Article 2, Section 2560, Dimensional Schedule, of the Zoning By-Laws for the construction of retaining wall structures within the front and side yards at the property located at 17 Somerset Road (Res 1), Lynne Davies seconded and it was so voted, 5-0.

Lynne Davies will write the decision.

2003-058

16 MacMillan Wharf (Harborfront Overlay District in the Town Commercial Center Zone), Frederick L. Nolan, III on behalf of Boston Harbor Cruises -

The applicant seeks a Variance under Article 2, Section 3230 and 3100 of the Zoning By-Laws to maintain two existing non-permitted signs totaling 26.33 square feet. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt explained the implications of a four member Board to the applicant. He would need a unanimous decision from the Board in order to be granted a Variance. He had the choice of proceeding with four members or continuing his case until there were five members seated. The applicant chose to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat on the case.

Presentation: Kevin Matthews, representing Boston Harbor Cruises appeared to present the application. He explained that there is a need for additional signage because of the location of the ferry. People are confused about where to buy tickets and where the ferry departs. The small signage now being used gets lost in its present location.

Board Discussion: Chair Gary Reinhardt informed the applicant that his application was not properly filled out. He suggested that the applicant seek advice and guidance from the Department of Community Development in filling out the application properly. The applicant had the option of withdrawing the application without prejudice or the Board would be compelled to deny his request. He chose to withdraw the application without prejudice.

2003-059 3 Fritz's Way (Residential 1 Zone), Thomas A. Edwards on behalf of John Benoit -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a one and one-half story single-family dwelling up and along a non-conforming dimension with the addition of a second story and to extend a non-conforming porch further into a non-conforming dimension. Gary Reinhardt, Peter Page, Steve Melamed, Lynne Davies and Howard Weiner sat on the case.

Presentation: Thomas A. Edwards appeared to present the application. The applicant wants to enlarge a small cottage to bring it more into conformity with the rest of the structures in the neighborhood.

Public Comment: Dot Sanderson, an abutter, spoke of her concerns about the close proximity of the cottage to her property. She feels that access to the cottage during the construction phase will be through her yard and is worried about the liability issue that might arise. Mrs. Fritz, an abutter, questioned the legitimacy of the boundaries of the property under discussion. There were no letters on file.

Board Discussion: The Board informed the applicant that it needs to see a certified plot plan that shows the present boundaries of the property. The case is continued until the September 18, 2003 Work Session.

2003-060 191 Commercial Street (Town Commercial Center Zone), Crayne A. Hurst -

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3330d of the Zoning By-Laws to alter a portion of an existing gable roof, to a flat roof and to alter and extend a pre-existing, non-conforming structure up and along a non-conforming dimension. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Howard Weiner sat on the case.

Presentation: Crayne A. Hurst and John DeSousa, designer, appeared to present the application. The applicant seeks to flatten a gable roof and add a railing to a deck located at the back of the building.

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

Board Discussion: The Board briefly questioned Mr. DeSousa and Mr. Hurst.

FINDINGS OF FACT:

- The proposed change from an existing gable to a flat roof will not hinder any solar access available to neighboring structures and will improve public safety by allowing a second means of egress from the apartment upstairs;
- The proposed changes are being made within the existing footprint and therefore not creating a new non-conformity;
- The improvement to public safety will outweigh any adverse effects to the neighborhood, such as environmental degradation, congestion or hazard; and
- The proper renovation will eliminate any question as to potential damage to the Town-owned building to the west of the structure.

Lynne Davies moved to grant a Special Permit under Article 3, Sections 3110 and 3330D of the Zoning By-Laws to alter a portion of an existing gable roof, to a flat roof and to alter and extend a pre-existing, non-conforming structure up and along a non-conforming dimension at the property located at 191 Commercial Street (TCC Zone), Howard Weiner seconded and it was so voted, 5-0. Peter Page will write the decision.

NEXT MEETING

The next meeting will be on September 18, 2003 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

Chair Gary Reinhardt and Howard Weiner will not be present for the September 18, 2003, and Lynne Davies will chair the meeting.

ADJOURNMENT

Howard Weiner moved to adjourn at 8:45 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 September 18, 2003.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini