

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

**MEETING MINUTES OF**  
**November 20, 2003**

**MEETING HELD IN TOWN HALL**

**Members Present:** Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey.

**Members Absent:** Howard Weiner (excused).

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

**WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 6:01 P.M.

Patrick Healey, who is interested in becoming an alternate member of the Zoning Board of Appeals, was present at the hearing. He is a landscape architect who has previously worked for the National Seashore. The Board discussed the position with Mr. Healey and answered his questions regarding the position.

**PENDING CASES:**

**2003-055**      **80-82 Commercial Street, 4 Prince Street (*Residential 3 Zone*), Eliot F. Parkhurst on behalf of Boutique Hospitality, Inc. -**

**2003-055**      **80-82 Commercial Street, 4 Prince Street (*Residential 3 Zone*), Eliot F. Parkhurst on behalf of Boutique Hospitality, Inc. -**

Gary Reinhardt, Peter Page, Lynne Davies and Howard Weiner sat both cases.

The Board discussed the cases while waiting the arrival of Attorney Parkhurst.

**Presentation:** Attorney Eliot F. Parkhurst presented the cases. The applicant is seeking to give up 6 rooms and convert these to 18 seats, to be utilized in a flexible manner. Some of these seats would be located in the outdoor porch areas. Eventually the applicant seeks 28 seats.

**Discussion:** The Board questioned Attorney Parkhurst and advised him to seek to have all 28 seats approved by the Board at once. The Board expressed concern about the outdoor seating with respect to the noise that may be generated by such an arrangement as many neighbors had expressed similar concerns at an earlier hearing. Attorney Parkhurst stated that his clients would be willing to give up the outdoor seating.

**FINDINGS OF FACT:** (for Case # 2003-055)

- The current use of the premises is as a hotel with 41 licensed guest units and 3 private residences;
- The proposed use of the premises is as a hotel with 35 rooms and 28 restaurant seats;
- At the present time, 18 of those restaurant seats will be permitted immediately and 10 will require a wait for Growth Management permits;
- The addition of quality dining establishment in conjunction with quality lodging establishment will enhance year-round tourism in Provincetown. The hours of operation for service of food and alcohol shall be 7:00 A.M until 11:00 P.M.;
- There shall be no outdoor seating with the exception of the large screened-in or winterized front porch area. No additional on-site parking will be added to accommodate the restaurant seating. No bar will be set up solely for the purpose of serving alcohol; and
- The dining premises will be open to public, but there shall be no outside advertising directed solely to dining patrons.

**FINDINGS OF FACT:** (for Case # 2003-056)

- The proposed use of the property; namely as a hotel with 35 guest units, 1 private residence and

28 restaurant seats, would require a total of 61 parking spaces;

- Presently on-site, there exists 19 parking spaces;
- The hotel has leased 15 additional parking spaces from St. Peter's Catholic Church; and
- The hotel is within immediate proximity of a municipal parking lot.

Lynne Davies will write both decisions.

Chair Gary Reinhardt postponed the Work Session at 7:28 P.M.

## PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:28 P.M.

**2003-070 150 Bradford Street (Residential 3 Zone), Fabulous Foods, Inc. d/b/a Bradford Street Market –**  
The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide a number (to be determined) of interior non-service seats for patrons within the storefront of a market. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Page, Lynne Davies and Brian Falvey sat on the case.

**Presentation:** Paul Pagliuca appeared to present the application. He seeks to add 11 seats for patrons of the market.

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

**Board Discussion:** The Board discussed whether the request for seats at the market constituted a change of use for the premises. Mr. Pagliuca was informed that he would have to apply for a change of use before he could request seating. The Board gave Mr. Pagliuca the choice of applying for a change of use and keeping the present application or withdraw the present application and apply for both a change of use and seating at the same time. The Board has until February 1, 2004 to file a decision on the case, so the change of use case must be decided by that date or the applicant will have to sign a waiver of time constraints.

**2003-071 226A Bradford Street (Residential 3 Zone), Neal Kimball on behalf of Elizabeth Patrick -**  
The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to construct a single-family dwelling, which will deviate from the existing neighborhood allowed building scale. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Neal Kimball and Patrick Patrick appeared to present the application. The structure that is being replaced is deteriorated. The single-family house that is being constructed will have no visual impact on the neighborhood because of the remote location of the property.

**Public Comment:** Steve MacNicol, an abutter, spoke in favor of the project. There were no letters on file.

**Board Discussion:** The Board questioned Mr. Kimball and Mr. Patrick.

### FINDINGS OF FACT:

- The proposed structure has a scale of 116.43 scale units, replacing an existing structure of 53.10 s.u.;
- The average scale of the neighborhood is 60.32 s.u, the allowable scale, as per the assessor's data, is 75.46 s.u.;
- The proposed lot coverage will be 3.7%; and
- The proposed structure will be only slightly visible from a public way, mainly Bradford Street, and therefore will have very little impact on the character of the existing neighborhood.

***Steve Melamed moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to construct a single-family dwelling, which will deviate from the existing neighborhood allowed building scale on the property located at 226A Bradford Street (Res 3 Zone), Peter Page seconded and it was so voted, 4-1.***

**2003-072 552 Commercial Street (Residential 2 Zone), Robert J. Starmer and Frederick M. Ramos, III -**

The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming single-family dwelling and under Section 3340E to deviate from the existing neighborhood allowed building. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Robert J. Starmer and Frederick M. Ramos, III appeared to present the application. The applicants wish to add a second story to the structure.

**Public Comment:** None. There were 2 letters in support of the application and none against.

**Board Discussion:** the Board determined that Section 3340E did not apply to the project.

*Lynne Davies moved to consider the case as a finding under the Goldhirsh v. McNear ruling, Steve Melamed 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 a pre-existing, non-conforming single-family dwelling at the property located at 552 Commercial Street (Res 2 Zone) under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 5-0.*

**2003-073 85 Shankpainter Road (General Commercial Zone), Lester J. Murphy, Attorney, on behalf of Clem & Ursie's Restaurant -**

The applicants seek a Special Permit under Article 2, Section 2440, and 2460 of the Zoning By-Laws to alter the existing seating area for the service of food and alcoholic beverages at Clem and Ursie's Restaurant. Steve Melamed recused himself because of a conflict of interest. Chair Gary Reinhardt explained the implications of a four-member Board to the applicant, namely that he would have to receive a unanimous vote in order to be granted a Special Permit and asked if he would like to proceed. The applicant agreed to proceed. Gary Reinhardt, Peter Page, Lynne Davies and Brian Falvey sat on the case.

**Presentation:** Attorney Lester J. Murphy and Clem Silva appeared to present the application. The applicant seeks to reconfigure the present 186 seats in the restaurant. This rearrangement involves moving some seats outside to the sushi bar area and opening up the area around the service windows inside.

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

**Board Discussion:** Brian Falvey acknowledged that he has had business dealings with Clem and Ursie's Restaurant but felt he could render a decision fairly and has no financial interest in the outcome of the case. The Board questioned Attorney Murphy and Mr. Silva.

**FINDINGS OF FACT:**

- The existing premises has a seating area containing 186 seats; and
- The proposed premises will also have a seating capacity of 186 seats.

*Lynne Davies moved to grant Special Permit under Article 2, Section 2440, and 2460 of the Zoning By-Laws to alter the existing seating area for the service of food and alcoholic beverages at Clem and Ursie's Restaurant (GC Zone) at 85 Shankpainter Road, Brian Falvey seconded and it was so voted, 5-0. Peter Page will write the decision.*

**2003-074 74 Race Point Road (Residential 3 Zone), Bernard C. Mullen, IV on behalf of James Buckingham -**

The applicant seeks a Special Permit under Article 2, Section 2440, B4a of the Zoning By-Laws to operate a neighborhood retail store. Lynne Davies disclosed that she received an abutter's notice for the case. She is not an direct abutter nor an abutter to a direct abutter, so she sat on the case. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Bernard C. Mullen, IV, James Buckingham and Miriam Collinson appeared to present the application. The applicant has a boat building repair and overhaul service and seeks to sell items related to that business.

**Public Comment:** Carla Vout, an abutter, voiced her concerns about oversized boats and trailers creating congestion on Race Point Road. Diane Hamilton is concerned about the additional traffic and congestion that may be created as a result of retail sales taking place on the premises. There was one letter on file supporting the application and five letters against.

**Board Discussion:** The Board questioned Mr. Buckingham and requested that the applicant submit more detailed plans of the building and parking plans for the premises. Chair Gary Reinhardt then advised the applicant that he could allow the Board to go ahead and vote or he could withdraw the application and after consulting with the Building Department, reapply for the Special Permit. Mr. Reinhardt also advised the applicant to consult with his neighbors before reapplying. The applicant chose to withdraw without prejudice.

*Lynne Davies moved to accept the withdrawal without prejudice, Brian Falvey seconded and it was so voted, 5-0.*

**2003-068 8 Montello Street (Residential 3 Zone), Peter Page on behalf of Hilda Neilly -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Law to extend a pre-existing, non-conforming two-family dwelling building with the construction of a required second means of egress. Peter Page recused himself because of a conflict of interest. Chair Gary Reinhardt explained the implications of a four-member Board to Neal Kimball, who was representing Peter Page and asked if he would like to proceed. Mr. Kimball chose to proceed. Gary Reinhardt, Lynne Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Neal Kimball appeared to present the application.

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

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

*Steve Melamed moved to consider the case as a finding under the Goldhirsh v. McNear ruling, Lynne Davies 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-Law to extend a pre-existing, non-conforming two-family dwelling building with the construction of a required second means of egress at the property located at 8 Montello Street (Res 3 Zone) under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 4-0.*

**2003-069 178 Bradford Street (Residential 3 Zone), Peter Page on behalf of James Mack –**

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 guesthouse entranceway up and along a non-conforming dimension. Gary Reinhardt, Lynne Davies, Steve Melamed and Brian Falvey sat on the case. Neal Kimball, who represented Peter Page chose to proceed with a four-member Board.

**Presentation:** Neal Kimball appeared to present the application. The applicant seeks to wooden awning over his front entryway.

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

**Board Discussion:** the Board briefly discussed the case.

**FINDINGS OF FACT:**

- The proposal is for a wooden awning to extend over the existing steps and porch which is an existing structure within the front yard setback; and
- The footprint remains the same.

*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 guesthouse entranceway up and along a non-conforming dimension at the property located at 178 Bradford Street (Res 3 Zone), Steve Melamed seconded and it was so voted, 4-0. Lynne Davies will write the decision.*

Chair Gary Reinhardt adjourned the Public Hearing at 9:45 P.M.

**WORK SESSION**

Chair Gary Reinhardt reconvened the Work Session at 9:45 P.M.

**ADMINISTRATIVE ACTION:**

**2002-072 4 Atwood Avenue, Dr. G. Brucehead, III -**

Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Steve MacNicol appeared to present the application. The height of the ceiling of the structure needs to be changed in order to bring the structure into conformity with the State Building Code.

*Peter Page moved to consider the request as an Administrative Amendment, Lynne Davies seconded and it was so voted, 5-0.*

*Peter Page moved to approve the request as an Administrative Amendment, Brian Falvey seconded and it was so voted, 5-0.*

**MINUTES:**

**November 6, 2003 – Lynne Davies moved to accept the language as written, Peter Page seconded and it was so voted, 3-0-2 (abstain).**

**NEXT MEETING**

The next meeting will be on December 4, 2003 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT**

*Brian Falvey 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 December 4, 2003.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

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Ellen C. Battaglini