

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

**MEETING MINUTES OF**  
**April 15, 2004**

**MEETING HELD IN TOWN HALL**

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

**Members Absent:** Peter Bez (excused).

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

**WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 6:30 P.M.

The Board discussed moving the May 6, 2004 hearing to May 13, 2004. There will be an Executive Session held that night to discuss pending litigation.

**PENDING CASES:**

**2004-013**     **128 Commercial Street (*Town Commercial Center*), Raymond Pelequin and Robert Paster on behalf of Lightning Realty Trust -**

Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood scale with the construction of a private garage attached to the principal dwelling structure.

**Presentation:** Neal Kimball and Raymond Pelequin were present to discuss the case. Revised plans were submitted to the Board showing the two buildings at the premises connected by a covered porch.

**Board Discussion:** In a report submitted to the Board, the Building Inspector, Warren Alexander, expressed his view that the two buildings as connected did not constitute a structure. The Board agreed with this opinion. The applicant chose to withdraw the application without prejudice.

**2004-022**     **361 Commercial Street (*Town Commercial Center Zone*), Daniel Lasser on behalf of Tonga Trust, T. Gandolpho, Trustee -**

The applicant seeks to renew a Special Permit for the outdoor display of pottery.

Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Patrick Eeley sat on the case.

**Presentation:** Mary Giammarino appeared to present the application.

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

**Board Discussion:** The Board briefly questioned Ms. Giammarino.

*Steve Melamed moved to grant a Special Permit for the outdoor display of pottery at the property located at 361 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.*

**2004-023**     **307 Commercial Street (*Town Commercial Center Zone*), Francis T. Muldoon on behalf of Provincetown Chamber of Commerce -**

The applicant seeks a Special Permit for the outdoor display of a penny press machine. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. The applicant requests to withdraw the application.

*Peter Page moved to accept the withdrawal of Case # 2004-023, Steve Melamed seconded and it was so voted, 5-0.*

**2004-028 24 Bradford Street (Residential 3 Zone), James Pat Patrick on behalf of George Poule -**

The applicant seeks a Special Permit under Article 3, Sections 3330 and 3340E of the Zoning By-Laws to change an existing gable roof to another roof configuration and to deviate from the allowed neighborhood building scale with the addition of a second story and a roof deck. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Tom Thompson and James Pat Patrick appeared to discuss the case.

**Board Discussion:** It was the opinion of Warren Alexander that there was not a third story being created by the project.

**FINDINGS OF FACT:**

- The change in the roof plan would be in keeping with the objectives of the Master Plan;
- The change in the roof plan would not be disruptive to the character of the neighboring area;
- The neighborhood average scale is 53.33 scale units;
- The allowed scale would be 65.93 s.u.;
- The proposed scale is 98.03 s.u.; and
- The additional scale will still be harmonious with the surrounding neighborhood and therefore in keeping with the objectives of the Local Comprehensive Plan.

*Steve Melamed moved to grant a Special Permit under Article 3, Sections 3330 and 3340E of the Zoning By-Laws to change an existing gable roof to another roof configuration and to deviate from the allowed neighborhood building scale with the addition of a second story and a roof deck on the premises located at 24 Bradford Street (Res3), Lynne Davies seconded and it was so voted, 4-0-1 (absent). Peter Page will write the decision.*

Chair Gary Reinhardt postponed the Work Session at 7:05 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. There were six members of the Zoning Board of Appeals present and one absent.

**2004-027 147 Bradford Street Extension (Residential 1 Zone), Attorney Lester J. Murphy, Esquire on behalf of Allan Gallant -**

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 use and structure with the addition of a third dwelling unit. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Attorney Lester J. Murphy and Allan Gallant appeared to present the application. With the addition of a third dwelling unit, there will be no bedrooms added and no changes to the exterior of the building.

**Public Comment:** None. There were no letters in the file.

**Board Discussion:** The Board briefly questioned Attorney Murphy.

**FINDINGS OF FACT:**

- This property was formerly located in a Residential 3 Zoning District that was later changed to a Residential 1 Zone, rendering its use to pre-existing, non-conforming;
- The change in use will have no adverse effects on the Town or the neighborhood;
- This is a neighborhood with numerous multiple dwelling units; and
- No bedrooms will be added to make the change.

*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 use and structure with the addition of a third dwelling unit on the premises located at 147 Bradford Street Extension (Res 1), Steve Melamed seconded and it was so voted, 5-0. Lynne Davies will write the decision.*

**2004-030 6 Law Street (Residential 3 Zone), Steven Langton on behalf of Joseph Basso -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the removal and reconstruction of a pre-existing, non-conforming utility building. The applicant was not present so the case was postponed until later in the evening.

2004-031

**293 Commercial Street (*Town Commercial Center Zone*), Stephen J. Boggess on behalf of Hake Nominee Trust -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for an additional ten outdoor seats. Gary Reinhardt, Peter Page, Lynne Davies, Brian Falvey and Patrick Eeley sat on the case.

**Presentation:** Stephen J. Boggess appeared to present the application. The applicant seeks to locate ten outdoor seats behind the building located at 293 Commercial Street.

**Public Comment:** None. There were no letters in the file.

**Board Discussion:** The Board questioned Mr. Boggess. The applicant stated that he intended to return on May 20, 2004 with an application for a Special Permit to operate a fast food restaurant. The Board suggested to the applicant that he combine the two applications and present them both at the May 20, 2004 hearing.

2004-032

**212-214 Commercial Street (*Town Commercial Center Zone*), Attorney Robin B. Reid, Esquire on behalf of New Art Realty Corp. -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcoholic beverages and the provision of live entertainment in a proposed cinema and cabaret use venue. Gary Reinhardt, Peter Page, Lynne Davies, Brian Falvey and Patrick Eeley sat on the case.

**Presentation:** Attorney Robin B. Reid and Paul deRuyter appeared to present the application. The applicant seeks to increase the use of the building, particularly during the winter months, by using the space for cultural activities and events.

**Public Comment:** Daniel Kells, executive director of the Provincetown Theater Foundation, speaking on behalf of that organization, spoke in favor of the application. Rick Murray spoke of his concerns about the possible increase in septic flow because of the change in use. Sian Robertson, an abutter, voiced her concern about the increase in noise levels. There was a letter in the file from an abutter, representing five households in the same building, which addressed concern about a potential increase in noise levels. There was a letter from another abutter who is concerned about the possible increase in noise as people exit the rear and side doors to smoke.

**Board Discussion:** The Board questioned Attorney Reid and Mr. DeRuyter. The Board suggested that additional insulation be added to the west side of the structure where the cabaret would be located in order to insure that the premises would be in compliance with the sound by-law. In addition, the Board requested that the applicant submit certification from the Health Agent as to the septic flow at the premises and whether there will be an increase in that flow as a result of the change in use and requested that a more detailed seating plan for the interior space be submitted to the Department of Community Development within ten days. The septic flow and revised seating plan will be discussed at the Work Session on May 13, 2004. Attorney Reid asked if she could submit a written decision at that time. The Board assented with the stipulation that an expiration date of December 31, 2005 for the Special Permit be included in that decision.

2004-033

**212-214 Commercial Street (*Town Commercial Center Zone*), Attorney Robin B. Reid, Esquire on behalf of New Art Realty Corp. -**

The applicant seeks a Special Permit under Article 3, Section 3340E and Article 4, Section 4140 of the Zoning By-Laws to deviated from the allowed neighborhood building scale and to increase the pre-existing, non-conforming lot coverage of 41.9 percent to 44.9 percent. The applicant requested a postponement of the case.

2004-034

**81 Shank Painter Road (General Commercial Zone), Neal Kimball and David Nicolau on behalf of Best Friends Realty Trust -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood scale with a second floor addition. Gary Reinhardt recused himself because of a conflict of interest. Steve Melamed chaired the case. Peter Page, Lynne Davies, Steve Melamed, Brian Falvey and Patrick Eeley sat on the case.

**Presentation:** Attorney E. James Veara and Neal Kimball appeared to present the application. The applicant seeks to add an aerobic studio the existing structure.

**Public Comment:** Greg Russo spoke in support of the application. There were 11 letters in the file in support of the project.

**Board Discussion:** The Board briefly questioned Attorney Veara and Mr. Kimball.

**FINDINGS OF FACT:**

- The size of the building, by its very nature, is large;
- The building is located in an area that has numerous large buildings; and
- Because of the location, the addition should not cause further congestion or have more of an impact on traffic in the neighborhood.

*Peter Page moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviated from the allowed neighborhood scale with a second floor addition on the premises located at 81 Shank Painter Road (GC), Patrick Eeley seconded and it was so voted, 5-0. Patrick Eeley will write the decision.*

2004-035

**3 Atlantic Avenue (Residential 3 Zone), John M. Reis, d.b.a. Golden Hammer, on behalf of Arthur Hagopian -**

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 single-family dwelling structure up and along the front and left side yard non-conforming dimensions. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Patrick Eeley sat on the case.

**Presentation:** John M. Reis and Arthur Hagopian appeared to present the application. The applicant seeks to add a second story to a portion of the existing structure.

**Public Comment:** None. There were no letters in the file.

**Board Discussion:** The Board briefly questioned Mr. Reis and Mr. Hagopian.

*Steve Melamed moved to consider as a finding 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 alter and extend a pre-existing, non-conforming single-family dwelling structure up and along the front and left side yard non-conforming dimensions on the premises located at 3 Atlantic Avenue (Res 3) as a finding under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 5-0.*

2004-036

**205-209 Commercial Street (Town Commercial Center Zone), George Murphy, d.b.a. Georgie Porgie's Bagel Shop, on behalf of Paul deRuyter's Aquarium Mall -**

The applicant seeks a Special Permit under Article 2, Sections 2460 and 2440 of the Zoning By-Laws to operate a fast food business. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Patrick Eeley sat on the case.

**Presentation:** George Murphy appeared to present the application. The applicant is moving his retail operation to the Aquarium Mall.

**Public Comment:** None. There were no letters in the file.

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

*Patrick Eeley moved to grant a Special Permit under Article 2, Sections 2460 and 2440 of the Zoning By-Laws to operate a fast food business on the premises located at 205-209 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0. The applicant submitted a written decision. Gary Reinhardt read the decision. Steve Melamed moved to approve the language as written, Patrick Eeley seconded and it was so voted, 5-0.*

2004-037

**150 Bradford Street (Residential 3 Zone), James Farley and Thomas Boland on behalf of Fabulous Foods, Inc., Brad McDermott and George Pagliuca, Trustees -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of vegetables and flowers for sale. Gary Reinhardt, Peter Page, Lynn Davies, Steve Melamed and Brian Falvey sat on the case.

**Presentation:** Jim Farley and Tom Boland appeared to present the application.

**Public Comment:** None. There were no letters in the file.

**Board Discussion:** The Board briefly questioned Mr. Farley and Mr. Boland.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of vegetables and flowers for sale on the premises located at 150 Bradford Street (Res 3), Brian Falvey seconded and it was so voted, 5-0.*

**2004-038**

**49A Commercial Street (Residential 2 Zone), Attorney Christopher J. Snow, Esquire on behalf of Alan L. Pinkerson -**

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3340E of the Zoning By-Laws to alter and extend a pre-existing, non-conforming single-family dwelling structure up and along the non-conforming west side and south rear yard dimensions and to deviate from the allowed neighborhood building scale. The Board chose to consider this case and the next together.

2004-039

**49A Commercial Street (*Residential 2 Zone*), Attorney Christopher J. Snow, Esquire on behalf of Alan L. Pinkerson -**

The applicant seeks a Variance under Article 2, Sections 2560 of the Zoning by-Laws to install a second means of egress located within a non-conforming yard setback dimension of a pre-existing, non-conforming single-family dwelling structure. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Patrick Eleey sat on the case.

**Presentation:** Attorney Christopher J. Snow and Gary Locke appeared to present the application. The applicant seeks to renovate the existing structure and bring it up to code.

**Public Comment:** David Martin, an abutter, spoke about his concerns regarding the size of the project, the lot coverage and the blockage of light to his property. Tim Chappell, an abutter, spoke in opposition to the application, citing his concerns about the large scale of the project. Robert Valois, residential designer, spoke against the application. Patrick Trani, an abutter, voiced his opposition to the project. Peter Gallagher, another abutter, spoke against the project as well. There was one letter in the file from Mr. Martin reiterating his opposition to the project.

**Board Discussion:** The Board questioned Mr. Locke and Attorney Snow. The Board requested that the applicant submit plans that were to scale and agreed that a site visit would help them in their deliberations about the case. Attorney Snow requested time to consult with his client.

2004-030

**6 Law Street (*Residential 3 Zone*), Steven Langton on behalf of Joseph Basso -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the removal and reconstruction of a pre-existing, non-conforming utility building. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melmed and Brian Falvey sat on the case

**Presentation:** Steven Langton appeared to present the application.

**Public Comment:** None. There were no letters in the file.

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

**FINDINGS OF FACT:**

- The existing shed has a side yard setback of 2 feet, plus or minus, and a rear yard setback of 4 feet, plus or minus, which do not meet the current setback requirements of 6 feet and 10 feet respectively; and
- The existing shed is 10 feet by 7 feet and the proposed shed will be 10 feet by 12 feet and will not encroach any further into the setbacks.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for the removal and reconstruction of a pre-existing, non-conforming utility building on the premises located at 6 Law Street (Res 3), Lynne Davies seconded and it was so voted, 5-0. Brian Falvey will write the decision.*

Chair Gary Reinhardt postponed the Public Hearing at 10:14 P.M.

## WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 10:14 P.M.

### PENDING DECISIONS:

- 2004-029**      **14 Cottage Street (*Residential 3 Zone*), Neal Kimball Residential Designs on behalf of Jon Maroto and George Nunno -**  
Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Lynne Davies read the decision. *Steve Melamed moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*

### MINUTES:

- March 18, 2004** – *Steve Melamed moved to accept the language as written, Brian Falvey seconded and it was so voted, 6-0-1 (absent).*

Chair Gary Reinhardt adjourned the Work Session at 10:21 P.M.

## PUBLIC HEARING

Chair Gary Reinhardt reconvened the Public Hearing at 10:21 P.M.

- 2004-038**      **49A Commercial Street (*Residential 2 Zone*), Attorney Christopher J. Snow, Esquire on behalf of Alan L. Pinkerson -**  
The applicant seeks a Special Permit under Article 3, Sections 3110 and 3340E of the Zoning By-Laws to alter and extend a pre-existing, non-conforming single-family dwelling structure up and along the non-conforming west side and south rear yard dimensions and to deviate from the allowed neighborhood building scale.
- 2004-039**      **49A Commercial Street (*Residential 2 Zone*), Attorney Christopher J. Snow, Esquire on behalf of Alan L. Pinkerson -**  
The applicant seeks a Variance under Article 2, Sections 2560 of the Zoning by-Laws to install a second means of egress located within a non-conforming yard setback dimension of a pre-existing, non-conforming single-family dwelling.  
The applicant made a request to withdraw both applications without prejudice.  
*Steve Melamed moved to accept the withdrawal without prejudice, Lynne Davies seconded and it was so voted, 5-0.*

### NEXT MEETING:

The next meeting will be on May 13, 2004 and will consist of an Executive Session at 6:15 P.M., Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:**

*Brian Falvey moved to adjourn at 10:30 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 May 13, 2004.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

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Ellen C. Battaglini