

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
May 20, 2004

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt, Peter Bez, Peter Page (arrived at 6:30 P.M.), Lynne Davies, Steve Melamed, Patrick Eeley and Brian Falvey

Members Absent: None.

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

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 6:00 P.M.

PENDING CASES:

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.

The applicant was not present and the case was postponed until after the Public 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 discuss the case. The applicant submitted a proposed site plan. Also submitted were two letters from abutters who had initially expressed concerns about the project stating that they were now satisfied with the plan for construction after having met with the applicant. The applicant stated that sound attenuation bats would be installed in the proposed cabaret side of the theater and only pre-packaged food items that are already sold at the concession stand would be offered to the patrons of the cabaret. These items will not be served to patrons in the cabaret, but sold only at the concession stand in the lobby.

Board Discussion: The Board questioned Attorney Reid and Mr. deRuyter.

Patrick Eeley moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcoholic beverages in the lobby before performances and during intermission only and the provision of live entertainment in the existing cinema and cabaret use venue at the premises located at 212-214 Commercial Street (TCC), with the condition that the Special Permit expire on December 31, 2004, Lynne Davies seconded and it was so voted, 4-0-1 (absent).

Gary Reinhardt read the written decision submitted by Attorney Reid. *Lynne Davies moved to accept the language as written, Patrick Eeley seconded and it was so voted, 5-0.*

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 deviate from the allowed neighborhood building scale and to increase the pre-existing, non-conforming lot coverage of 41.9 percent to 44.9 percent. Gary Reinhardt, Peter Page, Peter Bez, Lynne Davies and Steve Melamed sat on the case.

Presentation: Attorney Robin B. Reid and Paul deRuyter appeared to discuss the case. The applicant submitted floor plans that had been requested by the Board.

Board Discussion: The Board questioned Attorney Reid and Mr. deRuyter.

Peter Bez moved to grant a Special Permit under Article 3, Section 3340E and Article 4, Section 4140 of the Zoning By-Laws to deviate from the allowed neighborhood building scale and to increase the pre-existing, non-conforming lot coverage of 41.9 percent to 44.9 percent at the premises located at 212-214 Commercial Street (TCC), Steve Melamed seconded and it was so voted, 4-1. Peter Bez will write the decision. Attorney Reid submitted a written decision for the Board to consider. Mr. Bez agreed to look at the decision and communicate with Attorney Reid.

PENDING DECISIONS:

2004-044 5 Pleasant Street (Residential 3 Zone), Santos Construction, Arthur J. Santos on behalf of Stephen Syta -

The applicant seeks a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an accessory use swimming pool/spa. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Peter Bez read the decision. **Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 4-0-1 (absent).**

2004-045 350 Bradford Street (Residential 3 Zone), Michael and Sharon Santos on behalf of Michael Shay's Restaurant -

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide outdoor dining seats in the East side yard. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case. Patrick Eeley read the decision. **Lynne Davies moved to accept the language as written, Peter Bez seconded and it was so voted, 5-0.**

2004-046 359 Commercial Street (Town Commercial Center Zone), Neal Kimball on behalf of Joseph Zaloom and Patrick Devine -

The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second means of egress up and along a pre-existing, non-conforming dimension. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Lynne Davies read the decision. **Peter Bez moved to accept the language as written, Peter Page seconded and it was so voted, 5-0.**

2004-047 389-393 Commercial Street (Town Commercial Center Zone), Jackson Building and Remodeling on behalf of Clyde Mellert -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood allowed building scale for the construction of dormers. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Peter Bez read the decision. **Peter Page moved to accept the language as written, Lynne Davies seconded and it was so voted, 5-0.**

2004-048 238 Bradford Street (Residential 3 Zone), Daniel Kells, Executive Director of the Provincetown Theater Foundation -

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of alcoholic beverages and the provision of adult entertainment. 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 Bez seconded and it was so voted, 5-0.**

Gary Reinhardt postponed the Work Session at 7:02 P.M.

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:02 P.M. and explained the Public Hearing procedures to

the public. There were seven members of the Zoning Board of Appeals present.

- 2004-049** **293 Commercial Street (Town Commercial Center Zone), Linda Chase, d.b.a. Chaser's, on behalf of Hake Nominee Trust -**
The applicant seeks to amend a condition of Special Permit 1998-026 under Article 2, Section 2460 of the Zoning By-Laws to change the current start-up time of 6:00 P.M., for the provision of entertainment, to 12 noon daily. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.
Presentation: Linda Chase appeared to present the application.
Public Comment: Peter Warnick spoke in favor of the application. There were no letters in the file.
Board Discussion: The Board questioned Ms. Chase.
Peter Bez moved to grant amendment to a condition of Special Permit 1998-026 under Article 2, Section 2460 of the Zoning By-Laws to change the current start-up time of 6:00 P.M., for the provision of entertainment, to 12 noon daily on the premises located at 293 Commercial Street, Lynne Davies seconded and it was so voted, 5-0. Gary Reinhardt will write the decision with the existing findings of fact.
- 2004-050** **291-293 Commercial Street (Town Commercial Center Zone), Linda Unish and Thomas Barnes, d.b.a Indo, on behalf of Hake Nominee Trust -**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. The applicant was not present so the case was postponed until later in the Hearing.
- 2004-051** **183-185 Commercial Street (Town Commercial Center Zone), Shari Kadison on behalf of John Yingling -**
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Steve Melamed disclosed that he is an abutter to an abutter but felt he could render a fair decision on the case. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.
Presentation: Shari Kadison appeared to present the application. She seeks to display produce and flowers.
Public Comment: None. There were no letters in the file.
Board Discussion: The Board briefly questioned Ms. Kadison.
Peter Bez moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise for one year on the premises located at 183-185 Commercial Street (TCC), Peter Page seconded and it was so voted, 4-1.
- 2004-052** **11 Prince Street, (Residential 3 Zone), Father Henry J. Dahl on behalf of the Roman Catholic Bishop of Fall River -**
The applicant seeks a Special Permit under Article 2, Section 2440, B7, of the Zoning By-Laws to increase the number of paid parking spaces and to relocate the parking entrance booth. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.
Presentation: Father Henry J. Dahl appeared to present the application.
Public Comment: Robert Cabral spoke in favor of the application. Donald Morse. Sr., and Donald Morse, Jr. both spoke against the application. Robert Carreiro asked a question about the scope of the application. There was one letter in the file supporting the application.
Board Discussion: The Board questioned Father Dahl and informed him that he would need letters from the Building Commissioner, the Fire Chief and the Police Chief approving the extra spaces in the Church's parking lot.
FINDINGS OF FACT:
 - The existing parking lot is licensed for 55 parking spaces. The lot has recently been repaved and relined, allowing for 80 parking spaces of appropriate size with the necessary number of handicap spaces clearly marked. Of these 80 parking spaces, 15 have been leased to a neighboring inn;
 - During religious services at the church, only 20 spaces will be for rent, including the 15 leased spaces;

- The Town has a severe parking shortage, thereby necessitating private lots; and
- The applicant has asked to withdraw the portion of the application requesting to move the entrance to the parking lot.

Peter Bez moved to grant a Special Permit under Article 2, Section 2440, B7 of the Zoning By-Laws to increase the number of paid parking spaces at the premises located at 11 Prince Street (Res 3) contingent upon the receipt of letters of approval from the Building Commissioner, the Police Chief and the Fire Chief, Lynne Davies seconded and it was so voted, 5-0. Peter Bez will write the decision.

2004-053

309 Commercial Street (Town Commercial Center), Christopher S. Rego on behalf of John T. Grace -

The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to make a permanent a pre-existing, non-conforming metal and canvas temporary structure and to deviate from the neighborhood allowed building scale of a mixed use commercial structure. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Christopher S. Rego appeared to present the application. The applicant seeks to replace a metal and canvas awning over an outdoor dining area with a wooden structure topped with a rubber roof.

Public Comment: Peter Warnick, an abutter, asked whether the applicant has appeared before the Historic District Commission and whether the applicant should be seeking a Variance. There were no letters in the file.

Board Discussion: The Board questioned Mr. Rego and informed him that his application was incomplete. The application should include existing and proposed plans, existing and proposed elevations, a certified site plan and an indication as to exactly where the construction is to take place.

FINDINGS OF FACT:

- The existing metal and canvas structure is pre-existing, non-conforming and will be replaced, in a non-conforming area, with a wood structure and rubber roof;
- The proposed structure will be both visually and more acoustically beneficial than the existing structure;
- The existing structure has a scale of 235.79 scale units;
- The neighborhood average scale is 186.22 s.u., with an allowable scale of 214.15 s.u.;
- The proposed structure will be 24 feet by 17 feet with a height of 10 feet at its highest point; and
- The proposed structure will have little visual impact on the neighborhood and therefore will be in keeping with the intent of the Local Comprehensive Plan.

Peter Bez moved to grant a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to make a permanent a pre-existing, non-conforming metal and canvas temporary structure and to deviate from the neighborhood allowed building scale of a mixed use commercial structure on the premises located at 309 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0. Lynne Davies will write the decision.

2004-054

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

The applicant seeks a Special Permit under Article 2, Sections 2460 and 2440, B8, of the Zoning By-Laws to operate a fast food business. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Stephen J. Boggess appeared to present the application. The applicant seeks to open a coffee shop, serving pastries prepared offsite, in the rear of the building. He proposes having 8 seats inside for patrons.

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

Board Discussion: The Board questioned Mr. Boggess.

FINDINGS OF FACT:

- The proposed establishment will operate a fast food business of greater than 500 square feet with 8 seats;
- The establishment does not front upon any public way and therefore will not affect vehicular traffic in any way;
- The applicant has sufficient septic flow to accommodate the proposed use;
- The applicant will provide sufficient trash facilities and use private trash haulers as is necessary;
- The architecture and signage will conform to traditional Cape Cod style; and
- The effect on abutting residents will be negligible.

Peter Bez moved to grant a Special Permit under Article 2, Sections 2460 and 2440, B8, of the Zoning By-Laws to operate a fast food business on the premises located at 293 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0. Peter Page will write the decision.

2004-055

11 Oak Drive (Residential B Zone), John Reis, d.b.a. Golden Hammer, on behalf of John Medeiros -

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 single-family dwelling structure. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: John Reid and John Medeiros appeared to present the application. The applicant seeks to put an addition onto the garage to square off the house.

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

Board Discussion: The Board questioned Mr. Reis.

FINDINGS OF FACT:

- The building deviation is warranted due to the size of the parcel of land involved and so as to discourage a subdivision of that parcel into smaller ones;
- The proposed addition will not result in a structure that will disrupt the character of the neighborhood in which it is located;
- The existing structure has a scale of 165.46 scale units;
- The proposed structure has a scale of 232.64 s.u.;
- The neighborhood average is 122.28 s.u.; and

- The allowable scale is 152.84 s.u.

Peter Be 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 single-family dwelling structure on the premises located at 11 Oak Drive (ResB), Steve Melamed seconded and it was so voted, 5-0. Lynne Davies will write the decision.

2004-056 290D Bradford Street (Residential 3 Zone), Robert Valois, Architectural Designer, on behalf of Brian Ganson -

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 single-family dwelling structure. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Robert Valois and Brian Ganson appeared to present the application. The applicant seeks to convert an existing two-story shed/workshop into a structure containing a bedroom, an office and a bathroom.

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

Board Discussion: The Board questioned Mr. Valois.

FINDINGS OF FACT:

- The proposed scale is 72.94 scale units;
- The neighborhood average scale is 29.10 s.u.;
- The allowable scale is 36.38 s.u.;
- The proposed addition will not affect the economic health of the Town because the addition will not be seen by tourists;
- There will be no traffic impact on the Town;
- The homeowner is re-using the existing structure, which is under-utilized at the moment;
- There will be no increase in dependence on the Town as a result of the addition;
- This addition will not disrupt the character of the neighborhood; and
- The addition will not be visible from any public way.

Steve Melamed 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 single-family dwelling structure on the premises located at 290D Bradford Street (Res 3), Lynne Davies seconded and it was so voted, 5-0. will write the decision.

2004-050 291-293 Commercial Street (Town Commercial Center Zone), Linda Unish and Thomas Barnes, d.b.a Indo, on behalf of Hake Nominee Trust -

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Linda Unish appeared to present the application.

Public Comment: Peter Warnick expressed concerned about the location of the items to be displayed. There were no letters in the file.

Board Discussion: The Board questioned Ms. Unish. The Board informed the applicant that a certified plot plan needed to be submitted in order for the Board to consider the application. The applicant chose to withdraw the application without prejudice.

Lynne Davies moved to grant a withdrawal without prejudice of Case # 2004-050, Peter Bez seconded and it was so voted, 5-0.

Chair Gary Reinhardt adjourned the Public Hearing at 8:59 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 8:59 P.M.

REQUESTS FOR ADMINISTRATIVE AMENDMENTS:

2003-053 2 Browne Street (Residential 3 Zone), William P. Hamlin and Ramon S. Alcolea -

The applicants seek 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. Gary Reinhardt,

Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: William Hamlin and Ramon S. Alcolea appeared to discuss the request. The applicants want to re-configure the staircase because the original configuration was too awkward.

Board Discussion: The Board questioned Mr. Hamlin and Mr. Alcolea. The Board ruled that since the staircase would be encroaching further into the setback, the applicants would need to submit a new application.

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 Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Stephen J. Boggess appeared to present the application. The applicant requested a withdrawal without prejudice.

Peter Bez moved to grant a withdrawal without prejudice of Case # 2004-031, Steve Melamed seconded and it was so voted, 5-0.

MINUTES:

May 13, 2004 – Executive Session - Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 6-0-1 (abstain).

May 13, 2004 – Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 6-0-1 (abstain).

NEXT MEETING:

The next meeting will be on June 3, 2004 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT:

Steve Melamed moved to adjourn at 9:14 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 June 3, 2004.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglioni