

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

**MEETING MINUTES OF**  
**September 1, 2005**

**MEETING HELD IN TOWN HALL**

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

**Members Absent:** None.

**Others Present:** Doug Taylor (Building Commissioner), Maxine Notaro (Permit Coordinator) and Ellen C. Battaglini (Recording Secretary).

**WORK SESSION**

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

**PENDING DECISIONS:**

**2005-044**      **35 Bradford Street and 9 Montello Street (*Residential 3 Zone*), Bradford Montello Realty Trust -**  
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, 4-0.*

**2005-045**      **35 Bradford Street and 9 Montello Street (*Residential 3 Zone*), Bradford Montello Realty Trust -**  
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, 4-0.*

**PENDING CASES:**

**2005-042**      **89 Shank Painter Road (*General Commercial Zone*), Attorney Lester J. Murphy on behalf of James M. Costa -**  
The applicant seeks a Special Permit under Article 2, Section 2440 B6 of the Zoning By-Laws to operate a rental storage business pursuant to footnote 9. The case remains pending.

**2005-036**      **305 Commercial Street (*Town Commercial Center Zone*), Robert Dalton -**  
The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for Outside Display. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. **Board Discussion:** Doug Taylor reported that since he and Elizabeth Hartsgrove had been doing inspections, the applicant had been in compliance with the outdoor display by-law. The Board discussed the application, including their confusion over the drawings submitted by the applicant and his history of non-compliance. The Board concluded that due to the incomplete application and the lack of a show of good faith on the part of the applicant, citing a lack of confidence that he will abide by the outdoor display by-law in the future, they could not vote to approve the application. *Peter Bez moved to deny a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for Outside Display for the property located at 305 Commercial Street (TCC), Steve Melamed seconded and it was so voted, 4-1 (Peter Page opposed).*

Chair Gary Reinhardt adjourned the Work Session at 7:03 P.M.

## PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:03 P.M. and explained the Public Hearing procedures to the public. There were six members of the Zoning Board of Appeals present and none absent.

### **2005-041 16 Harry Kemp Way (Residential B Zone), John Reis -**

The applicant seeks a Special Permit under Article 4, Section 4800 of the Zoning By-Laws for amnesty for 2 affordable apartments presently exceeding lot area requirements. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** John and Joy Reis appeared to present the application. The applicant is seeking amnesty for 2 existing apartments to be subject to an affordable housing restriction for a term of perpetuity.

**Public Comment:** None.

**Board Discussion:** Building Commissioner Doug Taylor informed the Board of how the applicant came to be in the situation of applying for amnesty for 2 units. The by-law allows for 1 unit to be granted amnesty, but Mr. Reis seeks amnesty for 2 units. The Board questioned Mr. Reis. He stated that he would be willing to voluntarily designate the second unit as affordable if the Board grants amnesty for the other affordable unit.

*Peter Bez moved to grant a Special Permit under Article 4, Section 4800 of the Zoning By-Laws for amnesty for 2 affordable apartments presently exceeding lot area requirements at the property located at 16 Harry Kemp Way (Res) with the condition that the applicant obtain certification of the rent to be charged to tenants and agree that the designated agent for annual inspections is the Local Housing Partnership for one dwelling unit only and that the second unit will be voluntarily affordable and meet the criteria of Article 4, Section 4800, Lynne Davies seconded and it was so voted, 5-0. Peter Page will write the decision.*

### **2005-047 212-214 Commercial Street (Town Commercial Center Zone), Robin B. Reid, Esq. on behalf of New Art Realty Corp. -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a reconfiguration of service area. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case.

**Presentation:** Attorney Robin B. Reid and Paul deRuyter appeared to present the application. The applicant submitted revised plans and an abstract of 4 scenarios for proposed flex seating at the site. The applicant hopes to improve the economic viability of the site as a year-round business.

**Public Comment:** John Burroughs, a neighbor, spoke in favor of the application. There was 1 letter in the file from the Health Agent concluding that there would be no increase in use at the site.

**Board Discussion:** Building Commissioner Doug Taylor spoke to the issue of flex seating and the ability of the Department of Community Development to enforce it. He feels that his department has gotten a better grip on zoning enforcement in the past several months and thinks that flex seating is vital to the encouragement of year-round businesses. The Board questioned Attorney Reid and Mr. deRuyter. The Board examined the plan showing the 4 seating scenarios submitted and concluded that they needed to see 4 different plans showing each separate seating scenario.

*Peter Bez moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for a reconfiguration of service area at the property located at 212-214 Commercial Street (TCC) with the condition that in 2 weeks, the Board will receive plans, in triplicate, clearly showing each of the 4 seating scenarios so the zoning enforcement officer, when inspecting the premises, can clearly determine if the site is in compliance, Patrick Eeley seconded and it was so voted, 5-0. In addition, Mr. Bez requested that the following be part of the decision: "In exercising the powers granted by this section, a board of appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit." Patrick Eeley will write the decision.*

### **2005-048 5 Pleasant Street (Residential 3 Zone), Robert Valois and Stephen Syta -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter the

roofline of a pre-existing, non-conforming garage/studio structure. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Robert Valois, Stephen Syta and Joerg Dressler appeared to present the application. The applicant seeks to raise the roofline to obtain more space in the structure. There is rot and water damage at the premises as well. The applicant also had 2 letters of support from abutters that he was willing to submit to the Board.

**Public Comment:** None.

**Board Discussion:** The Board questioned Mr. Valois.

*Lynne Davies moved to approve a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter the roofline of a pre-existing, non-conforming garage/studio structure at the property located at 5 Pleasant Street (Res 3), Peter Bez seconded and it was so voted, 5-0. Peter Bez will write the decision.*

**MINUTES: August 4, 2005** – *Lynne Davies moved to accept the language as written, Steve Melamed seconded and it was so voted, 5-0.*

The board briefly discussed the issue of advertising at Crowne Pointe and the decision of the Board. If the Board chooses to change its decision, it needs to be advertised and the applicant needs to be notified.

**NEXT MEETING:**

The next meeting will be on September 15, 2005 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:**

*Lynne Davies moved to adjourn at 8:30 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 September 15, 2005.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

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Ellen C. Battaglini