

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
January 5, 2006

MEETING HELD IN TOWN HALL

Members Present: Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eleey.

Members Absent: Lynne Davies (excused).

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 CASES:

2005-068 **59 Commercial Street (Main House) (*Residential 2 Zone*), Neal Kimball on behalf of Thomas Roberts –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback.

2005-071 **59 Commercial Street (Cottage) (*Residential 2 Zone*), Neal Kimball on behalf of Thomas Roberts –**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use from an existing, non-conforming commercial use (office space) back to a conforming single-family residential use.

2005-072 **59 Commercial Street (Main House) (*Residential 2 Zone*), Neal Kimball on behalf of Thomas Roberts -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use from an existing, non-conforming commercial use (office space) back to a conforming single-family residential use.

Presentation: Attorney E. James Veara and Neal Kimball appeared to discuss the application.

Board Discussion: The Board discussed the three issues pertaining to the case with Attorney Veara and Mr. Kimball.

Chair Gary Reinhardt postponed the Work Session at 7:00 P.M.

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. There were five members of the Zoning Board of Appeals present and one absent.

NEW CASES:

2006-001 **371 Commercial Street (*Town Commercial Center Zone*), Stephen Carey -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for Outdoor Display. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eleey sat on the case.

Presentation: Dian Hamilton, on behalf of Stephen Carey, appeared to present the application.

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

Board Discussion: The Board concluded that the case had been improperly advertised and would need to be re-advertised.

2006-002

5 Holway Avenue (*Residential 3 Zone*), Provincetown Center for Coastal Studies -

The applicant seeks a Variance under Article 2, Section 2470 of the Zoning By-Laws for parking. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eleey sat on the case.

Presentation: Attorney Dwayne Landreth and Peter Borelli appeared to present the application.

Attorney Landreth stated that the premises are within close proximity to a municipal off-street parking lot, which would allow the Board to grant a Variance from the parking requirements.

Public Comment: Blaine Brouchet, an abutter, and Francis Santos were both concerned about an increase in traffic in a neighborhood where the configuration of streets has contributed to bottlenecks in the past. Robert Guerreiro, an abutter, also echoed this sentiment. There were no letters in the file.

Board Discussion: The Board questioned Attorney Landreth and Mr. Borelli. Doug Taylor, Building Commissioner stated that the applicant met the criteria for a Variance and felt that there would not be any increase in traffic in the neighborhood as a result.

FINDINGS OF FACT:

- The existing building's gross square footage would require 39 parking spaces.
- The property is in direct proximity to both a municipal off-street parking lot and a private off-street parking lot owned by the Diocese of Fall River.
- These two lots would allow the property use to go forward without on-street parking or increased traffic in the neighborhood.

Steve Melamed moved to grant a Variance under Article 2, Section 2470 of the Zoning By-Laws for parking at the property located at 5 Holway Avenue (Res 3), Patrick Eleey seconded and it was so voted, 5-0. Patrick Eleey will write the decision.

2006-003

133 Commercial Street (*Town Commercial Center Zone*), Lorraine Najjar -

The applicant seeks a Special Permit under Article 2, Section 24650, Section 2450, G11 of the Zoning By-Laws for Accessory Use. Steve Melamed recused himself because of a conflict of interest, leaving four members of the Board seated. Chair Gary Reinhardt explained to the applicant that there were only four members of the Board seated and thus the vote would have to be unanimous in order for a Special Permit to be granted. The applicant could continue the case until a five-member Board is seated or she could proceed with four. Attorney Lester J. Murphy, representing Lorraine Najjar, chose to consult with his client and give the Board an answer later in the evening.

2006-004

32 Bradford Street (*Residential 3 Zone*), William N. Rogers -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eleey sat on the case.

Presentation: Gary Locke, engineer, and Leonard Enos appeared to present the application. There are two buildings on the site. The first building will be converted from two units with six bedrooms to three units with eight bedrooms. Two means of egress are being added to each of the units in this building. The second building will be converted from two units and five bedrooms to one unit with three bedrooms.

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

Board Discussion: The Board questioned Mr. Locke and Mr. Enos.

FINDINGS OF FACT:

- The existing structure has a scale of 108.33 scale units.
- The proposed structure has a scale of 118.51.
- The allowable scale, as per the assessor's data, is 60.64 s.u.
- The proposed addition is so minor in scope as to have very little impact on the structure, therefore the proposed structure will be compatible and harmonious with the site and the surrounding structures.

Steve Melamed moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale for the property located at 32 Bradford Street (Res 3), Peter Bez seconded and it was so voted, 5-0. Peter Bez will write the decision.

2006-003

133 Commercial Street (*Town Commercial Center Zone*), Lorraine Najjar -

The applicant seeks a Special Permit under Article 2, Section 2450, G11 of the Zoning By-Laws for Accessory Use. Attorney Murphy indicated that his client would like to continue until a five member Board was seated. The case is continued until January 19, 2006.

2006-005

41 Court Street (*Residential 3 Zone*), Neal Kimball -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation from building scale. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eeley sat on the case.

Presentation: Neal Kimball appeared to present the application. The applicant seeks to extend a roof structure over the entrance to an office and a residence. There will be no increase in the footprint of the structure.

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

Board Discussion: The Board questioned Mr. Kimball.

FINDINGS OF FACT:

- The existing structure has a scale of 104.09 scale units.
- The proposed structure has a scale of 115.50 s.u.
- The allowable scale, as per the assessor's data, is 105.59 s.u.
- The proposed addition is small in scope and therefore will have little impact on the appearance of the structure. Therefore, the proposed structure will continue to be compatible with the surrounding site and structures and thus in keeping with the goals of the Local Comprehensive Plan.

Peter Bez moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for a deviation from building scale at the property located at 41 Court Street (Res 3), Steve Melamed seconded and it was so voted, 5-0. Patrick Eeley will write the decision.

2006-006

89 Mayflower Avenue (*Residential 1 Zone*), Neal Kimball -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws for deviation in building scale. Peter Page disclosed that he is an abutter to an abutter, but feels he can render a fair decision in the case. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eeley sat on the case.

Presentation: Neal Kimball and Shawn Nightingale appeared to present the application. The applicant seeks a half-story addition to an existing two-story structure. A flat roof will be changed to a hip roof and dormered out.

Public Comment: None. There were three letters in support of the application in the file.

Board Discussion: The Board questioned Mr. Kimball and Mr. Nightingale. The Board concluded that the applicant needed to apply for an additional Special Permit under Article 3, Section 3330C 3 (b). Thus they will wait until both applications are before them before rendering a decision. The case is continued until the January 26, 2006 hearing.

2006-007

20 Bradford Street (*Residential 3 Zone*), David Kilborn -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along non-conforming setbacks. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eeley sat on the case.

Presentation: Tom Thompson, John DeSouza and David Kilborn appeared to present the application. The applicant seeks to add two dormers, one on the east and one on the west side, in addition to adding a small bump-out and a cantilevered deck to the rear of the structure.

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

Board Discussion: The Board questioned Mr. Thompson, Mr. DeSouza and Mr. Kilborn.

Steve Melamed moved to consider as a finding under the Goldhirsh v. McNear ruling, Peter Bez seconded and it was so voted, 5-0.

Peter Bez moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along non-conforming setbacks at the property located at 20 Bradford Street (Res 3) as a finding under the Goldhirsh v. McNear ruling, Steve Melamed seconded and it was so voted, 5-0.

2006-008

75 Commercial Street (Residential 2 Zone), Andrew Simon -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback. Gary Reinhardt, Peter Bez, Peter Page, Steve Melamed and Patrick Eleey sat on the case.

Presentation: Andrew Simon and Barry Barnes appeared to present the application. The applicant seeks to extend a dormer over the bathroom to obtain more head room.

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

Board Discussion: The Board questioned Mr. Simon and Mr. Barnes.

Peter Bez moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback at the property located at 75 Commercial Street (Res2), Patrick Eleey seconded and it was so voted, 5-0. Peter Page will write the decision.

2006-009

11a Mermaid Avenue (Residential 1 Zone), Douglas Taylor -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to move a pre-existing, non-conforming structure along the non-conforming side yard setbacks. The applicant requested to withdraw the application without prejudice.

Steve Melamed moved to accept the withdrawal without prejudice of Case # 2006-009, Peter Page seconded. After a brief discussion, both Board members chose to withdraw their motions and the case will be re-advertised and continued until the January 26, 2006 hearing.

PENDING CASES:

2005-079

89 Bradford Street, Unit #1 (Town Commercial Center Zone), John Richard Burrows -

The applicant seeks a Special Permit under Article 3, Section 3100 of the Zoning By-Laws for a change of use from a gallery back to the original residence. The applicant requested another continuance. The Board asked the applicant for a waiver of time constraints to allow an extension of the period of time that they have to render a decision. The case is continued until the January 19, 2006 hearing.

Chair Gary Reinhardt adjourned the Public Hearing at 8:34 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 8:34 P.M.

PENDING CASES:

2005-075

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 and Patrick Eleey sat on the case.

Presentation: Robert Dalton and Angelina Prouty appeared to discuss the case.

Board Discussion: The Board questioned Mr. Dalton and Ms. Prouty.

Peter Bez moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for outside display at the property located at 305 Commercial Street (TCC), Patrick Eleey seconded and it was so voted, 4-0.

2005-068

59 Commercial Street (Main House) (Residential 2 Zone), Neal Kimball on behalf of Thomas Roberts -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming structure up and along a non-conforming setback.

2005-071

59 Commercial Street (Cottage) (Residential 2 Zone), Neal Kimball on behalf of Thomas Roberts -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use from an existing, non-conforming commercial use (office space) back to a conforming single-family residential use.

2005-072

59 Commercial Street (Main House) (Residential 2 Zone), Neal Kimball on behalf of Thomas Roberts -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws for a change of use from an existing, non-conforming commercial use (office space) back to a conforming single-family residential use.

Board Discussion: The Board continued to question Attorney Veara and Mr. Kimball in regard to Article 4, Section 4120. The Board suggested that the applicant keep Case # 2005-068, but withdraw Cases # 2005-071 and #2005-072 and apply for a new Special Permit under Article 2, Section 2440 (Permitted Principal Uses) A1a 2 to allow for two single-family dwellings on a lot in the Residential 2 Zoning District. The applicant granted the Board a waiver of time constraints for rendering its decision on these three cases.

ADMINISTRATIVE AMENDMENT:

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

Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Bez, Peter Page and Patrick Eeley sat on the case.

Presentation: Attorney Robin B. Reid, Esq. and Ben deRuyter appeared to present the Administrative Amendment. The applicant seeks a change to the seating arrangement.

Peter Bez moved to consider as an Administrative Amendment, Patrick Eeley seconded and it was so voted, 4-0.

Patrick Eeley moved to grant the Administrative Amendment for Case #2005-047, Peter Bez seconded and it was so voted, 4-0.

Chair Gary Reinhardt adjourned the Work Session at 9:25 P.M.

PUBLIC HEARING

Chair Gary Reinhardt reconvened the Public Hearing at 9:25 P.M.

2005-076 **212-214 Commercial Street (Town Commercial Center Zone), Attorney Robin B. Reid, Esq. on behalf of New Art Realty Corp. -**

The applicant seeks renewal of Special Permits #2004-032 and #2005-008 under Article 2, Section 2460 of the Zoning By-Laws. Steve Melamed recused himself because of a conflict of interest. The applicant chose to proceed with four members. Gary Reinhardt, Peter Bez, Peter Page and Patrick Eeley sat on the case.

Presentation: Attorney Robin B. Reid, Esq. and Ben deRuyter appeared to present the application.

Public Comment: None. There were two letters in the file from abutters voicing their concerns over noise at the site.

Board Discussion: The Board questioned Attorney Reid and Mr. deRuyter. The Board decided to renew the Special Permits for one year.

Peter Page moved to grant a renewal of Special Permits #2004-032 and #2005-00, both to expire on December 31, 2006, for the property located at 212-214 Commercial Street (TCC), Patrick Eeley seconded and it was so voted, 4-0.

Attorney Reid submitted a written decision to the Board.

Gary Reinhardt read the decision. *Peter Bez moved to accept the language as amended, Peter Page seconded and it was so voted, 4-0.*

MINUTES: December 15, 2005 - Peter Bez moved to approve the language as amended, Peter Page seconded and it was so voted, 4-0-1(Steve Melamed abstained).

NEXT MEETING:

The next meeting will be on January 19, 2006 and will consist of a Public Hearing at 7:00 P.M. and a Work Session to follow.

ADJOURNMENT:

Patrick Eley 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 January 19, 2006.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini