

# TOWN OF PROVINCETOWN

## ZONING BOARD OF APPEALS

### MEETING MINUTES OF July 20, 2006

#### MEETING HELD IN TOWN HALL

**Members Present:** Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies, Steve Melamed, Patrick Eleey, Elisabeth Verde and Todd Dever.

**Members Absent:** None.

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

#### WORK SESSION

Gary Reinhardt called the Work Session to order at 6:38 P.M.

#### PENDING CASES:

**2006-061 133 Commercial Street (Town Commercial Center Zone), Lorraine Najar-**

The applicant seeks a Special Permit under Article 2, Section 2460 for a reduction in restaurant seating, Article 3, Section 3110 for the alteration and extension of a pre-existing, non-conforming structure and Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale. Gary Reinhardt, Peter Bez, Peter Page, Lynn Davies and Steve Melamed sat on the case.

**Presentation:** Attorney Lester J. Murphy, Tristan Metcalf and Lorraine Najar appeared to discuss the application. The applicant submitted revised plans where the access and deck issues had been addressed as per the request of the Board.

**Board Discussion:** The Board questioned Attorney Murphy and Ms. Najar.

#### FINDINGS OF FACT:

- The applicant is proposing to remove 10 restaurant seats in order to add an accessory apartment above a restaurant;
- The Board finds that by allowing a reduction in restaurant seats, the Town has an opportunity to save a local restaurant and maintain its existing commercial use;
- The change being approved under this decision does not increase any side yard or front yard non-conformancies. Any encroachment into the side yard or front yard setbacks needs to be approved by the Board as a matter of public safety or returned to the Board under a variance application;
- The proposed apartment will occupy no more than 30% of the floor area occupied by the restaurant;
- The proposed apartment occupies no more than 50% of the lot area;
- The existing structure has a scale of 65.66 scale units;
- The allowable scale, as per the assessor's data, is 97.52 s.u.;
- The proposed scale is 117.65s.u.; and
- This is a neighborhood consisting of very large and very small structures and the proposed structure will be harmonious with its site and the surrounding structures and thus in keeping with the intent of the Local Comprehensive Plan.

**Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 for a reduction in restaurant seating, Article 3, Section 3110 for the alteration and extension of a pre-existing, non-conforming structure and Article 3, Section 3340E of the Zoning By-Laws for a deviation in building scale at the property located at 133 Commercial Street (TCC), Steve Melamed seconded and it was so voted, 5-0. Lynne Davies will write the decision.**

**2006-063**

**14 Johnson 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 in building scale. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Elisabeth Verde sat on the case.

The applicant requested to withdraw the application without prejudice.

*Steve Melamed moved to accept the withdrawal without prejudice of Case #2006-063, Lynne Davies seconded and it was so voted, 5-0.*

**MINUTES: June 15, 2006 – Steve Melamed moved to approve the language as written, Lynne Davies seconded and it was so voted, 7-0-1 (Todd Dever abstaining).**

Chair Gary Reinhardt postponed the Work Session at 6:55 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 eight members of the Zoning Board of Appeals present and none absent.

2006-064

**4 Conwell Street (Residential 3 Zone), John DeSouza -**

The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to alter a pre-existing, non-conforming structure along a non-conforming dimension and deviation in building scale. Gary Reinhardt, Peter Bez, Peter Page, Lynn Davies and Steve Melamed sat on the case. **Presentation:** John De Souza and Jim Turner appeared to present the application. The applicant seeks to alter the roofline of the structure at the site, proposing to construct one gable roof from the existing hip and shed roofs.

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

**Board Discussion:** The Board questioned Mr. De Souza and Mr. Turner.

**FINDINGS OF FACT:**

- The proposed addition will include a small reduction in the footprint of the structure;
- The second floor addition will encroach into the front yard and rear yard setbacks above the existing first floor structure;
- The proposed addition will create a modest increase in the building scale, however the two largest structures within the 250 foot radius circle, except the Fine Arts Work Center, about the structure on either side; and
- The proposed structure will be harmonious with its site and surroundings and thus in keeping with the intent of the Local Comprehensive Plan.

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to alter a pre-existing, non-conforming structure along a non-conforming dimension and deviation in building scale at the property located at 4 Conwell Street (Res 3), Peter Bez seconded and it was so voted, 5-0. Peter Page will write the decision.*

2006-065

**531 Commercial Street (Residential 3 Zone), John De Souza -**

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

**Presentation:** John De Souza, Tom Thompson and Glen Parker appeared to present the application. The applicant seeks to remove a staircase on the northeast side of the structure and put in a bay window.

**Public Comment:** John Livingstone asked the Board a question about the scope of the application, about the decks on the southeast side of the structure and about the footprint. There were no letters in the file.

**Board Discussion:** The Board questioned Mr. De Souza, Mr. Thompson and Mr. Parker.

*Peter Bez moved to consider as a finding under the Goldhirsh v. McNear ruling, Steve Melamed seconded and it was so voted, 5-0. The Board requested that the applicant submit revised plans showing the new bay window as per a decision of the Historic District Commission.*

*Lynne Davies moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming structure along a non-conforming dimension as a finding under the Goldhirsh v. McNear ruling at the property located at 531 Commercial Street (Res 3), Peter Bez seconded and it was so voted, 5-0.*

2006-066

**3 Duncan Lane (Residential 3 Zone), Robert Dello Russo -**

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

**Presentation:** Adolpho Perez, architect, and Robert Dello Russo appeared to present the application. The applicant seeks to remove and replace the structure at the site in addition to replacing the studio and shed on the premises.

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

**Board Discussion:** The Board questioned Mr. Perez and Mr. Dello Russo. The Board informed the applicant that they could only consider the removal and replacement of the main house with this application. The shed and studio on the premises needed a separate application.

*Peter Bez 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 a pre-existing, non-conforming single-family structure along a non-conforming dimension as*

*a finding under the Goldhirsh v. McNear ruling at the property located at 3 Duncan Lane (Res 3), Lynne Davies seconded and it was so voted, 5-0.*

**2006-067**

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

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

**Presentation:** Doug Taylor appeared to present the application. The applicant submitted plans showing as structure not much larger than what is existing.

**Public Comment:** Bob Mason, an abutter, spoke against the application, citing his concerns about the re-location of the structure. Doug Traub, an abutter spoke against the application and his concerns about adequate drainage at the site. Lisa Westervelt believed the project would be detrimental to the neighborhood. Dale Hanscomb, an abutter, speaking against the application, was concerned about the scale of the project. Lisa Traub, an abutter, was opposed to the application. Abutters Mary Ann Boswell, Mark Irving and Eric Mitkis all spoke in opposition to the application. There were 8 letters in the file opposed to the application and a letter from the Building Inspector stating that the project did not warrant scale relief.

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

*Steve Melamed moved to consider as a finding under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 2-3 (Gary Reinhardt, Peter Bez and Peter Page opposed).* The motion was defeated.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming structure along a non-conforming dimension at the property located at 11A Mermaid Avenue (Res 1), Lynne Davies seconded and it was so voted, 3-2 (Gary Reinhardt and Peter Bez opposing).* The motion was defeated. Gary Reinhardt will write the decision.

#### **NEXT MEETING:**

The next meeting will be on August 3, 2006 and will consist of a Work Session at 6:30 P.M. followed by a Public Hearing at 7:00 P.M.

#### **ADJOURNMENT:**

*Patrick Eleey moved to adjourn at 9:05 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 August 3, 2006.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

Ellen C. Battaglini