

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS

MEETING MINUTES OF
February 5, 2004

MEETING HELD IN TOWN HALL

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

Members Absent: None.

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

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:00 P.M. There were seven members of the Zoning Board of Appeals present and none were absent.

- 2004-007 276R Commercial Street (*Town Commercial Center Zone*), Michele L. Cannava on behalf of John Cicero -**
The applicant seeks a Special Permit for the outdoor display of merchandise. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.
Presentation: Michele L. Cannava appeared to present the application. The applicant seeks to renew a Special Permit for the display of 6 buoys and 2 lobster traps.
Public Comment: None. There were no letters on file.
Board Discussion: The Board questioned Ms. Cannava and discussed whether the present outdoor display met the required 10-foot setback from the curb. Since the display did not conform to the setback requirement, the applicant decided to leave the case open and present a clearer plan to the Board as to what is being displayed and where. The case will be discussed again at the Work Session on February 19, 2004.

2004-008

100 Shankpainter Road, (*General Commercial Zone*), Attorney E. James Veara on behalf of V.S.H. Realty, Inc. -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove, reconstruct, relocate and reduce the non-conformancy of a non-conforming structure and a Variance under Article 3, Section 3223 and 3230 of the Zoning By-Laws to construct and display a sign 18 feet in height with forty-eight square feet display area. Gary Reinhardt, Peter Bez, Peter Page Lynne Davies, and Steve Melamed sat on the case.

Presentation: Attorney E. James Veara appeared to present the application. The existing non-conformancy at the premises is the canopy overhanging the fuel island. The setback requirement for the property is 30 feet. The canopy is setback 19 feet. The applicant proposes to move the fuel island and canopy from its present location to a location where the setback will be 23 feet. The existing sign measures 48 square feet and is 13 feet high. The proposed sign will have the same square footage, but will be 15 feet high.

Public Comment: Elizabeth Patrick expressed concerns about the project, including the proposed landscaping plans, the design of the canopy and the proposed lighting plan. There was a letter in the file from Sally Brophy expressing concern about the size and location of the proposed sign.

Board Discussion: The Board questioned Attorney Veara about the hardship that the applicant is claiming in order to obtain a Variance. Attorney Veara was joined by Richard Boyle, the regional sales manager of Cumberland Farms, during the questioning. The applicant decided to withdraw the request for a Variance. The Board then discussed the Special Permit request and whether a new non-conformancy was being created by moving the fuel canopy to its proposed location. The Board suggested to Attorney Veara and Mr. Boyle that the fuel canopy either be moved 7 feet or that one of the five double-pump configurations on the plan be removed in order to meet the setback requirement. Martin Donoghue, of Coastal Engineering, joined the discussion to explain why the canopy could not be moved 7 feet. Attorney Veara said he needed to consult with his client about the issue. The case will be discussed at the Work Session on February 19, 2004.

2004-009 45 Commercial Street, Unit 3 (*Residential 1 Zone*), Beau and Company on behalf of William Courey -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a non-conforming structure up and along the rear and side yard non-conforming dimensions with the construction of an A-style doghouse dormer. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Ansel Davis appeared to present the application. The applicant seeks to replace one window with a skylight and a larger window.

Public Comment: None. There was one letter on file from Dr. Donald Butterfield, an abutter, supporting the application.

Board Discussion: The Board briefly questioned Mr. Davis.

FINDINGS OF FACT:

- The existing structure is non-conforming in its rear, front and side yard setbacks and in its lot coverage;
- The proposed alteration doesn't change the footprint of the structure; and
- The proposed dormer is within the existing rear and west side yard setbacks.

Peter Bez moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a non-conforming structure up and along the rear and side yard non-conforming dimensions with the construction of an A-style doghouse dormer at the premises located at 45 Commercial Street, Unit 3 (Res 1 Zone), Lynne Davies seconded and it was so voted, 5-0. Lynne Davies will write the decision.

2004-010 26 Pleasant Street (Residential 3 Zone), Neal Kimball on behalf of Paul Bingaman -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove, reconstruct and extend a pre-existing, non-conforming single-family dwelling up and along the non-conforming side and rear yard dimension. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Neal Kimball and Paul Bingaman appeared to present the application. There is a main house and two small cottages on the premises and the applicant seeks to increase the footprint of the main house.

Public Comment: There was none. There were two letters in the file. One letter was from abutters in the neighborhood who expressed concerns about access to the property by large vehicles via Carnes Lane and the potential damage to the road by those vehicles, and concerns about privacy between 24 and 26 Pleasant Street due to the new height of the proposed structure. The other letter did not object to the project, but was concerned about the removal of trees on the property and the replacement of any trees that had to be removed.

Board Discussion: The Board briefly questioned Mr. Kimball and Mr. Bingaman.

FINDINGS OF FACT:

- The existing structure is non-conforming in its rear yard setback;
- The proposed structure will continue that non-conformancy, but will not create any new non-conformancy; and
- The structure is located in the Residential 3 Zoning District.

Peter Bez moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to remove, reconstruct and extend a pre-existing, non-conforming single-family dwelling up and along the non-conforming rear yard dimension on the premises located at 26 Pleasant Street (Res 3), Steve Melamed seconded and it was so voted, 5-0. Steve Melamed will write the decision.

2004-011

13-15 Commercial Street (Residential 1 Zone), Neal Kimball on behalf of the Red Inn of Provincetown, Inc. -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter a pre-existing, non-conforming structure with the addition of three dormers for the provision of egress doors and a deck walkway with railings within the rear yard setback. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eleey sat on the case.

Presentation: Neal Kimball appeared to present the application. The deck walkway that the applicant seeks to construct will provide of an easier means of egress for the oceanside units at the premises.

Public Comment: Tom Boland urged the Board to grant the Special Permit. Attorney E. James Veara, representing Donald Winter and Richard DiFrummolo, objected to the application. He claimed that it constituted a proliferation of the business. There were two letters in the file. One letter from Daniel Mullen, an abutter, objected to the expansion plans in regard to the potential increase in noise and congestion. The other letter, from Donald Winter and Richard DiFrummolo, who are abutters to the property, expressed their objection to the project.

Board Discussion: The Board questioned Mr. Kimball and discussed whether the project was an expansion of use or not.

FINDINGS OF FACT:

- The property is currently housing a pre-existing, non-conforming use, which is that of an inn. The inn presently contains 54 restaurant seats, 6 guest rooms and 2 apartments;
- The proposed use will not be changed; there will still be 54 restaurant seats, 6 guest rooms and 2 apartments;
- The structure on the property is also non-conforming to the rear yard, the west side yard and the front yard setbacks;
- The proposed alteration will not increase any of those non-conformancies, nor will it create any new non-conformancy;
- The proposed alteration will add a vital second means of egress to the three second-story guest quarters;
- The proposed deck, and the existing staircase connecting it, are not intended as a primary means of entry or exit to and from the guest rooms, rather they are intended for the personal use of each guest room and as emergency exits in case of an emergency; and
- The improved safety offered by this additional means of egress outweighs any possible detrimental effect that the construction may have.

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 with the addition of three dormers for the provision of egress doors and a deck walkway with railings within the required rear yard setback on the premises located at 13-15 Commercial Street (Res 1), Patrick Eleey seconded and it was so voted 5-0. Lynne Davies will write the decision.

Chair Gary Reinhardt adjourned the Public Hearing at 9:05 P.M.

WORK SESSION

Chair Gary Reinhardt called the Work Session to order at 9:05 P.M.

MINUTES:

February 5, 2004 – Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 7-0.

NEXT MEETING:

The next meeting will be on February 19, 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 9:15 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 February 19, 2004.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini