

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, and Patrick Eleey.

Members Absent: Steve Melamed (excused) and Brian Falvey (excused).

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

WORK SESSION

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

PENDING CASES:

2004-008 **100 Shankpainter Road (*General Commercial Zone*), Attorney E. James Veara on behalf of V.S.H Realty -**

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

Presentation: Attorney E. James Veara appeared to discuss the application. The applicant had submitted new plans to the Board. The revised plans showed the relocation of the island containing the gas pumps in conformity with setback requirements for that zoning district and therefore in compliance with the Zoning By-Laws. Reginald Donoghue, from Coastal Engineering, joined in the discussion of the new plans. Attorney Veara withdrew the applicant's request for a Special Permit.

The Board has reviewed the revised plans for the project and found them in compliance with the Zoning By-Laws and thus not requiring any zoning relief. The Board is accepting the applicant's request to withdraw the application without prejudice for the Special Permit in Case # 2004-008. Peter Bez moved to accept the request for withdrawal without prejudice in Case # 2004-008, Lynne Davies seconded and it was so voted, 4-0-1 (absent).

PENDING DECISIONS:

2004-012 **293 Commercial Street (Town Commercial Center), Patricia McGuire on behalf of Steven Boggess**

-
Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Brian Falvey sat on the case. Peter Bez read the decision. *Lynne Davies moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*

PENDING CASES:

2004-013 **128 Commercial Street (Town Commercial Center), Raymond Pelequin and Robert Paster on behalf of Lightning Realty Trust -**

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

Presentation: Neal Kimball submitted revised plans for the project. The plans showed a building shorter than originally designed, reducing the scale of the project, and a sunroom connecting the new structure proposed for the site to the existing structure.

Board Discussion: The Board decided that they wanted the Building Inspector, Warren Alexander, to examine the plans before they rendered a decision. The case is continued until the March 18, 2004 Work Session.

2004-007 **276R Commercial Street (Town Commercial Center Zone), Michele L. Cannava on behalf of John Cicero -**

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

Presentation: Michele L. Cannava appeared to discuss the application. She had submitted revised plans showing new locations for the lobster traps and buoys that were being displayed outside the premises.

Peter Bez moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise on the premises located at 276R Commercial Street (TCC), Lynne Davies seconded and it was so voted, 4-0-1 (absent).

Chair Gary Reinhardt postponed the Work Session at 7:07 P.M.

PUBLIC HEARING

Chair Gary Reinhardt called the Public Hearing to order at 7:07 P.M. and explained the Public Hearing procedures to the public. There were five members of the Zoning Board of Appeals present and two absent.

2004-015

587 Commercial Street (Residential 2 Zone), Thomas Biggert and Chris

Pula –

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming two-family dwelling up and along the non-conforming side and rear yard dimensions with the elevation of the existing walls and roofline by one foot, to reconfigure and extend an existing second floor deck roof at the rear of the building and extend a non-conforming side yard dimension with the addition of a mudroom at the front of the structure.

The case is postponed until the Public Hearing on March 18, 2004.

2004-017 552 Commercial Street (Residential 2 Zone), Robert J. Starmer -

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a fireplace chimney outside of the building end wall of a pre-existing, non-conforming single-family dwelling, which will intrude into the required side yard setback of six feet. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eley sat on the case.

Presentation: Robert J. Starmer appeared to present the application. The applicant seeks to move a chimney outside of an existing structure.

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

Board Discussion: The Board briefly questioned Mr. Starmer.

Peter Bez moved to consider the case as a finding under the Goldhirsh v. McNear ruling, Lynne Davies 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 construct a fireplace chimney outside of the building end wall of a pre-existing, non-conforming single-family dwelling, which will intrude into the required side yard setback of six feet at the premises located at 552 Commercial Street as a finding under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 5-0.

2004-018 1 High Pole Road (Residential 3 Zone), Cape Cod Pilgrim Memorial Association -

The applicant seeks a Special Permit under Article 2, Section 2440, *Permitted Principal Use*, B7 of the Zoning By-Laws to operate a parking lot. Chair Gary Reinhardt recused himself because of a conflict of interest and Peter Bez chaired the case. Peter Bez, Peter Page, Lynne Davies and Patrick Eley sat on the case. Chair Peter Bez informed the applicant that since there were only 4 members seated, there would need to be a unanimous decision in order for the Board to grant a Special Permit. The applicant could choose to move forward with his case or postpone until 5 members of the Board were seated. The applicant chose to proceed.

Presentation: Attorney Christopher J. Snow appeared to present the application. The applicant seeks a renewal of the Special Permit granted in Case # 2003-036, with minor revisions to the conditions imposed by the Board in that case, because of the successful operation of the lot last summer including;

- Eliminating the need for an employee on site until 1:00 A.M. even though the lot itself closes at 9:00 P.M.;
- Allowing for a permanent renewal of the Special Permit;
- Allowing signage that would indicate whether there is parking available or not at any given moment; and
- Eliminating the ticketing requirement and just allow money to be collected from the parking patrons.

Public Comment: Howard Weiner, a resident on Winslow Street, spoke against the renewal, stating concerns such as an increase in traffic, noise level and the proliferation of trash on the street, and people going in and out of the lot after it is closed.

Board Discussion: The Board questioned Attorney Snow.

FINDINGS OF FACT:

- The lot is located in the Residential 3 Zoning District;
- There is already a parking lot with a parking capacity of 146 spaces;
- The lot has been in existence for one year with minimal impact on the public good; and
- The Cape Cod Pilgrim Monument Association currently provides seven year-round jobs and eight seasonal positions and this proposal would add three or four more positions.

Lynne Davies moved to grant a Special Permit under Article 2, Section 2440, Permitted Principal Use, B7 of the Zoning By-Laws to operate a parking lot at the premises located at 1 High Pole Road

(Res 3) with the following conditions that:

- *The lot be in full compliance with Article 2, Sections 3431 and 3432 of the Zoning By-Laws governing the illumination and overspill of light from the lot;*
- *The hours of operation for profit will be from 9:00 A.M. until 9:00 P.M.;*
- *The Special Permit expire one year from the date of issuance;*
- *All outside Lessees be bound by the same conditions; and*
- *No waiting on Winslow Street will be allowed.*

And new letters of approval from the Police Department, Fire Department and the Building Inspector need to be submitted to the Board, Peter Eleey seconded and it was so voted, 4-0. Lynne Davies will write the decision.

2004-019

47 Commercial Street (Residential 1 Zone), Robert Valois, Architectural Designer, on behalf of David Martin -

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

Presentation: Robert Valois and David Martin appeared to present the application.

Public Comment: Nathan Butera, Mr. Martin's partner, spoke in favor of the application. There was one letter in the file from abutters who expressed concerns about the project's impact on their light and view.

Board Discussion: The Board briefly questioned Mr. Valois.

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

Peter Bez moved to grant the Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a non-conforming deck structure up and along a non-conforming side yard dimension of a pre-existing, non-conforming single-family dwelling on the premises located at 47 Commercial Street (Res 1) under the Goldhirsh v. McNear ruling, Lynne Davies seconded and it was so voted, 5-0.

2004-020

48 Commercial Street (Residential 1 Zone), Neal Kimball Residential Design on behalf of Adam Schoenhard -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviated from the allowed neighborhood scale. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eleey sat on the case.

Presentation: Neal Kimball and Adam Schoenhard appeared to present the application. The applicant wants to expand the living space in the four-family dwelling while still maintaining the same footprint of the existing structure.

Public Comment: Maryellen Henry, an abutter, spoke of her concerns about the effect of the project on the light reaching her property and the effect of the deck expansion on her privacy. There were no letters in the file.

Board Discussion: The Board questioned Mr. Kimball.

FINDINGS OF FACT:

- The existing structure has a scale of 129.00 scale units;
- The applicant is proposing an addition of 7.6 s.u. for a total of 136.60 s.u.;
- The allowed scale in this neighborhood as per the assessor's data is 100.28 s.u.;
- The bulk of the additional scale will be in the rear of the subject property and little of the additional scale will be visible from the street;
- The structure is unique in the neighborhood in that it is setback at least one hundred feet from the street;
- Nine out of thirty-three of the qualifying structures within the two hundred and fifty foot radius are above 130 s.u.; and
- The proposed structure will be harmonious with the surrounding neighborhood and therefore in keeping with the intent of the Local Comprehensive Plan.

Lynne Davies moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood scale at the premises located at 48 Commercial Street (Res 1), Peter Bez seconded and it was so voted, 5-0. Peter Bez will write the decision.

2004-021 269A Bradford Street (Residential 3 Zone), Neal Kimball Residential Designs on behalf of Hazel Warner -

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood building scale with the addition of a turret to enclose an added interior staircase in a two-family dwelling structure. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case.

Presentation: Neal Kimball and Hazel Warner appeared to present the application.

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

Board Discussion: The Board briefly questioned Mr. Kimball

FINDINGS OF FACT:

- The existing structure has a scale of 116.38 scale units;
- The applicant proposes an addition of 12.17 s.u. for a total of 128.55 s.u.;
- The allowed scale, as per the assessor's data, is 90.92 s.u.;
- Out of the thirty-eight qualifying structures within the two hundred and fifty foot radius, most have scale measurements of more than 110 s.u.;
- The proposed structure is set back at least seventy feet from the street; and
- The proposed structure will be harmonious with the surrounding neighborhood and therefore in keeping with the intent of the Local Comprehensive plan.

Peter Bez moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood building scale with the addition of a turret to enclose an added interior staircase in a two-family dwelling structure at the premises located at 269A Bradford Street, Lynne Davies seconded and it was so voted, 5-0. Patrick Eeley will write the decision.

Chair Gary Reinhardt adjourned the Public Hearing at 9:03 P.M.

WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 9:03 P.M.

PENDING DECISIONS:

2004-014 213 Commercial Street (Town Commercial Center Zone), Paul DeRuyter on behalf of the Wooden Shoe Nominee Trust -

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, 4-0-1 (absent).*

2004-016 13 Wareham Street (Residential 3 Zone), Mary Ellen Spingler -

Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Gary Reinhardt read the decision. *Peter Bez moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*

MINUTES:

February 19, 2004 – *Patrick Eeley moved to accept the language as written, Peter Bez seconded and it was so voted, 5-0-2 (absent).*

NEXT MEETING:

The next meeting will be on March 18, 2004 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

ADJOURNMENT:

Peter Bez moved to adjourn at 9:20 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 March 18, 2004.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini