

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

**MEETING MINUTES OF**  
**March 18, 2004**

**MEETING HELD IN TOWN HALL**

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

**Members Absent:** None.

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

**WORK SESSION**

Chair Gary Reinhardt called the Work Session to order at 6:33 P.M.

**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. Neal Kimball had met with the Building Commissioner and discussed this case. The applicant requested a postponement of the case until the April 15, 2004 Work Session.

**PENDING DECISIONS:**

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

Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case. Lynne Davies read the decision. *Peter Bez moved to approve the language as written, Peter Page seconded and it was so voted, 4-0.* A letter was requested by the applicant from the Fire Chief, who has not yet responded. His letter, when received, will be added to the file.

**2004-020 48 Commercial Street (Residential 1 Zone), Neal Kimball Residential Design on behalf of Adam Schoenhard -**

Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case. Peter Bez read the decision. *Lynne Davies moved to approve the language as written, Patrick Eeley seconded and it was so voted, 5-0.*

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

Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case. Patrick Eeley read the decision. *Peter Bez moved to approve the language as written, Lynne Davies seconded and it was so voted, 5-0.*

The Board had a brief discussion about the intent of the outdoor display by-law.

Chair Gary Reinhardt adjourned the Work Session at 7:01 P.M.

**PUBLIC HEARING**

Chair Gary Reinhardt called the Public Hearing to order at 7:01 P.M. and explained the Public Hearing procedures to the public. There were seven members of the Zoning Board of Appeals present and none 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.

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

**Presentation:** John DeSousa appeared and informed the Board that the applicant requests a withdrawal without prejudice.

**Peter Bez moved to grant a withdrawal without prejudice, Lynne Davies seconded and it was so voted, 5-0.**

**2004-022      361 Commercial Street (*Town Commercial Center Zone*), Daniel Lasser on behalf of Tonga Trust, T. Gandolpho, Trustee -**

The applicant seeks to renew a Special Permit for the outdoor display of pottery. The case was postponed until later in the evening because of the absence of the applicant.

**2004-023      307 Commercial Street (*Town Commercial Center Zone*), Francis T. Muldoon on behalf of Provincetown Chamber of Commerce -**

The applicant seeks a Special Permit for the outdoor display of a penny press machine. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Francis T. Muldoon appeared to present the application. Mr. Muldoon informed the Board that this was a renewal of a Special Permit.

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

**Board Discussion:** The Board questioned Mr. Muldoon and determined that he didn't need zoning relief because they felt that the penny press machine qualified as a vending machine. The applicant was given the choice of withdrawing the application without prejudice, allowing the Board to vote or postponing the case until the April 15, 2004 Work Session while he obtained further advice. He chose the latter. The Board will vote on the application on April 15<sup>th</sup> if they have not received a letter from the applicant withdrawing the application

**2004-024      371 Commercial Street (*Town Commercial Center Zone*), Astrid K. Berg on behalf of Pepe's Wharf, Inc. -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of food and alcoholic beverages and the provision of live entertainment. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Brian Falvey sat on the case.

**Presentation:** Daniel P. Neelon, Esq. And Astrid K. Berg appeared to present the application.

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

**Board Discussion:** The Board questioned Attorney Neelon and Ms. Berg. The Board determined that Pepe's Wharf already had a Special Permit from 1999 for the area of service of food and alcohol and a Special Permit from 2001 for the modification of the area of food service. The live entertainment is a pre-existing, non-conforming use and does not need a Special Permit.

***It is the position of the Zoning Board of Appeals that the business located at 371-373 Commercial Street, d/b/a Pepe's Wharf, has a pre-existing, non-conforming use, namely for the service of food and alcohol as well as entertainment, and therefore does not require a Special Permit under Article 2, Section 2460 of the Zoning By-Laws, with the exception of a modification of areas of service granted by the Board in 1999. This Special Permit remains with this property and is attached with the deed for the property regardless of the operator or owner of that premises.***

The applicant chose to withdraw the application without prejudice.

**Peter Bez moved to accept the withdrawal without prejudice, Brian Falvey seconded and it was so voted, 5-0.**

**2004-025 85-87 Shankpainter Road (General Commercial Zone), Clement A. Silva and Debra Silva/Clem & Ursie's Restaurant -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood scale with an addition to accommodate rest rooms. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eleey sat on the case.

**Presentation:** Attorney Lester J. Murphy and Deb Silva appeared to present the application. The applicant seeks to add new restrooms, both handicapped accessible and accessible from the inside of the building, and a walk-in cooler.

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

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

*Peter Bez moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the allowed neighborhood scale with an addition to accommodate rest rooms at the premises located at 85-87 Shankpainter Road (GC), Lynne Davies seconded and it was so voted, 5-0.*

Attorney Murphy submitted a written decision to the Board, which was read by Chair Gary Reinhardt.

*Peter Bez moved to approve the language as written, Lynne Davies seconded and it was so voted, 5-0.*

**2004-026 62 Mayflower Avenue (Residential 1 Zone), Miriam Gallardo -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to extend a pre-existing, non-conforming single-family dwelling with the addition of a deck structure intruding into the required front and side yard setback.

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

**Presentation:** Miriam Gallardo and Courtney Spitz appeared to present the application. The applicant seeks a Special Permit for a deck that has already been built.

**Public Comment:** One abutter spoke in favor of the application. There were three letters in the file in support of the application.

**Board Discussion:** The Board questioned Ms. Gallardo and Ms. Spitz.

*Steve Melamed moved to consider the case as a finding under the Goldhirsh v. McNear ruling, Brian Falvey 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 extend a pre-existing, non-conforming single-family dwelling with the addition of a deck structure intruding into the required front and side yard setback on the premises located at 62 Mayflower Avenue (Res 1) as a finding under the Goldhirsh v. McNear ruling, Brian Falvey seconded and it was so voted, 5-0.*

**2004-027 147 Bradford Street Extension (Residential 1 Zone), Attorney Lester J. Murphy on behalf of Allan Gallant -**

The applicant seeks a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to alter and extend a pre-existing, non-conforming use and structure with the addition of a third dwelling unit. Peter Bez recused himself because of a conflict of interest. Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Patrick Eleey sat on the case.

**Presentation:** Attorney Lester J. Murphy appeared to request a continuance until the April 15, 2004 hearing.

**2004-028 24 Bradford Street (Residential 3 Zone), James Pat Patrick on behalf of George Poule -**

The applicant seeks a Special Permit under Article 3, Sections 3330 and 3340E of the Zoning By-Laws to change an existing gable roof to another roof configuration and to deviate from the allowed neighborhood building scale with the addition of a second story and a roof deck. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. There were two letters in the file from Mr. Poule; one asking to withdraw the application and the other asking to proceed with the application.

**Presentation:** John DeSousa and Tom Thompson, of Top Floor Design, and James Patrick appeared to present the application.

**Public Comment:** Mr. Mahoney, an abutter, spoke in support of the application. The only letters in the file were the previously mentioned ones from Mr. Poule.

**Board Discussion:** The Board questioned Warren Alexander about whether a third story was being added at the premises. The Board requested that the applicant or one of his representatives meet soon with Warren Alexander concerning this issue. The Board also requested a report from Mr. Alexander. The case is continued until the April 15, 2004 Work Session.

**2004-029 14 Cottage Street (Residential 3 Zone), Neal Kimball Residential Designs on behalf of Jon Maroto and George Nunno -**

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3340E of the Zoning By-Laws to extend and alter a pre-existing, non-conforming two-family dwelling structure up and along the non-conforming dimensions and to deviate from the neighborhood allowed building scale. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Neal Kimball and Mark Kinane, of Cape Associates, appeared to present the application. The house is severely deteriorated and the applicant would like to renovate the structure in order to bring it up to code.

**Public Comment:** Greg Russo spoke in support of the application. Russell Meads, on behalf of his parents who are abutters, spoke of his concerns about the possibility of damage to his parent's septic system, which is located in close proximity to the work area. There was one letter on file from Mrs. Meads that echoed the concerns voiced by her son. There was a letter from another abutter supporting the application and a letter from Nancy Meads, an abutter, opposing the application because of concerns related to the location of her cesspool.

**Board Discussion:** The Board questioned Mr. Kimball and Mr. Kinane. The Board encouraged the applicant to meet with his neighbors to discuss their concerns about the project, especially in regard to their septic systems. The applicant will present updated plans to the Board.

**FINDINGS OF FACT:**

- The existing structure has a scale of 59.19 scale units;
- The applicant is proposing an addition of 23.8 s.u. for a total of 82.99 s.u.;
- The allowed neighborhood scale, as per the assessor's data, is 64.91 s.u.;
- The proposed structure will be harmonious with the surrounding neighborhood and therefore in keeping with the intent of the Local Comprehensive Plan;
- The dormer on the north side of the structure will be enlarged, thereby extending a pre-existing, non-conformity, namely the encroachment into the north side setback; and
- This extension of the non-conformity will not affect the public safety in any way.

*Lynne Davies moved to grant a Special Permit under Article 3, Sections 3110 and 3340E of the Zoning By-Laws to extend and alter a pre-existing, non-conforming two-family dwelling structure up and along the non-conforming dimensions and to deviate from the neighborhood allowed building scale on the premises located at 14 Cottage Street, Steve Melamed seconded and it was so voted, 5-0. Lynne Davies will write the decision.*

**2004-022 361 Commercial Street (Town Commercial Center Zone), Daniel Lasser on behalf of Tonga Trust, T. Gandolpho, Trustee -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of pottery. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. The applicant was not present at the public hearing.

*Steve Melamed moved to table the case, Peter Bez seconded and it was so voted, 5-0.*

**MINUTES:**

**March 4, 2004 – Peter Bez moved to accept the language as amended, Lynne Davies seconded and it was so voted, 6-0-1 (absent).**

**NEXT MEETING:**

The next meeting will be on April 15, 2004 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:**

*Brian Falvey moved to adjourn at 9:50 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 April 15, 2004.

Respectfully submitted,

\_\_\_\_\_  
*Zoning Board of Appeals Signature*

Ellen C. Battaglini