

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

**MEETING MINUTES OF**  
**May 13, 2004**

**MEETING HELD IN TOWN HALL**

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

**Members Absent:** 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 6:38 P.M.

**PENDING CASES:**

**2004-032**      **212-214 Commercial Street (*Town Commercial Center Zone*), Attorney Robin B. Reid, Esquire on behalf of New Art Realty Corp. -**

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 in a proposed cinema and cabaret use venue. Gary Reinhardt, Peter Page, Lynne Davies, Brian Falvey and Patrick Eeley sat on the case.

**Presentation:** Attorney Robin B. Reid and Paul deRuyter appeared to discuss the case. The applicant submitted new floor plans for the cabaret area. The applicant stated that he intends to enhance the insulation at the premises in order to reduce the noise level and be vigilant about the impact of any outside lighting on the neighborhood.

**Board Discussion:** The Board has received information from the Provincetown Health Agent, Jan Raasch, that she is waiting for an opinion from Brian Dudley at the Massachusetts Department of Environmental Protection concerning the issue of septic flow at the premises. The Board discussed whether to continue discussing the case without this information. The applicant requested that the Board might render a decision conditioned upon the report from the DEP. The Board decided to continue the case until the May 20, 2004 Work Session.

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 six members of the Zoning Board of Appeals present and one absent.

**2004-033**      **212-214 Commercial Street (*Town Commercial Center Zone*), Attorney Robin B. Reid, Esquire on behalf of New Art Realty Corp. – (*continued from April 15, 2004*)**

The applicant seeks a Special Permit under Article 3, Section 3340E and Article 4, Section 4140 of the Zoning By-Laws to deviated from the allowed neighborhood building scale and to increase the pre-existing, non-conforming lot coverage of 41.9 percent to 44.9 percent. Gary Reinhardt, Peter Page, Peter Bez, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Attorney Robin B. Reid and Paul deRuyter appeared to present the application. The applicant seeks to increase the lot coverage and the building scale at the premises.

**Public Comment:** Daryl Irion spoke of her concerns about the proximity of the building to her property located behind the premises. There were two letters in the file. One from Ms. Irion reiterating her concerns about noise level and building proximity and one from another abutter expressing concerns about noise levels, lighting and increases in pedestrian traffic in the area.

**Discussion:** The Board questioned Attorney Reid and Mr. deRuyter. The Board informed the applicant that the application was incomplete. There was no plot plan of the proposed structure included and no floor plans for the additional living units. The Board decided to continue the case until the May 20, 2004 Work Session and requested that a plot plan of the proposed structure and floor plans be submitted.

**2004-040      214 Commercial Street (Town Commercial Center Zone), Kelly Blake on behalf of New Art Realty Corporation -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** The applicant was not present at the hearing.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise at the premises located at 214 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.*

The Board had no site plan in the file.

*Steve Melamed moved to reconsider the vote, Lynne Davies seconded and it was so voted, 5-0.*

*Peter Page moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise at the premises located at 214 Commercial Street (TCC) with the condition that a site plan be submitted by the applicant, Lynne Davies seconded and it was so voted, 4-1.*

**2004-041      184 Commercial Street (Town Commercial Center Zone), Thomas M. Rogers on behalf of Eileen Roland -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Steve Melamed disclosed that he was an abutter to an abutter, but felt he could render an unbiased decision. .

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

**Presentation:** Thomas M. Rogers appeared to present the application.

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

**Board Discussion:** The Board briefly discussed the case.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise at the premises located at 240 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.*

**2004-042      240 Commercial Street (Town Commercial Center Zone), Clothing by NIRA, Inc. on behalf of Joseph T. Patrick -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies, and Steve Melamed sat on the case.

**Presentation:** Stephen Abrams appeared to present the application.

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

**Board Discussion:** The Board briefly discussed the case.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise at the premises located at 240 Commercial Street (TCC), Peter Bez seconded and it was so voted, 5-0.*

**2004-043      244 Commercial Street (Town Commercial Center Zone), Marcus O'Brikis on behalf of Peter Stuart -**

The applicant seeks a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Loic Rossignon appeared to present the application.

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

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

*Peter Bez moved to grant a Special Permit under Article 3, Section 3420 of the Zoning By-Laws for the outdoor display of merchandise at the premises located at 244 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.*

**2004-044 5 Pleasant Street (Residential 3 Zone), Santos Construction, Arthur J. Santos on behalf of Stephen Syta -**

The applicant seeks a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an accessory use swimming pool/spa. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Arthur J. Santos appeared to present the application. The pool/spa will measure 7 feet by 14 feet and be 3 feet deep.

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

**FINDINGS OF FACT:**

- The property is located in the Residential 3 Zoning District;
- The addition of a swimming pool will be advantageous to the Town because it supplies an additional water source and will add to the overall health of the community; and
- There will be no adverse effects on the neighborhood.

*Peter Bez moved to grant a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install an accessory use swimming pool/spa on the premises located at 5 Pleasant Street (Res 3), Lynne Davies seconded and it was so voted, 5-0. Peter Bez will write the decision.*

**2004-045 350 Bradford Street (Residential 3 Zone), Michael and Sharon Santos on behalf of Michael Shay's Restaurant -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide outdoor dining seats in the East side yard. Steve Melamed recused himself because of a conflict of interest. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Patrick Eeley sat on the case.

**Presentation:** Michael and Sharon Santos appeared to present the application. The applicants seek flexible outdoor seating on the east side of the premises.

**Public Comment:** None. There were 6 letters in the file in support of the application.

**Board Discussion:** The Board briefly questioned Mr. and Mrs. Santos.

**FINDINGS OF FACT:**

- The total number of seats will remain at 200 with flexible seating allowed when outdoor dining is in effect. 34 seats will be taken out of the inside of the restaurant;
- The hours of operation for outdoor dining will be 8 A.M. until 10 P.M.; and
- There will be no amplified music at the premises.

*Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws to provide outdoor dining seats in the East side yard on the premises located at 350 Bradford Street (Res 3), Peter Bez seconded and it was so voted, 5-0. Patrick Eeley will write the decision.*

**2004-046 359 Commercial Street (Town Commercial Center Zone), Neal Kimball on behalf of Joseph Zaloom and Patrick Devine -**

The applicants seek a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second means of egress up and along a pre-existing, non-conforming dimension. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Neal Kimball, Joseph Zaloom and Patrick Devine appeared to present the application.

The applicants seek to renovate the second floor, utilizing open space above the porch to create a second means of egress.

**Public Comment:** Peter Bez, speaking on behalf of Vernon Porter, spoke in support of the application. There were no letters in the file.

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

**FINDINGS OF FACT:**

- The existing structure is pre-existing, non-conforming to the front yard and both side yard setbacks;
- The proposed addition is a second floor deck and will not change the footprint, but will encroach on the front yard setback;

- The proposed addition will improve public safety and in no way be a detriment to the neighborhood; and
- The proposed addition will bring the structure further into compliance with the State Building Code.

*Steve Melamed moved to grant a Special Permit under Article 3, Section 3110 of the Zoning By-Laws to construct a second means of egress up and along a pre-existing, non-conforming dimension on the premises located at 359 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.* Lynne Davies will write the decision.

**2004-047**

**389-393 Commercial Street (Town Commercial Center Zone), Jackson Building and Remodeling on behalf of Clyde Mellert -**

The applicant seeks a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood allowed building scale for the construction of dormers. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Paul Jackson and Clyde Mellert appeared to present the application.

The applicant seeks to create a second means of egress by constructing dormers on the third floor.

**Public Comment:** None. There were two letters in the file written by abutters who were against the application.

**Board Discussion:** The Board briefly questioned Mr. Jackson and Mr. Mellert.

**FINDINGS OF FACT:**

- The existing structure has a scale of 221.30 scale units;
- The neighborhood building scale is 110.14 s.u.;
- The proposed building scale is 126.66 s.u.;
- The proposed structure has a scale of 225.89 s.u.;
- This is a neighborhood with numerous large structures and the proposed building will be harmonious with the surrounding neighborhood; and
- The proposed structure will have a beneficial effect on the neighborhood and public safety by providing a second means of egress and bringing the structure more into compliance with the State Building Code.

*Peter Bez moved to grant a Special Permit under Article 3, Section 3340E of the Zoning By-Laws to deviate from the neighborhood allowed building scale for the construction of dormers on the premises located at 389-393 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.*

\_\_\_\_\_ will write the decision.

**2004-048**

**238 Bradford Street (Residential 3 Zone), Daniel Kells, Executive Director of the Provincetown Theater Foundation -**

The applicant seeks a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of alcoholic beverages and the provision of adult entertainment. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

**Presentation:** Daniel Kells appeared to present the application. Warren Alexander distributed a copy of the by-laws that had been approved at Town Meeting, including that which dealt with adult entertainment. Mr. Kells requested a withdrawal without prejudice of the provision of the application that dealt with adult entertainment because it is now a matter of right, pursuant to the new adult entertainment by-law.

*Peter Bez moved to grant the request for a withdrawal without prejudice, Steve Melamed seconded and it was so voted, 5-0.*

**Public Comment:** None. There was one letter in the file protesting the application.

**Board Discussion:** The Board briefly questioned Mr. Kells.

**FINDINGS OF FACT:**

- The alcohol will be served and consumed in the lobby area only and will not be brought into the performance space during performances; and
- The addition of a high quality theater facility is beneficial to the community both socially and economically and greatly outweighs any adverse effects it will have on the neighborhood.

*Lynne Davies moved to grant a Special Permit under Article 2, Section 2460 of the Zoning By-Laws for the service of alcoholic beverages at the premises located at 238 Bradford Street (Res 3), Peter Bez seconded and it was so voted, 5-0.* Lynne Davies will write the decision.

Chair Gary Reinhardt adjourned the Public Hearing at 9:48 P.M.

## WORK SESSION

Chair Gary Reinhardt reconvened the Work Session at 9:48 P.M.

### REQUESTS FOR ADMINISTRATIVE AMENDMENTS:

- 2003-039 13 Pilgrim Heights Road (Residential 1 Zone), John Semple on behalf of David MacRae -**  
Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.  
**Presentation:** John Semple appeared to discuss the request. The applicant seeks to add a screened porch instead of a den as originally planned. The porch will be larger than the den  
**Board Discussion:** The Board requested scale numbers from Mr. Semple before they rendered a decision. Mr. Semple and Warren Alexander calculated the scale numbers and presented them to the Board.  
*Peter Bez moved to consider the request as an Administrative Amendment, Lynn Davies seconded and it was so voted, 5-0.*  
*Peter Bez moved to grant the Administrative Amendment in Case # 2003-039, Lynn 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 -**  
Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.  
**Presentation:** Neal Kimball appeared to present the request. The applicant is reducing the size of the deck, and thus the building scale, as a result of a review by the Historical Commission.  
*Lynne Davies moved to consider the request as an Administrative Amendment, Steve Melamed seconded and it was so voted, 5-0.*  
*Lynne Davies moved to grant the Administrative Amendment in Case # 2004-020, Steve Melamed seconded and it was so voted, 5-0.*

### PENDING DECISIONS:

- 2004-027 147 Bradford Street Extension (Residential 1 Zone), Attorney Lester J. Murphy, Esquire on behalf of Allan Gallant -**  
Gary Reinhardt, Peter Page, Lynne Davies, Steve Melamed and Brian Falvey sat on the case. Lynne Davies read the decision. *Steve Melamed moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*
- 2004-028 24 Bradford Street (Residential 3 Zone), James Pat Patrick on behalf of George Poule -**  
Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case. Peter Page read the decision. *Lynne Davies moved to accept the language as written, Steve Melamed seconded and it was so voted, 5-0.*
- 2004-034 81 Shank Painter Road (General Commercial Zone), Neal Kimball and David Nicolau on behalf of Best Friends Realty Trust -**  
Peter Page, Lynne Davies, Steve Melamed, Brian Falvey and Patrick Eleeey sat on the case. Patrick Eleeey read the decision. *Lynne Davies moved to accept the language as written, Peter Page seconded and it was so voted, 4-0-1 (absent).*
- 2004-030 6 Law Street (Residential 3 Zone), Steven Langton on behalf of Joseph Basso -**  
Gary Reinhardt, Peter Page, Lynne Davies, Steve Melmed and Brian Falvey sat on the case. Gary Reinhardt read the decision. *Lynne Davies moved to accept the language as written, Steve Melamed seconded and it was so voted, 4-0-1 (absent).*

### MINUTES:

April 15, 2004 – *Steve Melamed moved to accept the language as written, Lynn Davies seconded and it was so*

*voted, 5-0-1 (abstain).*

The Zoning Board of Appeals was asked by the Board of Selectmen to propose goals and objectives for the coming year. The Board discussed this and suggested the following:

- A revision of the outside display by-law;
- Making Article 2, Section 2460 a Licensing issue, not a Zoning Board of Appeals issue;
- Making the designation of the hours of operation of an establishment a Licensing issue; and
- A revision of the current scale by-law.

**NEXT MEETING:**

The next meeting will be on May 20, 2004 and will consist of a Work Session at 6:00 P.M. and a Public Hearing at 7:00 P.M.

**ADJOURNMENT:**

*Steve Melamed moved to adjourn at 10:45 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 May 20, 2004.

Respectfully submitted,

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*Zoning Board of Appeals Signature*

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Ellen C. Battaglini