

TOWN OF PROVINCETOWN
ZONING BOARD OF APPEALS
MEETING MINUTES OF
July 22, 2004
MEETING HELD IN TOWN HALL

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

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 6:03 P.M.

OTHER BUSINESS:

The Board met with the Local Comprehensive Plan Implementation Committee, Anne Howard, Ted Malone, Ginny Binder, and with Martha Hevenor of the Cape Cod Commission.

PENDING DECISIONS:

2004-053 **309 Commercial Street (Town Commercial Center), Christopher S. Rego on behalf of John T. Grace -**

The applicant seeks a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to make a permanent a pre-existing, non-conforming metal and canvas temporary structure and to deviate from the neighborhood allowed building scale of a mixed use commercial structure. The Board has not received the requested plans. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Steve Melamed moved to vacate the original decision in Case # 2004-053, Peter Bez seconded and it was so voted, 5-0.

FINDINGS OF FACT:

- The Special Permit application instructions available in Town Hall clearly state all necessary parts of an application, noting, in BOLD LETTERS, “incomplete application will not be accepted”;
- The application for Case # 2004-053 was incomplete and the applicant was told this at a public hearing and asked to return with more complete plans; and
- The Board waited two months for plans and none have arrived, thus necessitating this decision.

Peter Bez moved to deny a Special Permit under Article 3, Section 3110 and 3340E of the Zoning By-Laws to make a permanent a pre-existing, non-conforming metal and canvas temporary structure and to deviate from the neighborhood allowed building scale of a mixed use commercial structure at the premises located at 309 Commercial Street (TCC), Lynne Davies seconded and it was so voted, 5-0.
Lynne Davies will write the decision.

MINUTES:

July 8, 2004 – *Steve Melamed moved to accept the language as written, Lynne Davies seconded and it was so voted, 6-0-1 (abstain).*

NEXT MEETING:

The next meeting will be on August 5, 2004 and will consist of a Work Session at 6:30 P.M. and a Public Hearing at 7:00 P.M.

The Board briefly discussed the outdoor display by-law.

Gary Reinhardt adjourned the Work Session at 6:58 P.M.

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 absent.

2004-072 128 Commercial Street (*Town Commercial Center*), Raymond L. Peloquin on behalf of Lightning Realty Trust-

The applicant seeks a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install a 16 x 32 foot swimming pool. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on the case.

Presentation: Raymond L. Peloquin appeared to present the application.

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

Board Discussion: The Board briefly questioned Mr. Peloquin.

FINDINGS OF FACT:

- The proposed swimming pool meets all necessary dimensional requirements;
- Water will be trucked in from out of town;
- The presence of a swimming pool in the neighborhood will improve public safety; and
- The proposed pool will have the required fencing.

Lynne Davies moved to grant a Special Permit under Article 2, Section 2450, G12 of the Zoning By-Laws to install a 16 x 32 foot swimming pool at the premises located at 128 Commercial Street (TCC), Steve Melamed seconded and it was so voted, 5-0. Peter Bez will write the decision.

2004-073 49A Commercial Street (*Residential 2 Zone*), Attorney Christopher J. Snow on behalf of Alan L. Pinkerson -

The applicant seeks a Special Permit under Article 3, Sections 3110 and 3340E of the Zoning By-Laws to alter, extend up and along a non-conforming dimension, increase the non-conforming lot coverage and deviate from the neighborhood allowed building scale of a pre-existing, non-conforming single-family dwelling structure.

2004-074 49A Commercial Street (*Residential 2 Zone*), Attorney Christopher J. Snow on behalf of Alan L. Pinkerson -

The applicant seeks a Variance under Article 2, Section 2560, *Dimensional Schedule*, pursuant to Article 5, Section 5222 of the Zoning By-Laws to construct a second means of egress within the required zoning side yard setback of a pre-existing, non-conforming single-family dwelling structure. Gary Reinhardt, Peter Bez, Peter Page, Lynne Davies and Steve Melamed sat on both cases.

Presentation: Attorney Christopher J. Snow and Gary Locke, engineer, appeared to present the application. The applicant has redesigned the project and has down-sized the design requirements in response to concerns voiced by abutters to the original plans for expanding the structure at the premises.

Public Comment: David Martin, a direct abutter to the project, speaking for his partner and himself, was in favor of the application. Robert Valois, an architectural designer, approved of the project. Tim Chappell, also a direct abutter, asked that a judgment concerning easements be put into the record. Peter Gallagher, another abutter spoke in opposition to the revised project, as did Tanya Leighton reading a statement from the Trustees of Jones' Locker Condominium Trust. There were 8 letters opposing the project and none in favor in the file.

Board Discussion: The Board questioned Attorney Snow and Mr. Locke. The building already has two internal means of egress, so the outside staircase the applicant is seeking is not required by the Massachusetts State Building Code. Attorney Snow stipulated for the record that there were easements in place at the premises.

FINDINGS OF FACT:

- The proposed project will bring the building into conformity with the Massachusetts State Building Code and FEMA requirements, thereby increasing public safety;
- The existing structure has a scale of 81.11 scale units;
- The allowed scale is 92.09 s.u.;
- The proposed structure will have a scale of 104.58 s.u.; and
- The proposed structure will be in harmony with the surrounding neighborhood, thus conforming to the Local Comprehensive Plan.

Steve Melamed moved to grant a Special Permit under Article 3, Sections 3110 and 3340E of the Zoning By-Laws to alter, extend up and along a non-conforming dimension, increase the non-conforming lot coverage and deviate from the neighborhood allowed building scale of a pre-existing, non-conforming single-family dwelling structure at 49A Commercial Street (Res2), Peter Bez seconded and it was so voted, 5-0. Peter Page will write the decision.

The applicant requested a withdrawal without prejudice of Case # 2004-074.

Steve Melamed moved to grant the request for a withdrawal without prejudice for Case # 2004-074, Lynne Davies seconded and it was so voted, 5-0.

2003-055 **80-82 Bradford Street and 4 Prince Street (Residential 3 Zone), Eliot Parkhurst, Attorney on behalf of Boutique Hospitality, Inc.-**

The applicant seeks a Special Permit under Article 2, Section 2460, pursuant to Article 5, Section 5330 of the Zoning By-Laws for the service of food and alcoholic beverages to guests only of an inn.

2003-056 **80-82 Bradford Street and 4 Prince Street (Residential 3 Zone), Eliot Parkhurst, Attorney on behalf of Boutique Hospitality, Inc. -**

The applicant seeks a Variance under Article 1, *Definition of an Inn*, and Article 2, Section 2470, *Parking Requirements*, of the Zoning By-Laws for the operation of an inn located on more than one lot and without the required number of parking spaces. The two cases are being heard by consent of both parties after having been remanded to the Board. The Board will take new public comment and letters from the public. Gary Reinhardt, Peter Page, Lynne Davies, Patrick Eeley and Brian Falvey sat on both cases.

Presentation: Attorney Eliot Parkhurst and Tom Walter appeared to present the applications. An indoor seating plan and a parking matrix were submitted to the Board for their approval.

Public Comment: David Dunn, an abutter objected to both applications. There was a petition signed by 14 abutters and 5 letters in favor of the applications and one letter in opposition to the applications

Board Discussion: The Board questioned Attorney Parkhurst and Mr. Walter.

FINDINGS OF FACT: (Case # 2003-055)

- The current use of the premises is as a hotel with 33 licensed guest units and 3 private residences;
- The proposed use of the premises is as a hotel with 33 rooms and 30 restaurant seats;
- At the present time, 22 of those restaurant seats will be permitted immediately and 8 will require a wait for Growth Management permits;
- The addition of a quality dining establishment in conjunction with a quality lodging establishment will enhance year-round tourism in Provincetown. The hours of operation for service of food and alcohol will be 7:00 A.M. until 11:00 P.M.;
- There shall be no outdoor seating with the exception of the large screened –in or winterized front porch area. No additional on-site parking will be added to accommodate the restaurant seating. No bar will be set up solely for the purpose of serving alcohol; and

The dining premises will be open to the public, but there shall be no outside advertising directed solely to dining patrons.

FINDINGS OF FACT: (Case #2003-056)

- The proposed use of the property, namely as a hotel with 33 guest units, 3 private residences and 30 restaurant seats, would require a total of 47 parking spaces;
- Presently, on site, there exists 19 parking spaces;
- The hotel leases 15 additional parking spaces from St. Peter’s Catholic Church; and
- The church is in close proximity to a municipal parking lot.

Brian Falvey moved to grant a Special Permit under Article 2, Section 2460, pursuant to Article 5, Section 5330 of the Zoning By-Laws for the service of food and alcoholic beverages to guests only of an inn and a Variance under Article 1, Definition of an Inn, and Article 2, Section 2470, Parking Requirements, of the Zoning By-Laws for the operation of an inn located on more than one lot and without the required number of parking spaces for the premises located at 80-82 Bradford Street and 4 Prince Street, (Res 3), Patrick Eeley seconded and it was so voted, 5-0. Lynne Davies will write the

decisions.

ADJOURNMENT:

Lynne Davies moved to adjourn at 8:55 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 5, 2004.

Respectfully submitted,

Zoning Board of Appeals Signature

Ellen C. Battaglini