

# Hartheimer appeals denial of Icehouse permit

By Steven Schwadron

Claiming that a 12-year-old zoning variance supercedes a 1976 Town Meeting moratorium against major real estate development, Albert Hartheimer appealed Thursday night a denial of a building permit to construct 33 new apartments in the five-story wing of the Icehouse Apartments.

The structure at 501 Commercial St., massive by Provincetown standards, used to be a cold storage fish plant. Owner Gary Ross has already built eight luxury apartments in the three-story wing on the basis of the 1965 variance, but work stopped in 1970 when Ross ran out of money. Hartheimer took an option to buy the property in 1975.

The 1965 variance promised Ross a building permit pending state approval of his sewage disposal plan. That plan has since been approved by state and local authorities. All the developer now needs is a building permit.

But John Bell, building inspector, denied a permit to Hartheimer, acting as agent for Ross, on the basis of the moratorium.

Last April's Town Meeting prohibited until 1978 building more than four dwelling units a year in any structure here. The moratorium was a direct response to two large condominium developments in Provincetown's East End.

Hartheimer argued last week that his 1965 variance predated the moratorium, that the moratorium was not intended to

apply to existing structures and that the building has particular hardships.

The board of zoning appeals is empowered, after its public hearing on the case last week, to give the go-ahead for developing the property. If the board validates the variance, Bell said he would have no grounds to deny a building permit. Board members wanted to consider the case carefully since it might end up in court.

Several abutters and nearby neighbors, including two Provincetown selectmen, spoke strongly against the proposed development. Hartheimer called them obstructionists, saying their comments did not reflect the feelings of the town at large.

Hartheimer said the building's height and bulk makes it stand out unattractively, and the only way to finish it was all at once.

He called the moratorium a "smoke-screen by people interested in their own businesses, not the town's general welfare."

"They simply want to keep everyone else from doing things, while they waste

water and pollute the harbor. If they had to comply with the same standards I will, they'd all be out of business," he said.

Hartheimer claimed the bylaw made no mention of remodeling existing structures, especially when a variance had already been issued.

While the local water supply was a major reason for the moratorium, he said the town has made only minimal efforts to conserve water, and that if developed, the

Icehouse would adopt stringent water conservation measures.

The project would not pollute the harbor, he said, quoting a letter from the commissioner of the state Department of Environmental Quality Engineering that called the Icehouse development less a source of pollution than the adjacent town storm drain. Pollution should be monitored and controlled, he said, but not by restricting well-conceived development.

The project would create jobs during construction and afterwards as well, Hartheimer said, and would help expand Provincetown's tax base by adding dozens of new taxpayers.

Currently, the eight occupied apartments cannot raise enough revenue to support needed repairs to the property, such as when a winter storm recently collapsed its bulkhead. As it now stands, the building is an eyesore and a safety hazard, he said.

No one besides Ross and Hartheimer spoke in favor of the project at the zoning board meeting. A number of opponents disagreed with the developers' interpretation of the moratorium.

"The issue here is the moratorium. When the freezer plant closed, it was legally too big to use for any other purposes," said Selectman Munro Moore. "It was varied to allow building it into apartments. That was the only change. It didn't say 40 apartments."

"That made it allowable to use the structure to construct apartments. There are hundreds of buildings in town that are allowed to do that, but at present they are all restricted to four a year," Moore said.

"When you call a halt to reassess, everybody gets hurt a little. Had people realized the reasons for the moratorium 12 years ago, he might not have gotten the original variance," he said. "It's not true that a variance issued 12 years ago gives him carte blanche now."

Howie Schneider called the proposed development a "classic case," where the developer does not own the property, but will buy it if all obstacles are eliminated.

"We may have been naive until recently about our use of water, but we're not going

to dense ourselves out of business. The moratorium was intended to curb just these kind of large developments."

Hartheimer resented Schneider's implication that the project represented a carpet-bagger development. In response to abuttor's questions, Hartheimer said the facility will have about 50 parking spaces, and will feature a self-contained fire sprinkler system.

But nearby residents also wondered about increased traffic congestion and the area's recurring flooding problems. The consensus from opponents was that if the building presents safety hazards, then the owner should repair them regardless of the proposed developments.

Despite Hartheimer's assurances, abutters still worried about potential harbor pollution. Frank Schaefer, of 500 Commercial St., said, "If we take any chance with our harbor, we are dooming ourselves economically and environmentally."



Icecaked Provincetown -- Winter 1977  
Big building: Old Cold Storage, now being made into apartments! Second peaked bldg (center): St. Mary's Episcopal Church.

The Advocate, Thursday, February 8, 1979

## Icehouse appeal dropped

By Mary Bauer

Gary Ross, owner of the Icehouse Apartments, last month dropped a court challenge to a Provincetown Board of Zoning Appeals 1977 decision which denied a building variance for the apartments.

Albert Hartheimer, a developer who held an option to buy the building, applied for a variance early in 1977 from a building moratorium voted in the April 1976 Town Meeting. He wanted to add 33 new units to the Icehouse complex at 505 Commercial St.

Ross brought suit in Barnstable Superior Court asking for a review of the zoning board denial. The issue was settled before trial Jan. 11 when David Pyne, Ross's attorney, withdrew the petition, said Town Counsel Duane Landreth.

The case was "dismissed with prejudice", meaning that Ross will no longer have the right to appeal to any court on the question of a variance from the moratorium, Landreth said. Hartheimer has abandoned the project.

In his application for a variance before the Zoning Board, Hartheimer had claimed that the 1976 moratorium didn't apply in his case because construction had already started under a 1965 variance. The earlier variance

permitted construction of luxury apartments in the huge building, formerly the Consolidated Cold Storage plant.

In its July, 1977 decision the zoning board said the 1976 moratorium applied to all builders, and found no reason to exclude Hartheimer from its provisions.

Pyne said he hopes to go before the zoning board soon to discuss the future of the building on Ross's behalf. He said the building is an "eyesore" and that "something's got to be done with it."

Pyne also said the original building permit is still in existence and in his opinion "the moratorium doesn't invalidate the permit." He said the permit established certain conditions which Ross was directed to fulfill, including a state-approved sewage disposal plan.

The state approved the plan in June, 1976, two months after the moratorium was voted, Pyne said. The Provincetown Board of Health granted a sewage permit the following January over objections by board member Barbara Mayo.

Pyne said he is not sure of the next step Ross will take in developing the property, but that he'll "present the case to the board" and that further litigation in the courts "may not be necessary."