

ZONING BOARD OF APPEALS

Approved 4.17.08
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Meeting Minutes

April 17, 2008

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members the Zoning Board of Appeals held a meeting, on Thursday, April 17, 2008 at 7:30 p.m. in Room B at the Town Hall. Members attending were Chairman Robert Gambale, Roger LeBlanc, Benjamin Fierro, Timothy Perkins, Associate Members Robert Bodwell and Robert Tragert and Administrative Assistant, Marie Rodgers. Kevin Lombard and Jim Sperber, Building Inspector, were not present.

Citizen Queries: there were none.

Public Hearings:

Chairman Gambale announced the continuation of **the Comprehensive Permit at 15 & 31 Locust Road and 30 & 34 Town Farm Road** at the request of the Petitioner, Mr. Scott Green; in a letter dated April 11, 2008 until the regularly scheduled meeting of May 15, 2008. In order to expedite the public meeting the Board determined to table the 40B discussion to the end of the meeting.

263 Argilla Road a/k/a 261 Argilla, Charles Whitten requests a **Special Permit** pursuant to Section IIB -XI.J VI, Footnote 2 of the Table of Dimensional & Density Regulations for relief of no more than 50% of the required minimum from side setback to construct single-family residence. The chairman read the legal notice and opened the public hearing at 7:40 p.m. The Petitioner represented himself and was accompanied by his wife and architect Todd Richardson of Richardson Associates. The petitioner reviewed the ongoing proposal and explained his architect's error of using the 20' setback for accessory structures instead of 40' for primary residence. He explained that it is a very tight site due to the wetlands and is fully permitted with an Order of Conditions from the Conservation Commission. Existing buildings were moved out of the ACEC and the barn was moved to the upland portion of the site, as permitted by this Board in the decision dated 2/15/08. The driveway was moved out of the ACEC and wetlands restoration work was done. In response to Chairman Gambale, the petitioner acknowledged that he received approval from the Building Inspector to relocate the boathouse.

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Additionally, the petitioner stated that his request is for setback for primary single-family rather than accessory structure of no more than fifty percent of the required setback; from 40-feet to 23-feet. The dwelling would be the same footprint including the square footage of the boathouse. Mr. Perkins clarified that this was the only way to site the dwelling within the ACEC; and the whole proposal is the same as when it was before the Board for the relocation of the barn and gardens.

Mr. Perkins noted that the relocation of the driveway will address a safety issue by providing for better sight lines. Mr. Richardson spoke to the locations of the existing buildings, the orchard restoration and showed aerial views and reiterated his work with Conservation Commission and abutters. A brief discussion took place regarding the requirements of a scenic road under the Planning Board's jurisdiction.

There were no abutters. **Peter Pinciario, 110 Argilla Road** spoke in favor of the proposal and urged the Board's approval; he commended Mr. Whitten's reputation for fine restoration work, winning the *Mary Conley Award* for restoration of the 1700's farm house that was gutted by fire; he continued to praise his character and his dedication to the environment and restoration work of the marsh.

Elizabeth Hickey, 9 Wainwright Road stated her support for the petition.

The chairman closed the public hearing. The Board discussed the location of the primary residence which would be 23-feet on the westerly side, 30 –feet on the easterly side and no closer than 21-feet.

Mr. Perkins moved that the Board grant the Special Permit as requested by the petitioner from the provision of the Protective Zoning Bylaw, Section IIB -XI.J VI, Footnote 2 of Table of Dimensional & Density Regulations for relief of no more than 50% of the required minimum from side setback of 20' on the northeasterly boundary line that abuts Robert Bryan to construct single family residence in accordance with plan titled 3/22/08. Mr. Fierro seconded, the motion passed unanimously.

Mr. Bodwell, yea; Mr. Perkins, yea; Mr. Fierro, yea; Mr. Gambale, yea; Mr. LeBlanc, yea;

9 Wainwright Street - James Hickey request a **Special Permit** pursuant to Section IIB - XI.J VI, Footnote 2 of Table of Dimensional & Density Regulations and a **Variance** pursuant to XI.K for relief of no more than 50% of the required minimum from side setback to construct an 19'x10'10" addition. The chairman read the legal notice and opened the public hearing at 8:02 p.m. Elizabeth Hickey was present to explain the proposal to expand her house and described it as one of those odd lots on Sawyer /Wainwright across from the wharf. Her and her husband have spoken with all their abutters and have a letter of support from the Jacksons.

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The reason for their request is to maximize the proposed addition and retain a yard. Ms. Hickey said it's the smallest lot in the neighborhood. The deck would be removed and replaced with a stairway with the addition. The chairman reviewed the relief criteria for a variance. Lengthy discussion was held regarding the proposal and relief requested.

The Board noted that the construction would not locate the dwelling any closer to the Sawyer side of the street. Currently, the existing building has a side set back of 14'-5". With the 4' bump out as proposed for the addition, the side setback would be reduced to 10'-5"; the abutter is Jackson. The current setback at the rear of the property is 38'.6". A variance would be required to reduce it to the proposed 24'-8". Additionally, 26.5 % of the lot is already covered, whereby only 20% is allowed; a variance would be required for relief for exceeding lot coverage.

The Board determined that it is a corner lot, and therefore has no rear. Also, the lot is not usual in shape for this neighborhood. It is currently non-conforming it cannot be more than 50% of the current non-conforming; it already exceed lot coverage.

The Board suggested eliminating the bump out leaving a straight line along the side of the property.

Ms. Hickey replied the reason for the bump out was to have all the plumbing intact and to improve the esthetics of the addition so that it would not look like a big box. She also said the land is currently sloped and that the driveway is there and there's no activity at that location.

The Board determined that the topography is unusual, but not unusual for that neighborhood.

Discussion took place regarding the proposal, options and alternatives; Mr. LeBlanc cited the bylaw and pointed out that the house next door is zero feet from the road, for this reason the petitioner could build five feet from the road if they choose to. The Board would need an average from several lots in the neighborhood to determine the average for the setback and the other setback could be a special permit. Lot coverage would still require a variance. The Board determined that the lot it is indeed a corner lot, the shape is not unusual in the neighborhood. The topography of the area was discussed – all the houses along Sawyer Street were built on ledge and all tiered. This is currently a non-conforming structure as 26.5 % of the lot is already covered, but only 20% is allowed under the bylaw.

Mr. Fierro stated for the record that the Board wishes to be supportive of the petition, but that it has to work within bylaw, as well as state law regarding the granting of a variance. He said this discussion has been to help the petitioner to think about ways to revise her proposal so that the Board can grant her the relief she seeks.

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The chairman suggested continuing the hearing until the next meeting so that the petitioner can rework the plan to be more in conformance with the neighborhood and to have time to come up with an argument for the excessive lot coverage, as well as evidence that she meets the criteria for variance for lot coverage.

Discussion took place regarding the petitioner's options. Mr. LeBlanc cited the regulations in Section IIB, 3, last paragraph, giving the Board broad latitude to grant a special permit where the proposed reconstruction, extension, alteration or change to a non-conforming structure would increase the non-conforming nature of said structure, but the Board determines that the "proposed modification will not be substantially more detrimental to the neighborhood than the existing nonconforming structure."

The Board determined that they could vote to grant a Special Permit for non-conforming structure and grant all relief, pending receipt of a letter from Mr. Sperber with the appropriate language allowing us to make this decision, based upon the Building Inspector's authority, providing evidence by the applicant the building inspector approved with ZBA approval.

There were no comments from abutters or others. Chairman closed the public hearing.

Mr. LeBlanc moved that the Board grant the Special Permit pursuant to Section IIB, 3, last paragraph, subject to the site plan as shown dated 2/25/08 and also that the structure shall look identical to the building plans dated 1/31/08 as designed by DMS design, LLC.

Also subject to a letter of confirmation from Mr. Sperber stating that Section IIB 3, subparagraphs a through e, do not apply to the property. Mr. Perkins seconded, the motion passed unanimously a polled vote. Mr. LeBlanc, yea; Mr. Gambale, yea; Mr. Fierro, yea; Mr. Perkins, yea; Mr. Bodwell, yea.

80 East Street, Carter, Colin and Tyler Fahey, Trustees request a **Special Permit** pursuant to Sections IIB - XI J. and IX.J for Accessory Apartment. The chairman read the legal notice and opened the public hearing at 8:50 p.m. The petitioners Carter and Tyler Fahey were present and explained that when the Building Inspector inspected the construction for their garage he recommended they obtain a special permit for the accessory apartment.

In response to the chairman's review of the accessory apartment criteria in the bylaw, the petitioners acknowledged in the affirmative to meeting all the criteria. The primary dwelling is fueled by oil and the accessory apartment will be fueled by gas; there is one electric meter. The decision will be recorded at the registry of deeds and cannot be transferred or divided. No commercial activity will be allowed in the garage or

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apartment. The Board determined that the new construction falls within the required square footage and the new outside entrance to the accessory apartment is in the back; the door out front is to the garage. Mr. Leblanc noted on the plot plan the back corner of the garage is located 37' from the lot line (less than the required 40'). The Board determined that the existing dwelling is already closer to that line than the addition. Therefore, because his proposed addition is no closer than the existing dwelling, a special permit would not be required.

There were no comments from abutters or others. The Public hearing was closed.

Mr. Fierro moved that the Board grant the Special Permit as requested by the Petitioner pursuant to Sections IIB - XI J. and IX.J for Accessory Apartment; specifically the Board finds the applicant has met the criteria for the issuance for Accessory Apartment under IX.J, and further that the applicant has met the conditions for the granting of a Special Permit, i.e., that the application serves a community need by providing for additional housing; finding no impact on town services or impact would be de minimus, there are no traffic issues, there is sufficient parking, there are adequate utilities to serve the apartment, that it appears to be compatible with the neighborhood and will have no negative impact on the natural environment. Mr. LeBlanc seconded, the motion passed unanimously.

17-25 South Main Street, Corcoran Brothers Development requests a determination of good cause to allow an extension of time for reconstruction and completion pursuant to Section II. Applicability 5. Reconstruction. The chairman read the legal notice and opened the public hearing at 9:05 p.m. Bob Corcoran and his brother Steve and architect Ken Savoie were present.

The two-story structure located at 17-25 South Main Street burned in a fire in June of 2006. The two-year time limit to reconstruct the building will expire this June 2008. Mr. Corcoran explained he purchased the property with seven months of the 24 months in which he could rebuild. He has received an Order of Conditions with the Conservation Commission, but that it was a four-month process. He said it is a very tight lot located right on the edge of the Ipswich River. He proposes using modular construction. He has received a building permit for the foundation. Total square footage of the new building will remain the same as previous structure. Discussion was held regarding start and completion expectations. Mr. Corcoran said it would be several months before the foundation is in then two and one-half months to finish.

There were no comments from abutters or others. Chairman closed the public hearing.

Mr. Gambale moved that this Board issue a letter of determination finding Good Cause to rebuild and replace the structure that burned down in June 2006; pursuant to section IIB 5. the extension will expire June 10, 2009. Mr. Leblanc seconded, the motion passed unanimously by a polled vote.

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Mr. Bodwell, yea; Mr. Perkins, yea; Mr. Fierro, yea; Mr. Gambale, yea; Mr. LeBlanc, yea;

Chairman Gambale returned to the discussion regarding **the Comprehensive Permit at 15 & 31 Locust Road and 30 & 34 Town Farm Road** - the Board was informed that the applicant had lost control of a portion of the site for which he is seeking the Comprehensive Permit. He intends to include different land. He submitted a letter from Mass Housing granting approval for the changes. The Board will review essentially a new proposal next month. The abutters should be noticed, as well as a new legal notice posted. All departments should be informed of the changes and new work orders will be required for consultants.

Mr. Bodwell moved to continue the Comprehensive Permit at 15 & 31 Locust Road and 30 & 34 Town Farm Road at the request of the Petitioner to the May meeting. Mr. LeBlanc seconded the motion passed unanimously.

Approval of Minutes

Moved by Mr. Perkins and seconded by Mr. Fierro the February minutes were unanimously approved as submitted.

Adjournment

There being no further business, it was moved, seconded and unanimously voted to adjourn at 9:48 p.m.

Respectfully submitted,

Marie Rodgers
Administrative Assistant