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## ZONING BOARD OF APPEALS

Meeting Minutes  
May 21, 2009

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members, the Ipswich Zoning Board of Appeals held a meeting on Thursday May 21, 2009 at 7:30 p.m. in Room A at the Town Hall. Members attending were Chairman Robert Gambale, Roger LeBlanc, Benjamin Fierro, Timothy Perkins, Robert Bodwell and Associate Member Robert Tragert. Also, Administrative Assistant to the Board Marie Rodgers. Jim Sperber, Building Inspector was absent.

**Citizen Queries:** there were no citizen queries.

Chairman announced the continuation request from Jeff Ries at 227 Argilla Road Special Permit and a Variance, under Sections IX-J, XI-J, and XI-K, to allow an accessory apartment above a detached garage.

**Public Hearings:**

**16 Market Street, Madex Realty Trust** requests a **Special Permit** under Sections XI-J, B.5 for a determination of good cause for an extension of time in order to reconstruct a nonconforming two story structure consisting of a business and residential unit and a **Variance** under section XI-K and IIB2 .b to and to increase the area and volume increase the allowable footprint.

Chairman Gambale read the legal notice and re-opened the public hearing at 7:53 pm. The Petitioner was present with his Architect Matt Cummings, and Attorney Rich Kallman.

Others in attendance: direct abutters Peter Ross and Arthur Ross. Attorney Kallman reviewed previous hearings and thanked the Board for the extension for reconstruction. He continued to relate that last Monday; Peter Ross came to his office and submitted a proposal of what they would like Mr. Cayer to build on that site; paper plans were submitted yesterday for Mr. Cummings review; he combined the Cayer proposal and the sketch submitted by the Ross's. Attorney Kallman then requested the Board grant a decision this evening.

Attorney Kallman acknowledged the request of Chairman Gambale to submit copies of the Mr. Ross's sketch to the Town Clerk to be stamped in and copies for the Board.

*Continue* - **16 Market Street, Madex Realty Trust** requests a **Special Permit**

Attorney Kallman submitted copies of a plan addressing concerns of keeping alley way open to avoid buildup of snow and ice between the buildings. This would be the first time the Ross's see this proposal.

Chairman Gambale reviewed the last meeting, it was agreed that zero front setback was allowed; the exit door can open inward because of the capacity of people on the first floor; the rear stairway is located where it is because space is extremely tight; commercial on first and second and residential on the third floor. Chairman Gambale questioned if in fact the second floor is commercial space, explains how it would or would not require some type handicapped accessibility.

Mr. Cummings explained that according to the code in Architectural Access Board an elevator is not required because the commercial space will the same use, used by the same people. He related his conversation with Jim Sperber, Code Enforcement Office who was of the same opinion. If the use changes they may have to come back to this Board and he does not want this issue to come back to the Board for relief.

Mr. Cummings described the plans and building materials required in alley way required two hour wall and cement clapboards.

Attorney Kallman review Variance criteria. Lengthy discussion took place regarding the regulations. Discussion took place regarding Mr. Sperber's decision requesting a Variance based on his conversation with Town Counsel. Specific provision were cited, a burned building would be allowed to be rebuilt with a Special Permit. The Board concurred that only a Special Permit would be required. Discussion ensued regarding a party wall vs. a fire wall. Mr. Cummings pointed to fn 5 to Table of Dimensional and Density special regulation for burnt buildings superseded everything in the zoning book.

Mr. Kallman said we don't want to come back, our intent this evening is to ask the Board to act what they feel is right. Mr. Gambale reviewed; to proceed under special permit criteria for special permit with the caveat if Mr. Sperber requires a Variance, they'll have to come back for a Variance.

Mr. Fierro agreed that special permit in bylaw addresses a disaster and acknowledged many unique buildings that are non-conforming; if the building was not enlarged could build by right, with increase have to come before the Board.

Petitioner expressed his frustration his petition was filed in February and was continued until the April 16, meeting; per Sperber it was re-advertised due to the deficient legal notice to include the request for a Variance under section XI-K and IIB2 .b to increase the allowable footprint; he does not want to come back and be delayed any further.

In response to the Chairman's clarification, Attorney Kallman agreed to go forward with a Special Permit. Chairman Gambale closed the public hearing.

*Continue* - **16 Market Street, Madex Realty Trust** requests a **Special Permit**

The Board Discussion criteria: authority under section II.B.5 relative to reconstruction after a fire for non-conforming structure, allowing the Board grant a Special Permit the proposal meets the economic needs of the community, fiscal impact – does not add to town services more that the pre-existing building and will add to the tax base, no traffic impact than previously, no significant increase in utilities –the proposal was mindful of the neighborhood character and Design Review Board recommendations were supportive. Abutter letters were all supportive and direct abutter concerns were address with modifications to the plan concerning the alleyway; no impact on the natural environment.

**Mr. LeBlanc moved to approve the Special Permit based on Architect plan dated 5/20/09 from Cummings Architects for commercial space at 16 Market Street to approve plans shown on plans. Mr. Perkins seconded, the motion passed with a roll call vote. Bodwell, yes - Perkins, yes – Gambale, yes - Fierro, yes - LeBlanc, yes.**

**27 Water Street Greg Mc Carthy and Eric Schmakel** requests a **Special Permit** and **Variance** pursuant to IIB.2 - Sections XI.J and XI.K to raze the existing structure and construct a four unit residential building within the same footprint. Chairman Gambale read the legal notice and re-opened the public hearing at 9:38 pm. (continued from the January, February, March, April meetings) The Petitioner **Greg Mc Carthy** was present represented by his **Attorney Rich Kallman**.

Attorney Kallman submitted a revised memo (hereby incorporated by reference) addressing concerns raised by the Board at the February meeting; grandfathered use of the boat building; effects of pre-existing non-conforming use has on the parking requirements. Lastly, will this proposal require Planning Board review?

Attorney Kallman submitted a layout of Water Street that Larry Graham discovered in the basement of Town Hall; the layout indicates that a portion of the proposed parking lies within Water Street. (hereby incorporated by reference). Mr. Gambale requested that Attorney Kallman have these submittals stamped in with the Town Clerk.

Discussion took place regarding the street layout. And Attorney Kallman requested to table discussion until a later time. Chairman Gambale spoke of an informal meeting that took place between himself, the Petitioner, Attorney Kallman and Mr. LeBlanc for informational purposes only to look at the 1910 layout.

Chair recognized **Jim Kresser 2 Scottons Lane** who questioned the layout; it was confirmed that the yellow line is the actual layout according to the 1910 plan.

Attorney Kallman cited case law and submitted copies to the Board and spoke to abandonment or non-use. Discussion took place concerning the Building Inspectors decision regarding abandonment. In an e-mail forwarded to the Board Mr. Sperber related his query to Town Counsel asking about abandonment vs non-use; Town Counsel said it was Mr. Sperber's judgment call.

Continue - **27 Water Street Greg Mc Carthy and Eric Schmakel** requests a **Special Permit** and **Variance**

Chairman Gambale suggested presenting these cases to Mr. Sperber for interpretation and resolution and in turn provide the Board with a decision; he conducts the annual inspections as such he is better qualified than the ZBA in making this determination.

Discussion took place regarding existing non-conforming multi family use under footnote 18, with commercial use on the first floor and residential use on the second floor. Mr. LeBlanc pointed to the unique situation of two different uses; if the residential use has always been occupied and the commercial use is abandoned it can no longer be considered multi family use.

Chair recognized **Jim Kresser 2 Scottons Lane** who questioned the definition of multi family; he requested that if the Board defers to the Building Inspector determination concerning abandonment that he should make that decision within this public process.

Chairman Gambale cited definition of the zoning bylaw.

Mr. Perkins related observations from the site visit of two vessels, equipment and stacked boat wood outside which shows use is still occurring, unless we have evidence to the contrary. Mr. Fierro added a point for clarification that it may show evidence that it has not been abandoned.

In response to Mr. Perkins query, Mr. Kresser has lived on Scotton Lane for five years and has seen Mr. Malanson a few times.

In response to Mr. Perkins query, Mrs. Nelson of 29 Water Street said she sees Mr. Melanson everyday, he drives his car out four or five times a week, he's in the building puttering, they're partially made boats with equipment and activity and he has guest visit; he's there.

Mr. Perkins opined that the Board has factual basis to make a decision with regards to abandonment. Chair agreed and Attorney Kallman continued to discuss multi family use; the use is permitted pursuant to B.1. non-conforming use.

The Board discussed the bylaw and determined that a Special Permit to change non-conforming use and extension of same non-conforming use one residential to four shall not be more substantially detrimental. (with parking remaining to be discussed)The Board determined that the property had not been abandoned and agreed that it meets the definition of multifamily and does not required Planning Board approval; the footprint of structure will not change.

**Jim Kresser 2 Scottons Lane** said clearly we're not talking about a permitted use; four units are not allowed in the single-family zoning, so were going from non-conforming multi- family to an increased additional two unit multi family. (Multi family would be allowed by Special Permit in Intown District).

**Mr. Kresser** opined it is not permitted on 5000 square feet of land even if there was a vacant 5000 sf lot four units would not be permitted.

**Continue - 27 Water Street Greg Mc Carthy and Eric Schmakel requests a Special Permit and Variance**

Chair recognized **Mary Kresser 2 Scottons Lane**, she opined this proposal would be detrimental to the neighborhood, it would increase volume in height and would deter from the neighborhood and she objected to the higher building and more volume. (the chair assured her these were preliminary plans only, and height will be taken into consideration).

Discussion ensued regarding the question before the Board, finding non-conforming use. The Board has to look at it, as if it was opened as a full commercial boat house with a residential unit, what kind of activity would there be? Is four residential units more or less detrimental than that? Currently there is a dormant commercial use there, but there is there potential for a marina or dock to come back. The question before the Board is to compared four residential units to a resumed boat business, would it be more detrimental to the neighborhood than residential units.

The Board agreed it is an extension of the existing use.

Parking was discussed Kallman said parking spaces have been in the public way since 1920 and have to disclose to people, it would be a risk the buyer takes.

**Attorney Kallman request to continue to the Board next regularly scheduled meeting in June.**

The Board continues the public hearing until the June 18, 2009 meeting.

**17 Bush Hill Road, Stephen and Carolyn Walsh** were present to request a **Variance** under Sections XI-K, and VI.C and D of the Dimensional and Density Regulations to decrease the existing lot. Chairman Gambale read the legal notice and opened the public hearing at 10:38 pm. The Petitioners were present with their Attorney Arthur Ross. Also present were Thomas and Patricia Skinner of 19 Bush Hill Road.

The Skinner's are abutters and interested in purchasing half of the back lot (60B) and create a yard more like others in neighborhood no further expansion proposed; there is legal frontage for two lots. It will make a conforming lot a non-conforming lot – anything done to the structure will have to come back to this board.

Hardship pertains to the shape of the lot – a large portion of the lot is behind the neighbors property; instrument plan was never recorded. It will make lots more uniform and consistent with the area. No change in density, no creation of building lots.

In response to the Chairman the Petitioner affirmed payments of two tax bills, it is the Petitioners intention to have one lot, one tax bill – make lot 59 legally existing non-conforming.

**Continue - 17 Bush Hill Road, Stephen and Carolyn Walsh**

The Board discussed process and procedure – proposed lot area for Skinner’s lot (191) will contain 20,549 square feet; Walsh lot (192) will be comprised of 19,401 square feet. The Petitioner will submit an ANR plan to the Planning Board.

**Mr. Perkins moved to permit the division of property in accordance with plan of land dated 11/7/80 Hancock Survey to permit division of 191A to lot 191 and remainder will stay with lot 192A subject to lot 192 and 192A by conveyance. Mr. Fierro seconded, motion passed by a roll call vote Gambale, yes - LeBlanc, yes - Fierro, yes - Perkins, yes – Bodwell, yes.**

**14 Bayview Road, Lorne Sullivan** requested an **Appeal** of the Building Inspector’s decision or in the alternative a request a **Variance** pursuant to sections XI.E and K for reduction of the side setback more than 50% of the requirement as established in VI.B Table of Dimensional and Density Regulations for the newly constructed sundeck with stairs. The Petitioners were not present. No abutters or others were present. The Board discussed the recent letter written by Jim Sperber and sent, rescinding his order, citing building code supersedes zoning. The Board recognized that there was no longer an appeal or request for the Board to act on. **The Board administratively continued the public hearing until the June 18, 2009 meeting.**

**YMCA** - the Board accepted the landscape plan received 5/2/09 dated 1/30/09; the Board found it in compliance with Comprehensive Permit. The Board then discussed letter dated 5/5/09 from Attorney Whitten; it appears to be incorrect regarding action taken by this Board

The Board determined no response would be necessary.

**Minutes:**

Moved by Mr. Fierro and seconded by Mr. Perkins the minutes from the April 2009 meeting were unanimously approved as amended.

**Old Business:**

Discussion took place regarding Mr. Fierro’s re-appointment letter; no word from BOS; need to be sworn in by June 1<sup>st</sup>.

**Adjournment**

There being no further business, it was moved, seconded and unanimously voted to adjourn at 11:38 p.m.

Respectfully submitted,  
Marie Rodgers  
Zoning Board of Appeals  
Administrative Assistant

**These minutes were approved by the Board on June 18, 2009.**