

Approved
10/30/18

ZBA Meeting Minutes for October 16, 2018

Meeting Opened at 7:00 P.M.

In Attendance: Chairman Stephen G. Gray; Vice Chairperson Sharon Clarke; Members Eric Mueller, James Nauen, and Fran Mello

Chairman Gray welcomed newest Member Fran Mello who was appointed recently as a permanent Member of the Board. She had served previously as an Alternate Member.

September 11, 2018 meeting minutes were presented for review or amendments.

Motion to accept as written was made by Member Mueller; seconded by Member Nauen. Motion passed: 5-0

Continued Public Hearing on Case Number 34-1: Petitioner: Davenport Building Company; 20 North Main St.; South Yarmouth, MA 02664. The Petitioner is requesting a Special Permit pursuant to Section 5300 of the Carver Zoning By-Law, for property located at 14 Andrews Point Rd. in Carver, MA. (Assessors' Map 1 – Lot 8) to demolish and reconstruct a new home on a pre-existing nonconforming lot in a Residential Agricultural District.

This case was continued from September 11, 2018.

Atty. Richard Serkey spoke for the Petitioner, Jeff Merritt, on behalf of Davenport Building Company. Atty Serkey presented Carver Zoning By-Law Section 2254 and read the section into the record. Atty Serkey contended that the request to demolish and rebuild is By-Right and a Special Permit is not necessary. In addition, he claimed that the new construction would increase the current non-conforming left side, right side, and rear setbacks and make them less non-conforming.

Chairman Gray reminded the Petitioner that only four members of the Board would be voting as Member Nauen had recused himself from this case.

Chairman Gray asked what the plans were to remove or replace the current deck, which is placed within five (5) feet of the property line. He was told that the old deck would be demolished and a new, larger deck would be constructed but that the setbacks would actually increase with the new construction.

Member Mello questioned whether the proposed rebuild was covered under Section 2254 which speaks to "reconstruction, extension, alteration, or change which does not increase the non-conformity," because the existing home would be demolished completely and relocated with no current part of the structure being utilized. Atty Serkey reiterated his position that a Special Permit is not required.

Neighbor John Caprarella expressed his opinion that the proposed project was completely new construction (and not a "reconstruction") and that it was not in the same footprint as the old house that was to be demolished. He also questioned whether the Petitioner was creating a self-imposed hardship. Vice Chairperson Clarke explained that self-imposed hardships come into play with Variance requests, not in situations where a Special Permit is sought.

Mr. Caprarella presented the Board with a list of concerns and conditions he wanted the Board to consider during their deliberations. Chairman Gray accepted the document and made it part of the Board file. He expressed his concern that the proposed project would change the character of the neighborhood, as the new home would be much larger and in the middle of a neighborhood of smaller homes. He also commented on the loss of privacy from the removal of a fence which separated the properties.

The neighbors at 22 Lakeview St., , stated they were not opposed to the proposed dwelling but would like to see a fence or some other type of screening constructed for privacy.

Member Mello asked if the walkout basement would be finished. The Petitioner indicated in the negative.

Chairman Gray asked if the lot had been surveyed and if it were staked and boundaries marked.

The Petitioner indicated in the affirmative; various neighbors in the audience disagreed.

Chairman Gray asked if the Petitioner had approached the neighbors to discuss fencing and how they might work together to resolve the issues that seemed to center mostly around privacy and screening. He reminded the Petitioner that he had suggested this at the previous meeting.

The Petitioner stated he had talked to the neighbors. The neighbors denied this.

Chairman Gray urged the Petitioner to speak with the neighbors to better understand and address their concerns.

Vice Chairperson Clarke asked the Petitioner, in view of the advice given by their attorney that a Special Permit was not necessary, if they would now go back to the Building Commissioner and apply for a Building Permit.

The Petitioner stated they would like to go back and seek a Building Permit before proceeding any further with the Board.

Chairman Gray reminded the Petitioner that the Board need not accept a withdrawal of the case if the Building Commissioner decided that zoning relief would not be required after all. He again suggested that the Petitioner and the neighbors talk before the next Board meeting about issues regarding privacy and screening.

A Motion was made to continue the meeting to the date of October 30th, 2018. Motion made by Vice Chairperson Clarke, seconded by Member Mello. Motion passed 4-0.

Public Hearing on Case Number 24-4A : Petitioner: David Mucahy (represented by Atty. Richard Serkey), d/b/a ohDeer South Shore, P.O. Box 340, Kingston, MA 02364. The Petitioner is requesting a Variance pursuant to Sections 5222 and 2230 of the Carver Zoning By-Law, or for property located at 157 North Main St. in Carver, MA (Assessors' Map 24, Lot 4A) to construct an addition to the rear of a pre-existing non-conforming residence in a Highway Commercial District, said addition for the purpose of an office and the storage of business materials.

Attorney Serkey contended that the Petitioner had been directed incorrectly to seek a Variance because under Carver Zoning By-Laws 2230, the "Use Regulation Schedule," the Petitioner has the right to utilize the property at 157 North Main Street as a "Craftsman/Tradesman."

Attorney Serkey argued further that the definition of "Craftsman/Tradesman" under Article VI, when parsed properly, applies to the Petitioner under the facts of this case.

The Petitioner has a case currently before the Planning Board but was referred to the ZBA by the Zoning Enforcement Officer and Carver Town Planner after discussions with, and a ruling from, Carver legal counsel, K Law.

The Petitioner was told a signed P&S would need to be submitted as part of the record if the case were to move forward with the ZBA.

The Petitioner is seeking to construct a 5900 square foot Morton/Space Metal building at the rear of a current non-conforming residence. This residence is rented at this time and will continue to be rented until the financing bank approves the cessation of rental income based upon business receipts from the proposed business that will move into the Morton/Space Metal building in back. This warehouse space is intended to be utilized for storage, mixing, and disbursement of non-toxic chemicals to spray customers' yards for deer, mosquitos and ticks; also, for the manufacture and retail sale of bat boxes, guinea fowl coops; and for associated office space.

Chairman Gray stated he would like to speak to Town Counsel to better understand the background of the case, as the Board was just now learning that the Town Planner had been having conversations with legal counsel about certain concerns that were being raised.

Chairman Gray asked if anyone in the audience wanted to speak about the case.

Brian Butler stated that the Petitioner did not know him, but that he had used the Petitioner's services previously and wanted to go on record that Mr. Mulchay's employees were friendly and professional and that his products worked.

Motion was made to continue the Hearing to the date of October 30, 2018 and, in the meantime, for Chairman Gray to contact Town Planner Steven Cole and Amy Kessel, Esq. at K Law and report back to the Board on the 30th.

Motion made by Member Mello; seconded by Vice Chairperson Clarke. Motion passed 5-0.

After continuing the Hearing, Chairman Gray asked Attorney Serkey if a 6 P.M. start time on this case and Case 34-1 would be acceptable. He answered in the affirmative.

Public Hearing on Case Number 60-63R : The Petitioners, Brian Butler and Linda Butler, are requesting a Variance pursuant to Section 2320 of the Carver Zoning By-Law for property located at 49 Woodhaven Street in Carver, MA (Assessors' Map 60, Lot 63R). They are seeking a Variance to construct a new two car garage and connector handicap ramp on a pre-existing lot in a Residential Agricultural District.

The Petitioners explained that they were asking for a 15.9 foot side variance to construct a 2 car (3 tandem) garage and an enclosed handicap ramp. Petitioner Linda Butler, 49 Woodhaven Street, explained to the Board that both she and her husband have medical conditions that will necessitate an enclosed handicap ramp in the near future, as they have lung conditions and need to avoid extreme heat, cold and snow.

Chairman Gray explained the threshold for a variance to be granted under M.G.L. c 40A—topography, soil, or shape of the lot.

The Petitioners asked that the Board grant the necessary sideline variance based on the shape of the lot.

Letters of support were presented from neighbors residing at 48 Woodhaven Street and 50 Woodhaven Street. These were entered into the record of the case.

Chairman Gray asked whether there were any plans to screen the proposed garage from the property of the neighbor on that side. The Petitioners replied that they would be happy to provide for screening but that they preferred a vegetation fence. It was agreed that a vegetation barrier along the easterly boundary would be provided as a screen.

Christine Pollock, 54 Woodhaven Street, Jennell Miller, 27 Woodhaven Street, and Patrick Keanneally, 45 Woodhaven Street, all spoke in support of the Petitioners.

Vice Chairperson Clarke agreed that limitations pertaining to the shape of the lot dictated where the proposed garage and handicap ramp could be located.

Motion to close the Hearing was made by Vice Chairperson; seconded by Member James Nauen. Motion passed: 5-0.

Motion to find that, owing to circumstances relating to the shape, soil conditions, and/or topography of the lot, but not affecting the district generally, a literal enforcement of the provisions of the By-Law would involve substantial hardship to the Petitioners. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law.

Motion made by Vice Chairperson Clarke, seconded by Member Nauen. Vote to approve: 5-0.

Motion was made to grant a 16 foot variance on the easterly side of the lot. Motion made by Member Mello; seconded by Member Mueller. Motion passed: 5-0.

As a condition to the grant of the Variance, Motion was made for the planting of a green vegetation screen on the easterly side of the lot, and that this green vegetation screen be planted within two (2) years after the Building Permit is issued.

Motion made by Vice Chairperson Clarke; seconded by Member Mueller. Motion passed: 5-0.

Motion was made by Vice Chairperson Clarke at 8:50 P.M. to adjourn the meeting; seconded by Member Mueller. Motion passed: 5-0 vote.