



*Appraisal*  
*10/16/18*

**CARVER ZONING BOARD OF APPEALS**  
**MINUTES OF September 11, 2018 MEETING**  
**Room 4 – 7:00 p.m.**

Present: Stephen G. Gray, Chairman; Sharon Clarke, Vice-Chairperson; Members Eric Mueller; Frances Mello, and James Nauen. Member Steven Maynard was absent. Also present: Marianne MacLeod, Recording Secretary.

Chairman, Mr. Gray, opened the meeting at 7:00 P.M. Mr. Gray requested a moment of silence in remembrance of the tragedy of 9/11/01. He then introduced the Board members present and shared with the public their individual work experience in many different areas.

**PUBLIC HEARING:**

Case No. 34-1: Petitioner: Davenport Building Company; 20 N. Main Street, S. Yarmouth, MA 02664. The Petitioner is requesting a Variance from side setbacks pursuant to Sections 2320 of the Carver Zoning By Law, for property located at 14 Andrews Point Road 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.

Michael Williams of Davenport Building appeared on behalf of the Petitioner, Jeff Merritt. Mr. Merritt and Joe Azzinotti are the owners of the property and were present as well. Mr. Williams explained that the Petitioner wants to make this house less non-conforming. They are seeking a Special Permit as it is alleged that the proposed modifications will not be more detrimental to the neighborhood. They will be discontinuing the existing cesspool and installing a new one at a different location on the property.

Mr. Gray requested a copy of the Conservation Commission Letter of August 28, 2018 which Mr. Williams had referenced in his remarks. It stated that Brooke Monroe, Conservation Agent, was writing, on behalf of the Conservation Commission, in support of the proposed project. Mr. Gray asked Mr. Nauen if he would recuse himself because he is a Member of the Conservation Commission and voted in favor of the project when the Petitioner came before it. Mr. Nauen said he did not believe he needed to recuse himself. Mr. Gray asked for the position of the other Board members. Ms. Clarke said she felt Mr. Nauen should recuse himself. Mr. Mueller agreed with Ms. Clarke. Ms. Mello felt the Board would hear different aspects of the project and believed Mr. Nauen did not need to recuse himself. Mr. Gray explained his thoughts and said he

would respectfully ask again for Mr. Nauen to recuse himself. Mr. Nauen said he would recuse himself under protest.

With the recusal of Mr. Nauen, Mr. Gray explained there were now four (4) voting members of the Board, meaning that in order to obtain approval, the decision would need to be unanimous. He stated that he wanted to be certain that the Petitioner understood. Both land owners, including the Petitioner, Mr. Merritt, and their representative, agreed to move forward.

Mr. Williams reviewed the plan that was submitted and explained the Petitioner is requesting sideline variances of 15 feet on the right and left sides and 15 feet from the rear. He also shared pictures of the existing house. Ms. Clarke asked for details about the house that will be razed. Mr. Williams said it is a 2-bedroom house and is in a condition where it needs to be re-built. They want to build a new house and move the septic system. Mr. Gray explained that they need to demonstrate something unique about the soil, topography, or the shape of the lot to justify the variances they are requesting. Ms. Clarke explained that self-imposed hardships are not allowed.

Mr. Gray said it appeared to him that the application and notice were for variances and not for a Special Permit. Mr. Gray asked if the Petitioner had filed anything with the Building Dept. Mr. Williams replied in the affirmative and that there was a copy of a letter from the Building Department in the documents submitted. Ms. Clarke explained the public notice was only for variances. She explained that this becomes a matter of proper public notice and that there could be an issue because the public notice may not have been correct. The advertisement was not for a Special Permit.

Mr. Gray asked if any other member of the Board would like to speak with regard to the issue of a Special Permit vs. variances. Mr. Mueller said he feels this should be a Special Permit application. Ms. Clarke explained what a Special Permit Hearing would entail and that is what should have been advertised.

Mr. Gray asked what the timetable is for the project. Mr. Williams replied they are hoping to start this Fall. Ms. Clarke explained that lot size needs to be considered as well, as it appears to be undersized based on current zoning bylaws.

Mr. Gray next invited members of the public to comment.

Dan Sullivan, 10 Andrews Point Road spoke. He liked the plan and the fact that the Petitioner was going to improve the house and, in turn, the neighborhood. He asked the Board to approve the project.

Mark Benning appeared with his wife Rebecca and lives on the east side of the Petitioner's property. He explained that a deck was constructed about five (5) feet from their property line. This was done about 15 years ago. He would like it noted that the Petitioner is not increasing the set-back and they are not counting the size of the deck. Ms. Clarke asked him to show in the plans exactly what he was talking about. He feels the deck should not be included in what they are requesting to build because the deck was never permitted. Rebecca said she felt the Petitioner was improving the property and really does not have a problem with the project,

except for the deck. Mr. Benning, too, said he is not against the project but just has concerns about the deck.

Brian Lauzon, 18 Lakeview Street, spoke next. He said the deck has always been there as far back as he can remember and he has lived in his house for 18 years.

John Caprarella and Lisa Zarba are abutters at lot #9. He feels the location to the property line is very close and this is a concern. He does not know exactly what the proposed house would look like and how it will fit on the property. He asked to view a copy of the plans when he attended the Conservation Commission meeting but was never shown any. Ms. Clarke explained the Board had entered the plans into the record and gave Mr. Caprarella a copy. He also had construction concerns regarding the excavation and potential damage to trees on his property by equipment and trucks, as well as debris. Ms. Zarba asked if the garage and shed were staying. Mr. Williams said they were staying. She also inquired if the driveway was being widened. Mr. Williams indicated that it was staying "as is."

Mr. Williams said the Petitioner was never aware of the deck not being permitted until tonight. Ms. Clarke stated that if something is in existence for more than 10 years, it is not considered to be an issue typically.

Mr. Merritt explained that he had worked with the Conservation Commission and that the first set of plans was to lift up the house and repair the foundation and then set the house back down. The Conservation Commission had concerns about excavation and worked with the Petitioner who came up with a plan to move the house back from the pond. He stated he is trying to work with all the Boards to get this project done correctly.

Ms. Clarke explained that if there ever were an appeal to be taken following a vote by the Board in favor, the fact that the request for relief was noticed improperly could be a sticking point.

Ms. Mello asked the square footage of the current house. Mr. Merritt said a little over 1,000 square feet. The proposed house will be about 1,520 square feet, with 400 square feet of it being a second floor which is to be added. Ms. Clarke asked if there is a basement. Mr. Williams explained that it is a walk-out towards the pond and will be used for storage only.

Ms. Mello asked about the square footage of the proposed porch. Mr. Williams could not answer that question. Mr. Williams said it will be the same size but will have a partial roof.

Mr. Gray explained that the Hearing will have to be re-noticed. His recommendation was that the Petitioner be allowed to withdraw without prejudice so that he could re-apply under the appropriate bylaw/s. The Board members agreed. The Petitioner would need to ask for a Special Permit in his new filing. Ms. Clarke added that the Board will ask that the Town waive the filing fee.

Mr. Williams requested that the Petitioner be allowed to withdraw without prejudice. Mr. Mueller made a Motion to accept, seconded by Ms. Clarke, voted and passed 4-0-0 with Mr. Nauen recusing himself.

Ms. Clarke made a Motion to ask the Town to waive the filing fee, seconded by Mr. Mueller, voted and passed 4-0-0 with Mr. Nauen recusing himself.

Mr. Gray asked the Petitioners to think about the concerns of the abutters regarding possible damage due to construction and damage to trees, as well as the deck being so close to the abutting property.

### **MINUTES**

All Board members received and reviewed a copy of the Minutes of the July 31, 2018 meeting. Mr. Gray found one typo on page 4 where the word "read" is repeated twice. This will be corrected.

Mr. Nauen made a Motion to accept the minutes of July 31, 2018 with the above-noted correction, seconded by Mr. Mueller voted, and passed unanimously 5-0-0.

### **CORRESPONDENCE**

None.

### **EXECUTIVE SESSION**

The Board then entertained going into Executive Session under M.G.L. c 30A, S 21 (a) (3) to discuss strategy with respect to pending litigation in the case of Town of Carver Planning Board v Town of Carver Zoning Board of Appeals, Plymouth Superior Court, Docket #: 1683CV00720, as an open meeting could have a detrimental impact on the litigation position of the public body.

A roll call vote was taken and all Members voted to go into Executive Session.

Mr. Gray announced that the Board would not be reconvening in open, public session.

Whereupon, the Board went into Executive Session.