



# TOWN OF CARVER

## Zoning Board of Appeals

108 Main Street

Carver, MA 02330

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Meeting Minutes of May 21, 2019

May 21, 2019 @ 7:00 PM

Carver Town Hall Room #4

Present: Stephen G. Gray, Chairman; Sharon Clarke, Vice-Chairperson; Members: Eric Mueller, Frances Mello, and Alan Germain

Also present: Recording Secretary, Kelly Dicarli

Meeting Opened: 7:00 P.M.

A. Minutes: Meeting minutes of April 30, 2019 were reviewed by the Board.

Sharon Clarke made a Motion to accept the minutes. Seconded by Alan Germain. Voted and passed unanimously, 5 – 0.

B. **Public Hearing: Case No. 1-8 (Continued):** Petitioner: Thomas J. Caprarella Family Trust appealing the issuance of Building Permit number 2018-425, to demo and reconstruct a single family residence, for property located at 14 Andrews Point Road, Carver MA (Assessor's Map 1- Lot 8) pursuant to Section 5223 of the Carver Zoning By-Laws

Stephen G. Gray initiated the discussion. He stated that the Board had conducted Public Hearings previously regarding the subject property (See Case file #34-1 for reference) and had determined, after reviewing all the evidence and considering the testimony, that the property owners did not require zoning relief in order to build based on the Plans they had submitted.

Edward Angley, Esq. was present representing the Petitioner, Caprarella Family Trust, a neighbor to the owner of the subject property. He distributed a letter to the Board, dated April 30, 2019. He then read this letter, which consisted of his rationale for appealing the issuance of the Building Permit for a new single family dwelling to be located at the subject property. This letter is part of the Case file.

In his letter, Edward Angley, Esq. quoted from Sections 2253 and 2254 of the Zoning Bylaw, as well as Article IV of the Bylaw relative to the definition of the word "reconstruction." He pointed out that the Plans submitted with the Building Permit application showed the existing dwelling at the site, which is not in compliance with current setback and lot size requirements per the By-laws, and a proposed two bedroom dwelling which allegedly was not within the same footprint of the existing structure that is to be razed. Per Edward Angley, Esq., the proposed construction would create a new nonconforming structure and would not be a "reconstruction" as this word is defined in Article IV, as the proposed construction would not be within the same footprint of the dwelling to be razed and that "grandfathering" was not allowed under these circumstances. Accordingly, he argued that the Building Permit was issued erroneously and that zoning relief was necessary as dimensional variances would be required for the proposed dwelling.

Anthony Riley, Esq. was present representing the owner of the subject property who desires to demo and reconstruct a single family residence. He had submitted a letter to the Board previously, dated April 25, 2019. He stated that the proposed construction would decrease existing setback nonconformities and also

be partly within the footprint of the house to be razed. He also discussed what he believes to be the appropriate interpretation of the word "reconstruction" as it appears in the Zoning Bylaws, Article IV. Anthony Riley, Esq. referred the Board to 2019 case law from the Massachusetts Supreme Judicial Court (Bellalta v ZBA of Brookline & others, 481 Mass. 380-381) and a letter from Town Counsel, dated October 30, 2018, that was received previously by the Board concerning the interpretation of "reconstruction" that he says supports his position (See Case file #: 34-1 for reference).

Mark Benning, 22 Lakeview Street, spoke. He is a neighbor. He opposes the proposed construction as it is too large and not in keeping with the character of the neighborhood. He noted there will be a three story high structure overlooking the property line. He also stated that the new dwelling will be set on the property line next to a non-authorized deck (18 feet wide and 19 feet long from edge of house) which was built over 10 years ago.

Sharon Clarke inquired about the Plans submitted to the Building Commissioner. Jeffrey Merritt, owner of the subject property, noted that since then, the drawings had not changed (with a bedroom on the second floor and a walkout basement). The setback distances were now on the Plans as well.

Jeffrey Merritt, the owner of the subject property, also stated that the proposed house would be closer to the street and further away from the pond and that it would be centered more on the lot than in the corner of the lot as previously.

Alan Germain spoke, noting he is also a member of the Conservation Commission. He mentioned that it had been in favor of the proposed construction.

Stephen G. Gray then asked Alan Germain if he felt that being a member of the Conservation Commission would affect his impartiality for purposes of the case before the Board. He stated in the negative. No objections were voiced by the other Board Members relative to Alan Germain continuing to sit on this Case.

Stephen G. Gray next invited lawyers for both sides to make a final comment.

Edward Angley, Esq. reviewed the definition of the word "reconstruction" in the Bylaw, as well as the "rule" for allowing unpermitted structures, the deck in this case, to remain if at least ten (10) years old, stating that if the structure was "illegal" originally, it remained "illegal." Anthony Riley, Esq. disagreed with the interpretation of the word "reconstruction" in the Bylaw that was advanced by Edward Angley, Esq. He instead mentioned that pertinent case law in Massachusetts supports his position and that of Town Counsel that the razing of the existing house and the construction of the proposed dwelling constitutes "reconstruction" and stressed that based on the Plans, existing setback non-conformities would be lessened, not increased, when the new house is built, and that zoning relief in this instance was not required or necessary.

Stephen G. Gray asked if Board Members wished to visit the site. Following some discussion, it was decided that no site visit was needed.

Finally, Stephen G. Gray mentioned that during previous Public Hearings (Case #34-1), he had discussed with both sides of the dispute getting together and working towards an amicable resolution so that the Zoning Board would not be compelled to make a decision. He stated that if the Board went to a Decision, the next possible next step would be for the losing side to appeal to the Court. He indicated that this would cost both money and time, as no construction would be allowed while the appeal was pending.

Both Sharon Clarke and Stephen G. Gray suggested continuing the Case for thirty (30) days for the parties and Board Members to consider their respective positions. In the meantime, both attorneys stated on the record that they would speak with each other in the interim in an effort to determine if an amicable meeting of the minds could be reached.

Frances Mello will follow up with the Carver Town Assessor regarding the history of the deck and if it has been taxed; however, Board Members stated that this information likely would not affect the outcome of the Case.

Anthony Riley, Esq. objected to the Continuance as he stated that the Board needed to make a Decision within 100 days of the Building Permit being issued in November 2018.

Sharon Clarke pointed out that when this matter came before the Board originally, the previous attorney for the landowner had requested a Continuance. At the following meeting of the Board, a Continuance was again requested by the landowner. As to both requests, the Petitioner agreed to the Continuance requests, therefore "freezing" the time by which the Board is required to make a Decision under M.G.L. c 40A. Edward Angley, Esq. had no objections with the Continuance of the Public Hearing at this time.

Alan Germain made a Motion that the Case be continued. Seconded by Sharon Clarke. Voted and passed unanimously, 5-0

- C. Public Hearing: Case No. 41-4: (continued)** Petitioner: Vittorio M. Artiano Jr., requesting a Variance pursuant to Sections 5222 and 2300 of the Carver Zoning By-Law for property located at 1-7 Commerce Way in Carver, MA (Assessor's Map 21, Lot 22) seeking a variance from rear and side setbacks to install a 42 X 65 storage building in the Industrial C District.

Vittorio M. Artiano appeared before the Board seeking a 42 X 65 storage building in the Industrial C District. A Public Hearing on this Case was opened on April 30, 2019. At that time, the Petitioner had requested (by email, dated April 30, 2019)) a Continuance due to the fact that only a four member Board was present.

Currently, Mr. Artiano owns a local company called Rebuildex and is requesting dimensional zoning relief so that he can construct the above-referenced storage building in which he plans to keep various equipment. He owns all the land and buildings at this address. Vittorio M. Artiano distributed plans and maps of the proposed storage building to the Board Members. The proposed storage building would be 11 feet from the leaching field and would be in compliance with current Title V regulations.

Vittorio M. Artiano also presented a letter from LMC Realty, LLC dated March 15, 2019, a direct abutter, indicating no objections to the storage unit being built. It was mentioned that the proposed storage building would abut a fence on Route 44 which is on the same side as the subject property. A cell tower is present on the opposite side of Route 44, as well as a solar field and an open lot.

Sharon Clarke inquired about the construction of the building and Vittorio M. Artiano stated that he owns all the land and buildings at the subject location. The proposed storage building will be one floor with a steel frame and roof, one entrance door, one garage door, electricity, heat via propane, working plumbing, but no sanitation units.

Alan Germain noted he is self-employed and sub-contracts work for SLT Construction which is located at the subject site. Stephen G. Gray asked Alan Germain if he felt this would affect his ability to make an impartial or unbiased decision on this Case. He responded in the negative and all Board Members indicated they had no objection to him continuing to sit on this Case.

Stephen G. Gray noted that M.G.L. c 40A requires that, in order for any variance to be granted by the Board, it must make a finding that there is something distinctive or unusual about the subject property, i.e. shape, soil, or topography, that would allow the Board to "break the Bylaw" as a literal enforcement would cause hardship to a petitioner.

Vittorio M. Artiano stated that the hardship in this instance is due to the shape of the subject property. Due to the multiple buildings located thereon, he is left with little room on which to place the proposed storage building other than a long, skinny triangle of land at the back corner of the property. Also, there is a leaching field in front of the left corner of the proposed storage facility, thereby affecting soil conditions at the site and limiting any further pushback from the side and rear.

Currently, there are storage boxes/units with miscellaneous equipment located in the rear corner of the subject property which the Petitioner plans to remove prior to construction.

A Motion was made to close the Public Hearing and duly seconded. Voted and passed unanimously, 5 – 0

A Motion was made by Eric Mueller that the Board find that, owing to circumstances relating to the shape, soil conditions, and/or topography of the structures or lot, but not affecting the district generally, a literal enforcement of the provisions of the Bylaw would involve substantial hardship to the Petitioner. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. Seconded by Sharon Clarke. Voted and passed unanimously, 5-0.

A Motion was made by Frances Mello to grant Petitioner, Vittorio M. Artiano Jr., a dimensional variance of 10 feet from the side lot and 32 feet from the rear lot, per Plans prepared by Morse Engineering and filed by the Petitioner and made part of the record of this Case. Seconded by Alan Germain. Voted and passed unanimously, 5-0.

Sharon Clarke made a Motion to require Vittorio M. Artiano to clean-up and remove all other storage buildings/structures and materials near the footprint of the proposed construction at the back corner of the subject property, prior to construction. Seconded by Frances Mello. Voted and passed unanimously, 5-0.

D: Correspondence (if any): None

E: Next Zoning Board Meeting: Tuesday, June 18, 2019 at 7 P.M.

F: Adjournment: Alan Germain made a Motion to adjourn this meeting. Seconded by Sharon Clarke. Voted and passed unanimously, 5-0.

Meeting adjourned at 8:20 P.M.

Respectfully submitted,  
Kelly DiCarli