



TOWN OF CARVER

Zoning Board of Appeals

108 Main Street
Carver, MA 02330

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Meeting Minutes of June 18, 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; Robert Francis, Building Inspector; Members of the public

Meeting Opened: 7:00 P.M.

- A. Minutes: Reviewed March 26, 2019 minutes.
Alan Germain made a Motion to accept the minutes. Seconded by Eric Mueller. 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 demolish and reconstruct a single-family residence, for property located at 14 Andrews Point Road, Carver MA (Assessors' Map 1- Lot 8) pursuant to Section 5223 of the Carver Zoning By-Laws.

Stephen G. Gray opened the discussion and noted that during previous Public Hearings on this Case and on Case #34-1, there had been extensive conversation and evidence-taking regarding the subject property. He reminded everyone that he had encouraged Edward Angley, Esq. (representing Petitioner, Thomas J. Caprarella Family Trust) and Anthony Riley, Esq. (representing Jeffrey Merritt, the owner of the subject property) to have a conversation to ascertain if they could reach an amicable settlement on behalf of their respective clients. Both Edward Angley, Esq. and Anthony Riley, Esq. responded that attempts at a resolution had been unsuccessful.

Edward Angley, Esq. asked that the Board allow his client, Thomas J. Caprarella, to speak. Permission was granted and Mr. Caprarella also distributed diagrams that he maintained were pertinent relative to the definition of the word "reconstruction" as it appears in Article VI of the by-Law.

Next, Stephen G. Gray noted that he had received an email dated June 5, 2019 from the Boette and Philips Family, 8 Andrews Point Road, Carver, Ma., stating their support for the proposed project. This family was absent from the meeting due to a prior engagement.

Frances Mello mentioned that she had followed-up with the Carver Town Assessor regarding the history of the deck at the subject property and if it had been taxed. Per Town records, the deck was said to date to at least 2014 with modifications made in 2017. The deck has been taxed.

Stephen G. Gray inquired if the proposed reconstruction would be less non-conforming.

Anthony Riley, Esq., on behalf of the property owner, responded in the affirmative, based on the Plans. The westerly side yard setback of the existing dwelling is 8 feet currently and what is being proposed would be a setback of 15 feet; the easterly side yard setback of the existing dwelling is 4.5 feet currently and what is being proposed would be a setback of 15 feet; the rear yard setback of the existing dwelling is currently 10 feet and what is being proposed would be a setback of 35 feet; the front yard setback is 95.4 feet and what is being proposed would be a setback of 55.5 feet which is within the 50 foot minimum requirement. The existing lot coverage is 16% currently and what is being proposed is 18% which is under the 30% maximum.

Stephen G. Gray requested that legal counsel for both parties stipulate to the following to which they agreed:

The existing dwelling is non-conforming as to setbacks from lot lines and lot size.

The proposal to raze the existing dwelling and replace it with a new dwelling will be, at least, partly within the existing footprint of the dwelling to be razed, per the Plans.

The construction of the new dwelling would not change overall lot size.

The construction of the new dwelling would not extend or intensify existing setback non-conformities.

The construction of the new dwelling would not create any new setback non-conformities.

The construction of the new dwelling would actually lessen existing setback non-conformities.

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

A Motion was made and duly seconded and voted unanimously that the Board find that the proposed project is a “reconstruction” as that word is defined in the by-Law under Article VI, based upon the Board’s interpretation of said definition, the Plans of record, as well as in reliance upon applicable case law, and the opinion of Town Counsel whose opinion is part of the case file.

A Motion was made by Frances Mello that, per by-Law 2254, the Board find that there is no need for zoning relief in this case. Seconded by Eric Mueller. Voted and passed unanimously, 5-0.

A Motion was made by Alan Germain, based on all of the evidence and the findings of the Board in this case, to uphold the issuance of the Building Permit. Seconded by Eric Mueller. Voted and passed unanimously, 5-0.

Stephen G. Gray commended all parties for their participation and how articulate they were in expressing their opinions and positions.

- C. Public Hearing: Case No. 52-1: Petitioner: On the application of Brittany and Eric Predella, requesting a Variance pursuant to Sections 2300 and 5222 of the Carver Zoning by-Law for property located at 17 Forest Street in Carver, MA (Assessors' Map 52, Lot 1 – 3R) seeking a variance to build a garage within the minimum setbacks in a Residential Agriculture area.

Eric and Brittany Predella are seeking to build an attached garage at the subject property. The couple live in a raised ranch. They brought illustrations of the proposed garage which they showed to the Board. They are seeking side yard setback zoning relief, as the requirement is a minimum of 30 feet and they only have 18 feet. They state that the placement of their well and septic at the subject property prevents them from locating the garage anywhere other than where it appears, per the Plans as filed. The garage will consist of a one room space, a tall ceiling with beams for support, no second story, no floor drain, and no lavatory. However, it will have electricity (with the possible future addition of air conditioning and heat). One edge of the proposed garage will be four feet in front of the existing dwelling at the subject property.

No opposition was received or voiced by any members of the public.

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 by-Law," as a literal enforcement would cause substantial hardship to a petitioner.

Going through this analysis, the Petitioners agreed that the shape of their lot does not apply, as it is square, and that the topography of the subject property is flat from corner to corner and side to side. However, the Petitioners argued that soil conditions were an issue as the placement of their well and septic on the subject lot mandates that the proposed garage be placed as depicted on the Plans, which would require a 12 foot side yard variance.

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

Eric Mueller made a Motion that the Board find that, owing to circumstances related to the soil conditions of the lot but not affecting the district generally, a literal enforcement of the provision of the by-Law would involve substantial hardship to the petitioner and that 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. Seconded by Frances Mello. Voted and passed unanimously, 5-0.

Eric Mueller made a Motion that the Board grant the requested side yard setback variance of 12 feet. Seconded by Alan Germain. Voted and passed unanimously, 5-0.

Alan Germain made a Motion that the grant of the variance be conditioned as follows:

1. The subject garage will be used as a garage and for no other purpose.
2. There will be no second floor to the subject garage.
3. There will be no bathroom placed in the subject garage.
4. There will be no floor drains in the subject garage.
5. Subject to the Plans of record.

Seconded by Eric Mueller. Voted and passed unanimously, 5-0.

D. Next Zoning Board Meeting: Tuesday, July 30, 2019 at 7 P.M.

E. Adjournment: Alan Germain made a Motion to adjourn. Seconded by Eric Mueller. Voted and passed unanimously, 5-0.

Meeting adjourned at 7:46 P.M.

Respectfully submitted,
Kelly DiCarli