



# TOWN OF CARVER

## Zoning Board of Appeals

108 Main Street

Carver, MA 02330

Phone: (508) 866-3450 Fax: (508) 866-3430

Meeting Minutes of October 1, 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: Mark Poirier; Alternate Member and Recording Secretary, Kelly DiCarli

Meeting Opened: 7:00 P.M.

A. Minutes: Reviewed July 30, 2019 August 20, 2019 minutes.

Alan Germain made a motion to accept the minutes. Seconded by Eric Mueller. Voted and passed unanimously, 5-0

B. Minutes: Reviewed August 20, 2019 minutes

Alan Germain made a motion to accept the minutes. Seconded by Frances Mello. Voted and passed unanimously, 5-0

C. **Public Hearing: Case No. 60-C-60-R (Continued): Petitioner:** William Jackson, requesting a Variance from frontage requirements pursuant to Sections 5222 and 2320 of the Carver Zoning by Law for property located at 43 Woodhaven Street Carver, MA (Assessor's Map 60, Lot C-60-R) in the Residential Agriculture Area.

The reason for requested relief is so Petitioner, William Jackson and wife (present) is seeking four (4) feet of frontage variance in front of the Jackson's housing establishment. The shed will be located on the right side of the house. William Jackson stated the shed cannot be built in back of house due to a retaining wall behind their house

Stephen Gray noted the Zoning Board Members completed a site visit on September 7, 2019 and asked if William Jackson had any additional questions or comments before the decision was made. Mr. Jackson declined any further questions or comments.

Pamela Jackson (wife), re-iterated from the past Zoning Board of Appeal meeting this variance request be granted based on a financial burden due to the errors made by the contractors. Mrs. Jackson noted she has invoices from the project, however, per Stephen Gray, invoices not necessary to be reviewed by the Zoning Board Members.

Zoning Board Members reviewed the plot plans and summarized their site visit. It appears the house structure is at an angle and the structure won't sit in front of the house. The measurement on the plan is 48.8 feet and the petitioners are 1.2 feet short for the 50-foot structure. Mr. Jackson confirmed measurements.

Alan Germain noted that due to the topography, the shed cannot be built in back of the house due to a retaining wall.

approved  
10/29/19

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

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

Sharon Clarke made the motion on the findings when the front steps of the house are considered, the garage construction would no longer place the resulting structure in front of the house and a frontage setback variance of only 1.2 feet would be needed for the proposed garage. Seconded by Alan Germain. Voted and passed unanimously, 5-0

Alan Germain made a motion to grant the variance from the front set back two (2) feet from the Carver by-law section 2320 owing to soil, topography, and per the submitted plans. Seconded by Eric Mueller. Voted and passed unanimously, 5-0

- D. **Public Hearing: Case No. 125-9-107: Petitioner:** Deborah Myers requesting a Special Permit pursuant to Sections 2242 of the Carver Zoning by Law, for property located at 13 Priscilla Mullens Way in Carver, MA (Assessors Map 125-Lot 9-107R) in order to operate a home-based horse stable business in a Residential Agricultural District.

The reason for requested relief is so Petitioner, Deborah Myers to provide a horse boarding business on her property. Ms. Myers has been living at her residence since March 2017 and started boarding horses May 2018. Ms. Myers has four (4) non-fixed, movable structure stables from a company in Maine delivered to her property with a rent to town agreement. Ms. Myers reported her business is already in place and was unaware of a special permit. Ms. Myers received a board of health permit to operate the horse stables before renting the stables. Once she realized she needed a zoning permit she immediately went to the town hall to begin the application process. Ms. Myers reported to the Board Members that the Building Commission told her to continue business as usual during the Zoning Board of Appeals process. Ms. Myers has 4 stables currently on her property which the measurements are as follows: two (2) 12x24, one (1) 10x10, and one (1) 10x12. The total square footage for all buildings measure 1,116 square feet. To note, the buildings are not positioned together but separated on her property. In addition, Ms. Myers has 135x55 ft riding space.

Ms. Myers received permits from the Board of Health and was in compliance with requirements, in which her permit was given in May 2018 with a re-inspection and expiration date December 2019. Ms. Myers is able to house 8 horses in total on her property lot, however, only 7 horses reside in the stables. Ms. Myers is boarding three (3) horses whom which belong to other owner and two (2) horses belong to herself. Currently her business excludes lessons and trail riding.

Alan Germain reviewed Sections 2245 (c) of the Carver Zoning by Law and according to documented permits, the stalls are referred to as “sheds” to which Ms. Myers was unaware of this. Frances Mello also reviewed Sections 2245 (c) of the Carver Zoning by Law and question the original approval of the “sheds”

Sharon Clarke prompted Ms. Myers to further described her permit process and her business.

Deborah Myers noted that during the permit process there was no discussion about the Zoning Board grant request. The Board of Health noted to the petitioner she can have up to eight (8) horses and doesn't matter how they are obtained. Ms. Myers further discussed her stalls, there is no electricity present and has a running water hose coming from the house. Ms. Myers business is advertised through her website and Facebook.

Stephen G. Gray inquired the square footages of house and the stalls. Ms. Myers noted her house is 1700 square feet and her stalls are total of 1100 square feet.

Ms. Myers noted that she was granted building permits for the stalls. Alan Germain hypothesized the permits were granted because the buildings are non-fixed structures but labeled as storage sheds.

Stephen G. Gray inquired to Ms. Myers the traffic study that was completed. Ms. Myers reported she conducted a traffic study autonomously where she set up cameras on her property facing the road several months prior to the hearing date. The camera captures 20 seconds of video and Ms. Myers would count the cars passing by her house every night and visitors at her business to determine the approximated traffic around her business that would affect the residence.

In addition, Deborah Myers indicated a tree line separates her property from her neighbors and was questioned by the Board Members regarding manure containment and removal. Ms. Myers explained that the Board of Health reported the manure needs to be 200 feet from all neighbors well and possibly leave a container on site. Ms. Myers also indicated she has numerous fly control treatments on and near the manure site, applies fly spray on the horses, as well as her area is sprayed for mosquitoes three (3) or four (4) times a year.

Stephen G. Gray opened the meeting for public comments.

Johnathan Dunn, 11 Priscilla Mullins Way, neighbor, is opposing the Petitioners request to operate a home-based horse stable business in a Residential Agricultural District. Mr. Dunn voiced he has no problem with horses or his neighbor. However, when she moved in, she cleared the "whole property" of trees, sanded the property, then started to put up the stalls.

Lori Dunn (Wife) also spoke and discussed her objection to the stalls and stated per the Town Hall she would have the manure removed and not left on her property.

Johnathan Dunn voiced because his property directly abuts Ms. Myers property, the smell of the manure is "bad" and close to his house.

Thomas Hyland, 18 Priscilla Mullins Way, does not abut her property and lives a few houses away and is not opposed the Petitioners request to operate a home-based horse stable business in a Residential Agricultural District. Mr. Hyland stated based on his observation the business does not change the neighborhood or the change in traffic.

Donna Forand, 27-8 South Meadow Village, non- neighbors, asked if the Petitioner has staff to take care of horses. Deborah Myers confirmed she has staff on site to care for the horses.

Stephen G. Gray asked Deborah Myers for any closing remarks.

Deborah Myers reported she spoke with Johnathan Dunn in 2017 and communicated with him her plan to start the horse boarding business. Ms. Myers continued to note he "hated horses" and they are a "burden". Deborah Myers stated she spoke with all neighbors as courtesy and open to any comments or concerns. Deborah Myers noted she has three (3) letters from the neighbors indicating "no problem with the stable". Deborah Myers gave letters to Stephen Gray and will be part of her file. She also reported she didn't clear her whole lot, there is 24 feet on one side, 12 foot of trees from another building and 30 feet in the back.

Stephen G. Gray asked Deborah Myers to tell the Board Members whether she is going to sell her property in the three (3) years? Ms. Myers stated "no", as she has children in the Carver School System.

Given the information presented to the Board Members, Alan Germain requested a site visit to which Sharon Clarke supported.

Alan Germain made a motion to continue the Public Hearing: Case No. 125-9-107 for next meeting on October 29, 2019 at 7 P.M. Seconded by Eric Mueller. Voted and passed unanimously, 5-0.

Frances Mello made a motion to conduct a site visit on October 12, 2019 at 9 A.M. Seconded by Eric Mueller. Voted and passed unanimously, 5-0.

- E. **Public Hearing: Case No. 52-1 (Continued): Petitioner:** Capeway Cannabis Inc., requesting a Variance pursuant to Article 27, Zoning By-Law Changes - Section 5000.5 (2) Location and Dimensional Controls to allow a non-medical marijuana establishment within 500 feet of a religious facility. Property is located at 316 Tremont Street in Carver, MA (Assessor's Map 127, Lot 8-0-R) in a General Business District

The reason for requested relief is that the Petitioner, Capeway Cannabis Inc., is seeking a variance to allow for a setback of 250 feet from a religious facility instead of at least 500 feet as required under the bylaw.

Alan Germain will be abstaining from this vote, however Mark Poirier is the alternate appointed board member.

Stephen G. Gray opened the discussion stating the preliminary decision of this matter has been made by the town hall. As a result, to this decision couldn't be permitted because of the existence Carver bylaw and the matter was sent to the Zoning Board of Appeals. The Zoning Board of Appeals will making a decision in accordance to M.G.L. c 40A. Stephen Gray continued to state that the Board Member has nothing to do with the preliminary decision at the town hall, and will be charged in making an independent and responsible decision based on judgement upon voting. Stephen Gray reminded everyone that non-medical marijuana per state law is now allowed. Throughout this petition, issues of dimensional shape to break the bylaw will be the issues not social policy.

Edward Angley, Esq. representing Kevin Hough (present) presented a pre-written documentation to the Board Member supporting the non- medical marijuana establishment. In summary, Edward Angley, Esq. noted the change in Article 27 of the town, Carver has limited the number of recreational cannabis facilities to two (2) , the difficult of building commercial property in South Carver, the proposed location of the Marijuana establishment is a circumstance to shape, and the substantial financial hardship to the petitioner thus far.

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 - Stephen- the argument is shape and topography financial hardship.

The Board Members inquired the location of the establishment which is located at 316 Tremont Street, Carver. Kevin Hough noted this building would be a lease from Timeless Stonework as this business is manufactured in back of the property in a metal building. Kevin Hough confirmed the owner of the building of Timeless Stonework's was not present during this meeting.

Edward Angley, Esq. reported that under the Massachusetts State Cannabis Regulation, once they go for state regulation, they have to have security in the building and only one (1) businesses sign.

Kevin Hough discussed the state would prefer to have a free-standing location.

Stephen G. Gray prompted Edward Angley, Esq. to further explain why this variance should be requested by shape of the lot. Edward Angley, Esq. pointed out to the definition in his presentation and noted this lot is square with a tip and the lays flat. Stephen G. Gray summarized that Edward Angley, Esq. is noting the topography definition to alternative approach, to which Edward Angley, Esq. noted the alternative approach is the buildings elevation.

Stephen G. Gray opened the meeting for public comments

Barry Hanson, 307 Tremont Street, the Church Pastor is opposing the Petitioners request for the Variance pursuant to Article 27, Zoning By-Law Changes - Section 5000.5 (2) Location and Dimensional Controls to allow a non-medical marijuana establishment within 500 feet of a religious facility. Barry Hanson was unaware of the request from the Zoning Board of Appeals and only request on his behalf is for the Board members to consider is when making their decision, keep in mind the initial decision made by the Town Government and if this request granted it will uphold the town decision.

Stephen G. Gray informed Ms. Hanson that the Zoning Board of Appeals is the only committee that has the legal authority to break bylaw due to a unique and/or unusual circumstance. Stephen G. Gray also noted there has been an allegation made by the petitioner that his church has been inactive for a period of time, to which Stephen G. Gray followed up with questions pertaining to Mr. Hanson's congregation.

Mr. Hanson commented how he cannot foresee this variant grant being unique. In addition, Mr. Hanson noted he's been the Pastor for the past five (5) years and the period of inactive was before he arrived. Mr. Hanson reported that in 2014 the church consisted of 30 people and currently has a membership of 105 people of all ages and about 40-50 of those members are from the town of Carver. Sermons services are conducted on Sundays through Saturday which approximately 40-50 members attended the last sermon. The church is available for weddings as well.

Donna Forand, 27-8 South Meadow Village, also spoke opposing the Petitioners request for a non-medical marijuana dispensary. Ms. Forand researched different towns that currently provide recreation marijuana dispensaries and discussed issues of traffic and parking and concerned the same safety issues would impact Carver. Ms. Forand noted that her husband walks to church and concerned for his safety due to high traffic.

Stephen G. Gray responded to Ms. Forand that the issues she brought up can be addressed and be attached as "conditions" if request is granted.

Donna Forand also noted alterative locations that Kevin Hough could start his business that would not go against the zoning bylaws. Kevin Hough noted he looked at one the properties suggested by Ms. Forand however the property is about 108 acres and would be financial unfeasible. Kevin Hough and Edward Angley, Esq. agreed to review the other location suggested by Ms Forand.

Robin Hanson (wife), 307 Tremont Street also opposing the Petitioners request for a non-medical marijuana dispensary. Mrs. Hanson's concerns of the establishment close to the church are the children of the congregation and her children. Ms. Hanson noted she has four (4) adult children with disabilities to which they all live at home. Ms. Hanson further noted she doesn't want her kids exposed to this establishment.

Sam Moore, South Main Street, not opposed to the Petitioners request for a non-medical marijuana dispensary spoke about the source of income and tax revenue the business will bring for the town of Carver. Mr. Moore inquired if the petition is denied what the State can do to allow the store to open given the state passed the law in 2016 to allow the use of recreational marijuana. Mr Moore also discussed the limited business locations in Carver.

Alan Germain, 24 Pine Street, is opposing the Petitioners request. Mr. Germain noted he's voicing his opinion as a town citizen and not board member. Mr. Germain noted the new bylaw was approved in April,

2019 by the town hall and voted the 500foot distance from a non-medical marijuana establishment to a religious facility.

Sharon Clarke asked Kevin Hough regarding other businesses he's has or starting. Mr. Hough reported he has three (3) other businesses but declined to disclose the projects. Given the information presented to the Board Members, Sharon Clarke requested a site visit.

Frances Mello made a motion to conduct a site visit on October 12, 2019 at 9 A.M. Seconded by Sharon Clarke. Voted and passed unanimously, 5-0.

Eric Mueller made a motion to continue the Public Hearing: Case No. 52-1 for next meeting on October 29, 2019 at 7 P.M. Seconded by Eric Mueller. Voted and passed unanimously, 5-0

- F. **Correspondence:** Public Hearing: Case No. 125-9-107: Petitioner Deborah Myers handed Stephen G. Gray letters from neighbor abutters to be part of the record. Copies will be made as part of record.
- G. **Possible Executive Session:** To discuss strategy with respect to pending litigation in the Land Court case of John J. Caprarella, co-Trustee of the Caprarella Family Trust, dated June 30, 2009, et. al., Docket #: 19 MISC 000360, if an open meeting may have a detrimental effect on the litigation position of the public body and the Chair so declares.

A motion was made to conduct an Executive Session. Voted and passed unanimously, 5 – 0.

- H. Next Zoning Board Meeting: Tuesday, October 29, 2019 at 7 P.M.
- I. Adjournment: Eric Mueller made a motion to adjourn. Seconded by Alan Germain. Voted and passed unanimously, 5-0

Meeting adjourned at 9:19 P.M.

Respectfully submitted,  
Kelly DiCarli