



TOWN OF CARVER

Zoning Board of Appeals

108 Main Street

Carver, MA 02330

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

Meeting Minutes of August 20, 2019

@ 7:00 PM

Carver Town Hall Room #4

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

Also present: Recording Secretary, Kelly Dicarli

Meeting Opened: 7:00 P.M.

A. Reorganization

Alan Germain made a motion to renew Stephen G. Gray position as chairman of the Zoning Board of Appeals. Seconded by Sharon Clarke. Voted and passed unanimously, 4-0

Frances Mellow made a motion to renew Sharon Clarke position as Vice-Chairperson of the Zoning Board of Appeals. Seconded by Alan Germain. Voted and passed unanimously, 4-0

B. Public Hearing: Case No. 52-1: 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.

Stephen initiated the discussion by reviewing a letter sent by Edward Angley, Esq. representing the Petitioner, Kevin Hough (present) to the Zoning Board of Appeals dated August 12, 2019. The letter specified waiving the time limits for action by the Board to date 90 days beyond the date of this letter. Per the Board Members, this request to grant continuance was granted in the previous meeting July 30, 2019 and waived 90 days date of the letter.

Alan Germain noted he will be abstaining from this vote

Stephen G. Gray then reviewed with the Petitioner and Edward Angley, Esq. representing the Petitioner regarding the voting of only a four (4) Member Board at tonight's meeting rather than a five Member board. If the Petitioner were to move forward at this time, he was advised that he would require a unanimous decision from the Board in order to be granted the relief requested. Whereas, if a continuation were to be requested to a date when the full five Member Board were sitting (alternate board member available) relief could be granted with a vote of 4-1.

Approved
10/1/19

Edward Angley, Esq. inquired the availability of the alternate board member, however per Sharon Clarke no alternate board member available at this time. At that time, Edward Angley, Esq. seeking postponement. Sharon Clarke stated there will be no new public notice but the next date for this case will be posted on the Town website. No letters to abutters or parties of interest will be sent.

Eric Mueller made a motion to continue the Public Hearing Public Hearing: Case No. 52-1 to next meeting on October 1, 2019 at 7 P.M. Motion was duly seconded by Frances Mellow. Voted and passed unanimously, 4-0.

- C. Public Hearing: Case No. 1-8 (Continued): Petitioner: The Carver Redevelopment Authority requesting a Variance from frontage requirements pursuant to Sections 5222 and 2320 of the Carver Zoning by Law for property located at 0 North Main Street in Carver, MA (Assessor's Map 49, Lot 61) in the General Business District.

The Petitioner, Carver Redevelopment Authority, is seeking a frontage variance in a General Business District due to changes in zoning over the years that allegedly have created a non-conforming lot. The subject property has never had a structure on it.

Stephen G. Gray requested that Sharon Clarke recuse herself as to this matter, as she is a Member of both the Petitioner, Redevelopment Authority, and the Zoning Board of Appeals. She did so and stepped away from the Board table to address the Members from the audience as the representative of the Petitioner, Redevelopment Authority

Stephen G. Gray discussed with Ms. Clarke that there were now only a four (4) Members who would decide this case. If the Petitioner were to move forward at this time, she was advised that it would require a unanimous decision from the Board for the requested relief to be granted. Sharon Clarke acknowledged her understanding and decided to move forward on behalf of the Petitioner.

The Board Members announce a site walk was completed on August 3, 2019. Despite Ms. Clarke being absent during site walk, Johanna Leighton was present as the Carver Redevelopment Authority representative. Board Members and Ms. Leighton walked entire parameter and no issues were noted. William Sinclair; Chairman of the Carver Redevelopment Authority (present) stated all four (4) boundaries in place within the four (4) corners on the site.

Sharon Clarke continued discussion of her request the variance of 50 feet as it currently does not meet frontage variance for general business zoning. Sharon Clarke further noted they want the variance in place so when they sell the property, the taxes will be given back to the Town of Carver which are owed. Sharon Clarke is in agreement this request follows M.G.L. c 40A (ie. shape of the lot) Sharon re-iterated that the lot changed to General Business District and hence changed requirements for current zoning (50 feet short of current zoning)

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.

Alan Germain and Frances Mellow both verbally agreed the distinctive or usual findings to the lot is shape. Frances Mellow inquired to Ms. Clarke the strip of land to the right of the lot, to which Ms. Clarke responded the strip does not belong to the town.

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.

Frances Mellow made a motion to grant the Petitioner the variance of 50 feet frontage on lot to be marketed and granted as General Business use only. Seconded by Alan Germain. Voted and passed unanimously, 5-0.

Frances Mellow made a Motion that the grant of the variance be conditioned as follows:

1. No single-family free-standing housing to be built on this lot.

Seconded by Alan Germain. Voted and passed unanimously, 5-0.

- D. Public Hearing: Case No. 60-C-60-R: 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. William Jackson and his wife presented to the Board Members plot plans of their land and pictures of the shed.

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.

William Jackson and wife noted this as a topography issue. Per William Jackson and his wife, the construction company who initially built the foundation poured the foundation incorrectly to which the plans were read erroneously. The foundation measurements on the plans were meant to read 16x20, however constructed as 20x16.

Eric Mueller clarified the concern stating the foundation was supposed to go flush with the house, however because of the error Mr. and Mrs. Jackson seeking to build four (4) extra feet in front

Alan Germain noted that Mr. and Mrs. Jackson have a pool in the back, hence the land must level out in the backyard. Alan Germain presented the idea of building four (4) extra feet on the back of the foundation and change the retaining wall?

Stephen G. Gray agreed with Alan Germain and continued his dialogue that when the Zoning of Appeals reviews cases and plans, Board Members attempt in all effort to follow the zoning bylaws and creatively discuss other ways structures could be built without breaking the bylaws. Stephen G. Gray validated Mr. and Mrs. Jacksons concern this is an inconvenience of time of construction and cost.

Given the information presented to the Board Members, Alan Germain requested a site visit as this could potentially affect future applicants.

In addition, if Mr. and Mrs. Jackson rescind their request for variance and no site walk is needed, a letter noting this withdrawal would be submitted in writing and sent to the Zoning Board of Appeals.

Alan Germain made a motion to continue the Public Hearing: Case No. 60-C-60-R for next meeting on October 1, 2019 at 7 P.M. and conduct a site visit on September 7, 2019, which motion was duly seconded by Eric Mueller. Voted and passed unanimously, 5-0.

E. Minutes:

Alan Germain made a motion to review July 30, 2019 minutes at next meeting. Seconded by Eric Mueller. Voted and passed unanimously, 5-0

F. Correspondence: as noted above, a letter sent to the Zoning Board of Appeals from Edward Angley, Esq. representing the Petitioner, Kevin Hough in Public Hearing: Case No. 52-1 dated August 12, 2019

G. Next Zoning Board Meeting: Tuesday, October 1, 2019 at 7 P.M.

- i. Follow up: Review July 30, 2019 and August 20, 2019 minutes

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

Meeting adjourned at 7:51P.M.

Respectfully submitted,
Kelly DiCarli