



# TOWN OF CARVER

## Zoning Board of Appeals

108 Main Street

Carver, MA 02330

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

Meeting Minutes of September 29, 2020

@ 7:00 PM

Carver Town Hall

Meeting Room #1

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

Also present: Recording Secretary, Kelly DiCarli

Absent: Frances Mello, Member and Mark Poirier, Alternate Member

Meeting Opened: 7:03 P.M.

A. Chairman Gray initiated a discussion with Petitioners regarding the presence of only a four Member Board at tonight's meeting rather than a five Member board. If the Petitioners were to move forward at this time, they were advised that they would require a unanimous decision from the Board in order to be granted the relief requested. Whereas, if a continuance were to be requested to a date when the full five Member Board were sitting, relief could be granted with a vote of 4-1.

B. Minutes: Reviewed Minutes of August 28, 2020

Member Germain made a Motion to accept the Minutes of August 28, 2020. Seconded by Member Mueller. Voted and passed unanimously, 4-0.

C. Board Reorganization

Member Germain made a Motion to postpone the Board Reorganization to the next meeting, Tuesday, October 27, 2020. Seconded by Member Mueller. Voted and passed unanimously 4 -0.

D. Public Hearing: Case No. 1-108R: Petitioner: Matthew Guimares seeking a Special Permit pursuant to Sections 2245c, 5221 and 5300 et. seq. of the Carver Zoning by Law, for property located at 7 Atwood Street in Carver, MA (Assessors Map 1-Lot 108R), to construct a 1200 square-foot barn (maximum allowed is 600 square feet), in a Residential-Agricultural District.

The Petitioner opted to proceed after the Public Hearing was opened on September 29, 2020, despite the fact that he was advised that a grant of the requested Special Permit would need to be unanimous, due to the fact that only four (4) Board Members were present.

Mr. Guimares is seeking to construct a 1200 square foot detached barn to the left of his residence for the housing of farm animals and tractor storage (no parking of personal vehicles). He is not seeking to add animals to his farm at this time, but may do so in the future. Mr. Guimares submitted plot plans and distributed building plans to the Board Members. The actual dimensions of the proposed barn will be 30 x 40 feet with a peak of 25 feet. The barn will not have electricity, plumbing, or heat. There will be a second floor used only has a hay loft.

Vice-Chairperson Clarke inquired of the Petitioner whether he could move back the barn on his property but this was not believed to be possible due to the presence of an easement for power lines.

Chairman Gray reviewed the Special Permit By-law and the criteria under Section 5330. Special permits may be granted by the S.P.G.A. upon its written determination that the benefits of the proposed use outweigh its detrimental impacts on the town and the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. The determination shall include consideration of each of the following: 5331. Social, economic, or community needs which are served by the proposal; 5332. Traffic flow and safety, including parking and loading; 5333. Adequacy of utilities and other public services; 5334. Neighborhood character and social structures; 5335. Impacts on the natural environment; 5336. Chairman Gray and Board Members noted no issues of concern with regard to any of these provisions.

Chairman Gray discussed an email that was received on September 29, 2020 at 1 P.M. by the abutters of the Petitioner, Justin and Michelle Panzer, 10 Craig Street. They opposed the Special Permit request. Mr. Guimares stated these abutters are located in back of his property. He does not know them or would have addressed these concerns with them personally. Chairman Gray inquired of Mr. Guimares his plan regarding noise, smell, and disposal of animal waste. He stated he will be utilizing a storage bin with a lid that meet the requirements for storage of animal waste. Mr. Guimares noted he spoke with his abutters both to the immediate right and left of his house and they allegedly had no issues.

At this time, Vice-Chairperson Clarke requested a site walk by the Board.

Chairman Gray invited discussion by the Public.

Donald Blauss, 8 Atwood Street, noted Mr. Guimares was a "great neighbor" and was in support of the proposed construction.

Member Germain made a Motion to conduct a site visit on October 17, 2019 at 9 A.M. Seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 4-0.

Member Germain made a Motion to continue Public Hearing: Case No. 1-108R to October 27, 2020 at 7 P.M. Seconded by Member Mueller. Voted and passed unanimously, 4-0.

- E. Public Hearing: Case No. 62-A-5R: Petitioners: Paul and Mary Jane Murphy seeking a Special Permit pursuant to Sections 2245c, 5221 and 5300 et. seq. of the Carver Zoning By-law, for property located at 31 West Street in Carver, MA (Assessors Map 62-Lot A-5R), to demolish existing 24 x 24 barn and construct a new 24 x 30 barn (720 square feet; maximum allowed is 600 square feet) in a Residential-Agricultural District.

The Petitioner opted to proceed after the Public Hearing was opened on September 29, 2020, despite the fact that he was advised that a grant of the requested Special Permit would need to be unanimous, due to the fact that only four (4) Board Members were present.

Petitioners Paul and Mary Jane Murphy are seeking a Special Permit to demolish their old barn and construct a new 24 x 30 foot barn. The barn will be located in approximately the same spot as the old barn which is @300 feet to the rear of the property. They noted the current barn is old, rotted, and moldy and unsafe for their one (1) horse. They have no plans at this time to add any other horses. The one (1) story barn will consist of storage for grain and hay. The barn peak will be approximately twelve (12) feet. The barn will not have water or heat. However, there will be electricity inside the barn and solar lighting outside the barn. The Petitioners noted the barn is being built remotely and is being transported as an intact module. They indicated that they have already made a down payment

on the barn and are financially “tied up”. The Petitioners showed pictures of the current barn to the Board Members.

Chairman Gray invited discussion by the Public.

Mike Paddock, 23 West Street, spoke in support of the grant of a Special Permit and noted that the Petitioners are “good neighbors.” He believes the new barn would be an improvement to the neighborhood.

Vice-Chairperson Clarke remarked that the proposed construction is replacing the current barn and feels no site walk is needed.

A Motion was made to close the Public Hearing: Case No. 62-A-5R and duly seconded. Voted and passed unanimously, 4-0.

A Motion was made by Vice-Chairperson Clarke for the Board to find that the benefits of the proposed use outweigh the detrimental impacts on the Town and neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. Seconded by Member Germain. Voted and passed unanimously, 4-0.

Vice-Chairperson Clarke made a Motion to grant a Special Permit under the authority granted to the Board under the Carver Zoning By-law, Sections 5221 and 5300 et. seq. Seconded by Member Germain. Voted and passed unanimously, 4-0.

Vice-Chairperson Clarke summarized that the written Decision of the Board would be filed in the Office of the Town Clerk. Any person aggrieved by the Decision could appeal to a court of competent jurisdiction pursuant to M.G.L. c 40A, Section 17 within 20 days of the date that the Decision is filed in the office of the Town Clerk. At the end of the 20 days, if no one has appealed, the Petitioners can pick up a certified copy of the Board’s Decision at the Town Clerk’s office and would need to record a copy of the Decision of the Board at the Plymouth County Registry of Deeds. Once the Decision is on record, the Building Department can issue the Building Permit.

- F. Public Hearing: Case No. 17-62: Petitioner: Peter Hiltz, seeking a Variance pursuant to Section 2320, or a Special Permit pursuant to Sections 2253, 5221 and 5300 et. seq. of the Carver Zoning By-law, to extend a structure (construction of a 5-foot-wide porch in front of the existing house) on a pre-existing non-conforming lot for property located at 9 Pine City Road in Carver, MA (Assessors Map 17 Lot 62), in a Residential Agricultural District.

The Petitioner opted to proceed after the Public Hearing was opened on September 29, 2020, despite the fact that he was advised that a grant of the requested Special Permit would need to be unanimous, due to the fact that only four (4) Board Members were present.

The Petitioner is seeking a Special Permit to construct a new front porch at his ranch-style house that would be 5 feet wide. This would consist of two sets of two stairs each, one of which would lead to the living room and the other to a breezeway. They would be constructed approximately 25 feet apart. The stairs to the porch to the living room would extend one foot beyond the placement of the current stairs at the property.

The current setback from the street is 38.5 feet as shown on the submitted plan.

Chairman Gray discussed with the Board Members whether this request would be for a Special Permit or a Variance and reviewed the Town of Carver By-law, Section 5300.

Member Germain and Vice-Chairperson Clarke were of the opinion that the relief requested was for a Special Permit, as the Petitioner was seeking relief only for the further extension of the stairs and that this was a pre-existing non-conforming lot.

Chairman Gray invited discussion by the Public. No comments were received.

Member Germain made a Motion to close Public Hearing: Case No. 17-62. Seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 4-0.

Member Germain made a Motion for the Board to find that it could award a Special Permit to reconstruct, extend, alter, or change the nonconforming structure as it determined that such reconstruction, extension, alteration, or change was not substantially more detrimental than the existing nonconforming structure to the neighborhood. Seconded by Member Mueller. Voted and passed unanimously, 4-0.

Vice-Chairperson Clarke made a Motion to grant the Special Permit under the Carver Zoning By-law, Section 2253 and 5300. Seconded by Member Mueller. Voted and passed unanimously, 4-0.

Vice-Chairperson Clarke made a Motion to grant the Special Permit with the condition that the new construction, including stair placement, not be any closer to the street than 35 feet (currently 38.7 feet). Seconded by Member Germain. Voted and passed unanimously, 4-0.

Vice-Chairperson Clarke summarized that the Decision of the Board is filed in the Office of the Town Clerk. Any person aggrieved by the Decision may appeal to a court of competent jurisdiction pursuant to M.G.L. c 40A, Section 17 within 20 days of the date that the Decision is filed in the office of the Town Clerk. At the end of the 20 days, if no one has appealed, the Petitioner may pick up a certified copy of the Board's Decision at the Town Clerk's office and would need to record a copy of the Decision of the Board at the Plymouth County Registry of Deeds. Once the Decision is on record, the Building Department can issue the Building Permit.

- G. Public Hearing: Case No. 9-0-R: Petitioner: Donald J. Correa seeking Variances pursuant to Section 2320, or a Special Permit pursuant to Sections 2253, 5221 and 5300, et. seq., of the Carver Zoning By-law, for property located at 12 Pond View Way in Carver, MA (Assessors Map 9-Lot 0-R), due to the fact that the Applicant is moving the location of a single-family house footprint in a Residential-Agricultural District.

The Petitioner opted to proceed after the Public Hearing was opened on September 29, 2020, despite the fact that he was advised that a grant of the requested Special Permit would need to be unanimous, due to the fact that only four (4) Board Members were present.

The Petitioner is seeking relief so as to construct a new single family home following the demolition of a pre-existing abandoned and uninhabitable house and to move the new home closer to the street and away from the pond at the rear of the property. The Petitioner told the Board that he had appeared before the Conservation Commission in March 2019 and was advised that the proposed new home needed to be moved away from the water.

Member Germain, also a Member of the Conservation Commission at that time, stated that he could not recall the details of the March 2019 meeting of the Conservation Commission.

Chairman Gray questioned whether the request of the Petitioner was for a Special Permit or for dimensional Variances, in view of the fact that the proposed house, if moved forward toward the street and away from the water, would not be in the same footprint as the current dilapidated home. Board Members noted that, per Town of Carver By-law, Section 2255, the Petitioner would need dimensional relief as the current home had been uninhabitable and abandoned since approximately 2006 and therefore had lost its protected status as a pre-existing non-conforming structure and was now otherwise subject to all provisions of current zoning.

Chairman Gray invited discussion with the Board as to the involvement of Member Germain with the proposed project of the Petitioner while on the Conservation Commission and that this could raise the appearance of a conflict if he were to sit as a voting member of the ZBA. He inquired whether Member Germain would agree to recuse himself and he agreed to do so.

Chairman Gray invited discussion by the Public.

Jennifer Vaillancourt, 126 Plymouth Street, inquired how close the existing structure was to the water. The Petitioner noted that the proposed house would be 67 feet from the water. Ms. Vaillancourt asked about the location of the proposed well and the Petitioner stated that it would be 10 feet from the edge of the pond.

Edward and Kathleen Koslowsky, 10 Pond View Way, abutters to the subject property, claimed that the Petitioner had been granted an easement over their property for the well placement, although no documentation was presented. Mr. Koslowsky alleged that in a Public Hearing in April 2006 with the Board of Health, the Petitioner was not meeting setbacks from his well and did not want to use the driveway location. Mr. Koslowsky remarked that the Petitioner agreed at that time to place the well access off Janes Lane, not Pond View Way. However, on the current plan, Janes Lane is not shown but rather Pond View Way. The Petitioner stated that he had no memory of using the driveway to the property and the current septic plans were approved by the Town of Carver Board of Health.

Marty Falligan, 13 Pond View Way, mentioned that he attended the Conservation Commission meeting in March 2019 and questioned why he had not received notification of any subsequent meetings and whether he would be notified of the next meeting of the ZBA if this case were continued. He was told that he would not be notified specifically, as the Board would announce its next meeting this evening and on the website maintained by the Town of Carver. Mr. Falligan also discussed the placement of the new construction and that the current structure was uninhabitable.

Brian and Jessica Cadorette, 16 Pond View Way, discussed the proposed driveway on the plan and was concerned that it might be going through their yard. This was determined not to be the case. Mr. and Mrs. Cadorette also noted confusion with Bunny Road, Pond View Way, and James Lane regarding property lines and labeling of roads on the plan.

It was determined that the Zoning Board of Appeals would follow-up on the following issues: 1.) review the Conservation Commission/Board of Health file for next meeting; 2.) The Petitioner would speak with his engineer regarding the confusion surrounding the labeling of roads on the plan; 3.) Mr. and Mrs. Koslowsky and the Petitioner will investigate the records concerning the septic variance and discuss same with each other; a legal opinion will be sought concerning the ability of the ZBA to meet on this case as a Board of three Members.

Vice-Chairperson Clarke made a Motion to continue the Public Hearing: Case No. 9-0-R to the next meeting on Tuesday, October 27, 2020, at 7 P.M. Seconded by Member Mueller. Voted and passed unanimously, 3-0-1.

#### H. Correspondence:

Email received on September 29, 2020 at 1 P.M. by Justin and Michelle Panzer, 10 Craig Street, opposing the Special Permit request on Public Hearing: Case No. 1-108R

#### I. Next Zoning Board of Appeals Meeting:

- a. Tuesday, October 27, 2020, at 7 P.M.

#### J. Adjournment:

Member Germain made a Motion to Adjourn. Seconded by Member Mueller. Voted and passed unanimously, 4-0

Meeting adjourned at 9:21 P.M

Respectfully submitted,

Kelly DiCarli