



# 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 27, 2020

@ 7:00 PM

CARVER TOWN HALL

MEETING ROOM #1

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

Also present: Kelly DiCarli; Alternate Member and Recording Secretary

Absent: Mark Poirier, Alternate Member

### I. Meeting Opened: 7:00 P.M.

#### A. Minutes: Reviewed Minutes of September 29, 2020

Member Germain made a Motion to accept the minutes as written for September 29, 2020. Seconded by Member Mueller. Voted and passed unanimously, 4-0-1  
Member Mello abstained.

#### B. Board Reorganization

Vice-Chairperson Clarke made a motion to renew Stephen G. Gray position as Chairman of the Zoning Board of Appeals. Seconded by Member Germain. Voted and passed unanimously, 5-0-1  
Chairman Gray abstained

Member Mello made a motion to renew Sharon Clarke position as Vice-Chairperson of the Zoning Board of Appeals. Seconded by Chairman Gray. Voted and passed unanimously, 5-0-1  
Vice-Chairperson Clarke abstained

#### C. Public Hearing (Continued): 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.

Chairman Gray stated received an email from Petitioner Matthew Guimares on October 27, 2020 sent at 4:59 P.M. which in summary stated that Mr. Guimares is withdrawing his request without prejudice. Chairman Gray also noted he received an email from the Petitioners direct abutters opposition to the proposed construction.

As of note, the Zoning Board of Appeals did complete a site walk as scheduled.

Member Germain made a motion to allow the request to be withdrawn without prejudice for the variance pursuant to Sections 2245c, 5221 and 5300 et. seq. of the Carver Zoning By-law. Seconded by Member Mueller. Voted and passed unanimously, 5-0

- D. Public Hearing (Continued): Case No. 9-0-R: Petitioner: Donald J. Correa, as Trustee of 12 Pond Way Realty Trust, 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.

Chairman Gray initiated the discussion by noting he received multiple submissions from the Petitioner since the last Zoning Board of Appeal meeting. Most recent memorandum received late afternoon of October 27, 2020.

Chairman Gray invited discussion by the Board Members if they need addition time to review late submissions or if they are prepared to continue with meeting as scheduled.

Vice-Chairperson Clarke displeased with the multiple submissions close to the schedule meeting and inquired to the Petitioner why the memorandum was submitted late. Per the Petitioner, he found additional information supporting the variance request and added onto the primary submission.

The Petitioner noted that subsequently to last meeting few things occurred from his perspective. The Petitioner reviewed the Conservation Commission from March 2019 via YouTube and the previous Zoning Board of Appeal Meeting from September 29, 2020. The Petitioner circled back with Joe Webby from J. Webby Consulting to review the proposed plans of the existing structure with existing setbacks on it which Joe Webby has done and reproduced the proposed structure. The Petitioner reviewed with the Board past court cases resembling his case, summarized his electronic submissions, discussed specific statutes, and housing abandonment definitions on his proposed structure. The Petitioner explained further that his proposed structure doesn't comply with the term abandonment as a legal matter and his proposed structure meetings Section 2254 of the By-law. The Petitioner noted that from the Conservation Commission meeting in 2019, his proposed plan wasn't going to be approved and wanted the structure sixty-five (65) feet from the pond. The new structure will be sixty-six (66) feet from the pond with a side line of 17.3x 23.3 away from the existing structure.

Chairman Gray asked Member Germain to speak in regards to the Conservation Commission meeting from 2019 and what transpired. Member Germain noted last Zoning Board of Appeal meeting he accepted the notion to recuse self, and since then viewed the Conservation Commission meeting on YouTube. Since watching the meeting, Member Germain has a differing opinion from the Petitioner regarding movement of the proposed structure. Member Germain continued that the Conservation Commission did not "force" the Petitioner to move the structure. During the conversation the plan included a little porch which was taken out of original footprint. Savery Moore; Chairman of the Conservation Commission asked the Petitioner "Could you move the house". At that time a motion was made to continue the hearing pending another plan.

Member Germain noted based on this information he can be an objective member and would like to un-recuse self. Chairman Gray found Member Germain's notation "credible" and inquired if any member of the Board had objections. No objections were voiced. Vice-Chairperson Clarke also reviewed the Conservation Commission meeting from March 2019 and concurred with Member Germain, the Conservation Commission did not make the Petitioner move the house and has "no issues" having Member Germain stay as a member for an unbiased decision.

Chairman Gray requested a motion be made to have Member Germain rejoin Public Hearing: Case No. 9-0-R as a member.

Member Mueller made a Motion to have Member Germain rejoin the Zoning Board of Appeals as a member for Public Hearing: Case No. 9-0-R. Seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 4-0

Chairman Gray asked the Petitioner if he has any questions or concerns of Member Germain re-joining the Zoning Board of Appeals for this case. After several prompts, the Petitioner had no objections.

The Assistant Manager to the Petitioner; Meagan King, discussed the need for dimensional variance related to M.G.L. c 40A or hardship and no substantial decrement to the public. Ms. King reviewed issues related to topography, hardship, there no substantial detriment to public good on the proposed plan and the new structure will create a livable home.

Chairman Gray summarized the Petitioner's need for a side lot relief (approximately 32.6 feet) and frontage set back relief (additional 54.6 feet) on new structure

Chairman Gray requesting a case continuance to review case information and memorandum submitted by the Petitioner. Chairman Gray invited discussion by the Board Member their thoughts for case continuance. No opposition was received or voiced by any Board Member regarding case continuance.

Chairman Gray invited discussion by the Public.

Kathleen Koslowsky, 10 Pond View Way, stated that Member Germain's recollection from Conservation Commission was "Correct". It was "Suggested" not a forced issue when the Petitioner came before board from 2019.

Marty Falligan, 13 Pond View Way, stated he doesn't understand "What's going on", and why going through all this work just put house back where it was. Mr. Falligan is not opposed to building the structure but "Wants to see house back where it was".

Member Germain made a motion to continue the Public Hearing: Case No. 9-0-R to Tuesday, November 17, 2020 at 7 P.M., which Motion was duly seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 6-0

- E. Public Hearing: Case No. 111-125; Petitioner: John and Susan Sontag. A Petition was filed seeking a Special Permit and Variance pursuant to Sections 2245(c), 2310, 2320 and 5221-5222 and 5300 et. seq. of the Carver Zoning By-law, for property located at 20 Bow Street in Carver, MA (Assessors Map 111 Lot 125), to construct a 26 X 36 garage that will be 10 feet from the street (proposed garage 936 square feet; maximum allowed is 700 sq

Petitioner Susan Sontag (present) and John Sontag (absent) are seeking a special permit and oversized variance to build a detached garage 10 feet from the street and passway from their current two (2) car garage. The Petitioners are asking for 13.5 feet from the proposed garage to house. The proposed 26 X 36 construct will consist of a one (1) story, three (3) car garage, consist of electricity, and have no heat or plumbing. The current garage will remain as is.

Chairman Gray inquired if a site walk is needed for this case, to which the Board Members concurred. Member Mello prompted the Petitioners to have the property steaked out.

Chairman Gray invited discussion by the Public. No opposition was received or voiced by any members of the public.

Member Germain made a motion to continue Public Hearing: Case No. 111-125 until next Zoning Board of Appeal meeting, Thursday, November 19, 2020 at 7 P.M. Seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 5-0.

Member Mello made a motion to conduct a site visit on Saturday, November 07, 2020 at 9 A.M. Seconded by Vice-Chairperson Clarke. Voted and passed unanimously, 5-0.

- F. Public Hearing: Case No. 99-2-0R: Petitioner: Ashley Stelmack. A Petition was filed seeking a Special Permit pursuant to Sections 2242, 5221 and 5300 et. seq. of the Carver Zoning By-law, for property located at 77B Wenham Road in Carver, MA (Assessors Map 99-Lot 2-0R), to operate a Home Occupation (spa providing facials, waxing, makeup, spray tans, lash and brow tinting) in a Residential-Agricultural District.

Ashley Stelmack is seeking a special permit to operate a home occupation. The Petitioner lives in a cape style house approximately 1700 square foot. The Petitioner is a licensed esthetician, whom will be the only person employed and providing services. Services will include facials, waxing, makeup, spray tans, lash and brow tinting. The dedicated room will be located on the first floor next to the kitchen where she will be seeing one (1) client at a time (no waiting room). Mrs. Stelmack discussed potential hours of operation and days a week her business will be open. There will be off road parking provided.

Vice-Chairperson Clarke educated Mrs. Stelmack to meet with The Town of Carver's Board of Health for operating license. Of note, Mrs. Stelmack stated she owns all her equipment and no dangerous chemicals would be distributed into the septic system.

Member Mello addressed how she will be advertising her business. Mrs. Stelmack noted online only. Vice-Chairperson Clarke noted that if a sign were to be used the placement not more than three (3) square feet in area may be permitted. Member Germain, in addendum noted the sign would need to be unlit.

Chairman Gray invited discussion by the Public:

Ann Potenza, 5 Mcfarlin Road, spoke about the following concerns, traffic, the size of the Petitioners driveway, and chemicals being dispensed into the drain.

A Motion was made to close the Public Hearing Case No. 99-2-0R and duly seconded. Voted and passed unanimously, 5 – 0

Member Germain made a Motion for the Board to find it could award a Special Permit, as the benefits of the proposed use outweighed the 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. Seconded by Member Mello. Voted and passed unanimously, 5-0.

A Motion was made, duly seconded, and voted unanimously to grant a Special Permit under the Carver Zoning By-law, Sections 2242, 5221, and 5300 et. seq. based on the evidence received at the Public Hearing this date.

A Motion was made in favor of the following conditions: 1.) Days of operation and hours will be Tuesday – Saturday, 9:00 A.M. with the last client leaving by 8:00 P.M.; 2.) The only Employee will be the Petitioner; 3.) The Petitioner will only service one client at a time. 4.) Business operations will be conducted in a dedicated room at the house without a waiting room; 5.) All parking will be in the driveway towards the rear of the subject property and not on the street; 6.) Business proposed to be completed consists of facials, waxing, makeup, spray tans, lash and brow tinting which is subject to permitting by board of health. Duly seconded. Voted and passed unanimously, 5 – 0

Vice-Chairperson Clarke summarized the decision is filed in the Office of the Town Clerk. Any person aggrieved by this 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 this 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 special permit is on record, the building department can issue the building permit

G. Correspondence:

- a. Received late email from Petitioner: Matthew Guimares to withdraw request without prejudice for Public Hearing: Case No. 1-108R
- b. Correspondence from direct abutters opposition on Public Hearing: Case No. 1-108R
- c. Numerous submissions from Donald J. Correa for Public Hearing (Continued): Case No. 9-0-R

H. Next Zoning Board of Appeals Meetings:

- a. Tuesday November 17, 2020 at 7 P.M.
- b. Tuesday, December 01, 2020 at 7 P.M.

I. Adjournment:

Member Germain made a Motion to Adjourn. Seconded by Member Mueller. Voted and passed unanimously, 5-0

Meeting adjourned at 8:49 P.M

Respectfully submitted,

Kelly DiCarli