



TOWN OF CARVER

Zoning Board of Appeals

108 Main Street

Carver, MA 02330

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Meeting Minutes of Thursday, September 16, 2021

7:00 PM

CARVER TOWN HALL

MEETING ROOM 1

Present: Stephen G. Gray, Chairman; Sharon Clark, Vice Chairperson; Members: Frances Mello and Mark Poirier

Meeting Opened: 7:05 P.M.

- A. Minutes from the meetings of 8/24/2021 and 9/16/2021 will be reviewed at the next meeting. There were no minutes recorded from the meeting of 8/24/2021, hence the drafter of these Minutes will reconstruct from any video which may exist.
- B. **Chairman Gray:** Opened the meeting and acknowledged the use of a sign-in sheet for contact tracing purposes and asked all present to sign, as requested by the Town of Carver Board of Health in its Memo, dated 9/14/2021. Anyone who has tested positive must quarantine for ten (10) days until a negative result is obtained.
- C. **Public Hearing (Continued): Case 31-9-2R --** Petitioner: Matthew Marois requesting a Special Permit pursuant to Sections 2245(c), 5221, and 5300 et. seq. of the Carver Zoning By-law, for property located at 48 South Meadow Road, Carver, MA (Assessors Map 104 Lot 8-E-R), so as to construct a 30 x 50 detached storage barn with an enclosed 10 foot porch on the left and 10 foot open "pavilion" style porch on the right side of the barn in a Residential-Agricultural District.

Mr. Marois, Petitioner: Explained that he revised his plans and dropped off additional copies at Town Hall early in the week to prepare for the meeting. No updated plans appeared to be present before the Board at that time, so Mr. Marois left the meeting to return home for a copy to bring to the meeting. In the interim, Chairman Gray acknowledged that the Board had made a site visit on July 11, 2021. It was observed that the Petitioner had "changed his mind" a couple of times as to the style of the structure that was proposed initially. Now he is proposing a 20 x 30 section enclosed and to the rear of the structure; the balance would be an open, pavilion style porch with roof/canopy. Chairman Gray stated there should be no future plans to enclose the open section of the structure, as it would require a Special Permit to do so.

Vice Chairperson Clarke asked the Petitioner if it was his intention to withdraw his Petition at that time. The answer was in the affirmative, as the Board found that the size of the enclosed section of the proposed structure (600 square feet) did not require any zoning relief under the By-laws.

The matter was then continued briefly so as to allow the Petitioner to return this evening with his new Plans.

approved
9/28/2021

D. Public Hearing: Case 41-6C Petitioner: MO Lyons Realty, LLC requesting dimensional variances pursuant to Sections 2320 and 5222 of the Carver Zoning By-law for property located at 129 Center Street, Carver, MA (Assessors Map 41 Lot 6C) so as to construct a single family dwelling with driveway and utilities on an existing lot in the Residential Agricultural District. Variances are being requested due to the need for side setback and lot size relief (which also has an electrical easement and right of way located thereon).

Kevin Grady-Grady Consultants - Represented applicant MO Lyons Realty, LLC. Mr. Grady has not attended all the previous meetings but is aware of the feedback. He presented a display of the plot plan and the highlighted lot. Original lot size requirement in the Town in 1970 was 30,000 square feet; required currently to be 60,000 square feet.

Chairman Gray stated to Mr. Grady that he appeared to need 29,000 square feet of relief for lot size, as the lot is undersized under current zoning. One side of the house as proposed was also said to be too close to the sideline.

Kevin Grady-Grady Consultants told the Board that the Conservation Commission, before denying its application due to the fact that there were wetlands on the property, reviewed a revised plan where the Petitioner moved the proposed dwelling ten (10) feet further away from the wetlands resource area but that they would still need sideline relief. Mr. Grady also stated that the easement is diagonal to a lot line. He mentioned that wetlands relate to soils which are saturated typically. He claimed a unique scenario and he remarked that the circumstances of this lot are different than any other lots in the Town. Based on these items, he requested that all necessary zoning relief be granted.

Stephen Gray, Chairman observed that one side of the proposed dwelling was only one (1) foot off the easement.

Sharon Clarke, Vice Chairperson stated that it appeared that this was a pre-existing, non-conforming lot endorsed in the 1970 Plan. The lot was in tax title for a long time and foreclosed on by the Town in 2017. She also remarked that the location of the proposed dwelling on the lot was not staked out as requested specifically by the Board prior to its site walk. She mentioned that the Board Members could see the abutter's shed but had no idea where the house would be situated.

Kevin Grady-Grady Consultants stated that he had not been aware of the site visit and did not stake out the property, as requested by the Board.

Sharon Clarke, Vice Chairperson mentioned that the existing shed is adjacent to the building, 2 feet off the lot, house, wires and test holes. As well, Mr. Grady stated that their surveyor did a complete survey of the property and surrounding properties and addressed the fact that a small corner of the subject lot may have been conveyed at some point. He alleged that the surveyor of record decided that instead of making an issue out of the corner, it would just be removed from the Plan and that no boundary disputes or issues existed from a surveyor perspective.

Frances Mello, Member inquired how the lot was "unique," as claimed by Mr. Grady.

Kevin Grady-Grady Consultants said that the subject lot predates zoning. It now has an easement with electrical lines going through it. He claimed that a utility company would not allow a structure to be built

there. He mentioned that Conservation Commissions are more particular about maintaining wetlands setbacks than in previous times. Building Departments are more stringent as well.

Mark Poirier, Member asked about the shape of the lot.

Kevin Grady-Grady Consultants stated that it is half of the lot area that is required by the By-Law.

Stephen Gray, Chairman remarked that the Board cannot grant a variance based on size. He observed that what Mr. Poirier is asking is not a size inquiry, but rather, a shape of the lot question.

Frances Mello, Member mentioned that a legal opinion had been sought by the Board and that the existence of the easement on the lot does not relate to shape.

Stephen Gray, Chairman stated that this issue had already been discussed extensively during previous meetings. He asked, "Where is the soil, shape, topography issue?" Application of Chapter 40A to the facts of this case suggest that there is no evidence to support the granting of a variance. He mentioned that there was no shape of the lot issue at all, as it is a rectangular lot. The existence of the easement or right of way merely affects buildable area, not shape. Town counsel weighed in on this and agreed, he remarked.

Kevin Grady, Engineer asked shape or topography or soil?

Stephen Gray, Chairman said that the Board is limited by application of state law, Chapter 40A. He mentioned that this case is a tough one for engineers to present based on an argument relating to shape/topography. The shape is a rectangular shape.

Kevin Grady-Grady Consultants then claimed that, combined with topography, the setback, and the septic, the shape of the lot need not be relied upon in this instance. He stated that there were soil issues and that this has caused problems with the Conservation Commission, as part of the property is wet. He said topography is an issue because Center Street is elevated and the only location where a septic system could be sited (pointing on the Plot Plan exhibit) is from elevation 96 to elevation 78.

Mark Poirier, Member: How it drops off, where it drops off, we have no idea where the house is going on this lot.

Kevin Grady, Grady Consulting asked about when the easement on the lot was granted.

Sharon Clarke, Vice Chairperson stated that the easement was placed in 1926 when the owner bought the lot; the lot was considered buildable. Many years later, the Town sold it as a developable lot, not a buildable lot.

Fran Mello, Member observed that the zoning relief requested seemed to her to be an example of a self-imposed hardship, as the Owner purchased the subject property with notice that it was not conforming and that the easement existed before purchase.

Alan Germain, Vice Chairman of the Conservation Committee asked to be recognized and advised the Board that it did deny the project because of the wetlands. There was really no place to build.

Kevin Grady-Grady Consultants remarked that he had advised his client, the Petitioner, to file an appeal of the decision of the Conservation Commission to deny the project necessary relief; however, the Petitioner did not have the funds and has decided not to appeal after all.

Stephen Gray, Chairman asked the Board if there was a Motion to close the Public Hearing. It was so moved, all Board members in agreement.

Sharon Clarke, Vice Chairperson made a Motion that a 10 foot variance for sideline relief be granted.

This Motion was not seconded.

Sharon Clarke, Vice Chairperson made a Motion to deny the variance request as it does not meet the requirements under Chapter 40A for a variance.

The Motion passed unanimously.

Stephen Gray, Chairman (addressing Kevin Grady-Grady Consulting) told him that this had been a challenging case from a development standpoint and commended him for trying as hard and as creatively as he did in advocating for the proposed project.

C. Public Hearing: Case 31-9-2R (Continued): Matthew Marois returned to the meeting with revised plans to submit to the Board.

Stephen Gray, Chairman stated that 600 square feet is allowed by right in this instance. He told the Petitioner not to be tempted to enclose any part of the structure that was not shown on the Plan.

The Board then voted unanimously to allow the Petitioner to withdraw without prejudice.

Frances Mello, Member recused herself from further discussion at the meeting as she has had personal business with the Petitioner in the ensuing matter, Case #70-1-2R, 72 Center Street.

Stephen Gray, Chairman, addressing all persons present and interested in Case #: 70-1-2R, 72 Center Street, stated that one of the Board Members was not present and apologized for those affected as, based on the law, the Petition would require a unanimous decision by the Board if only four (4) members are in attendance. He told everyone that they could rest assured that the Board had read all submissions in advance and expressed his appreciation for their patience as to this matter.

Also, the Chairman announced that he had learned that attempts had been made to lobby certain Board Members regarding the merits of this Case and that this was inappropriate. He stated that all comments must be after a Public Hearing is opened and the Board is in public session so that there is no question that each Member remains unbiased and impartial.

The Public Hearing was not opened at this time. The Case was continued to the date of September 28, 2021.

The next meeting will be on September 28, 2021.

Adjournment.

Respectfully Submitted,

Maureen Graham