

approved
1-11-22

ZONING BOARD OF APPEALS

Meeting Minutes of December 7, 2021
@ 7:00 p.m.
CARVER TOWN HALL
MEETING ROOM #4

Present: Stephen Gray, Chairman; Sharon Clarke, Vice-Chairperson. Members: Frances Mello, Frank Casey, and Mark Poirier.

Also present: Alternate Member, James Barrington. Recording Secretary, Patricia Pacella, was present as well.

Meeting opened at 7:00 P.M.

A. Approval of meeting Minutes of October 26, 2021. Chairman Gray stated the Minutes have not been compiled currently, as there was no Recording Secretary at the last meeting. He advised that the Minutes would be done and approved at the next meeting.

B. Request by Bonnie Fistel, 153 Main Street, for a three (3) year renewal of a Special Permit for the operation of a commercial kennel.

Vice Chairperson Clarke asked if there had been any changes in the business since Ms. Fistel had last appeared before the Board. She stated that nothing had changed. She still kennels up to twelve (12) dogs, all golden retrievers. She said that she had received no complaints, there were no barking issues, and is on good terms with her neighbors. Ms. Fistel breeds one to two litters yearly and also shows dogs in competitions.

Chairman Gray asked if there was any Public Comment but there was none.

Vice Chairperson Clarke made a Motion to renew the Special Permit for the operation of a commercial kennel for three (3) years at 153 Main Street and was seconded by Member Mello. The Motion passed unanimously, 5-0.

C. Request by Deborah Myers, 13 Priscilla Mullens Way, for a two (2) year renewal of a Special Permit for the operation of a home-based horse stable business.

Chairman Gray noted that neither Ms. Myers or her representative were present at the meeting.

Vice Chairperson Clarke suggested that the matter be continued to the next meeting date so as to allow Ms. Myers to appear.

Member Mello made a Motion to continue the matter of Deborah Myers, 13 Mullens Way, for a two (2) year renewal of a Special Permit, to the next meeting of January 11, 2022. The Motion was seconded by Member Casey. The Motion passed unanimously, 5-0.

Continued Public Hearings:

D. Public Hearing: Case 131-4-3: Petitioner: Industrial Tower and Wireless, LLC requesting a Special Permit pursuant to Sections 4600, 4660 and 4676 et. Seq. of the Carver Zoning By-law, for property located at 0 Federal Road in Carver, MA (Assessors Map 131 Lot 4-3), so as to construct a 150-foot monopole wireless telecommunication facility in the Industrial "A" District. The Special Permit request is made due to the fact that the tower must be set back from public ways and residential uses a distance of at least three (3) times the height of the tower.

Chairman Gray opened the meeting stating that he had received submissions that same day from the Petitioner and others. He mentioned a 10-page letter that was received in opposition to the Petition as well as a 5-page, single-spaced letter from Counsel for the Petitioner and an 84-page report from the Petitioner, all that afternoon. He indicated he was dismayed by these late submissions and remarked that it was disrespectful to the Board for petitioners to send documentation so late and then expect the Board to read everything and render a decision the same evening.

Chairman Gray stated that he wanted this Case to be continued.

Vice Chairperson Clarke mentioned she was also disturbed to see the number of pages that came via email throughout the day. She stated she has been a Board member for the previous thirty (30) years and she reads everything that is presented before a meeting. She concurred that the meeting should be continued.

Member Barrington stated he was surprised at the document volume that was received today, the day of the meeting.

Chairman Gray stated he received a letter from Fire Chief Weston, dated November 2, 2021, expressing certain concerns and a "7 item wish list" for the Petitioner to consider. He urged the Petitioner and the Fire Chief to communicate before the next hearing date and to come to a resolution as to this list.

Chairman Gray suggested a February hearing date but asked the Members for their opinion.

Vice Chairperson Clarke stated she would like to have the hearing moved out a month and offered the date of January 25, 2022. The Board members agreed and continued this case to that date.

E. Public Hearing: Case 12-16-24R: Petitioner: Douglas Riccio requesting dimensional Variances pursuant to Sections 2320 and 5222 of the Carver Zoning By-law for property located at 21 Quaker Road in Carver, MA (Assessor's Map 12, Lot 16-24R) so as to construct an attached 2 car garage along with a master bedroom and family room addition in the Residential Agricultural District. Variances are being requested due to the need for front and side setback relief.

Member Barrington recused himself from this Hearing as he is an abutter.

Chairman Gray opened the Public Hearing. He stated that the Petitioner was seeking two (2) dimensional variances. He noted the Petitioner requires a sideline variance of 9.9 feet and a frontage variance of 14.8 feet.

The Petitioner, Douglas Riccio, was present and told the Board of his plan to construct an attached two (2) car garage, together with a family room and master bedroom, above. He stated that this additional space is needed for the family he is planning on starting.

The Petitioner stated that, due to the soil conditions and topography of the lot, the granting of these two (2) dimensional variances would be indicated because of the location of the septic system serving the residence, as well as the sloping nature of the lot from the street to the front of the existing house which has flooded previously. He remarked that the only viable location on the lot for the proposed construction was the front and right side. He said that the left side is needed for a septic system reserve area, and he would otherwise be put to substantial financial hardship which would involve the need to relocate the driveway and electrical service to the house if the proposed construction were to be on the left side.

The Petitioner maintained that considerable open space would continue to exist between his residence and the sideline even after the proposed construction was complete.

The Petitioner stated he has owned the subject property since 2018. He also mentioned that the septic system has the capacity to service a 5-bedroom home. He remarked that a shed that exists currently on the right side of the yard where the proposed addition would be located, would be relocated to the left side of the yard and the shed on that side would be demolished and removed.

It was observed that the Petitioner would need to obtain any necessary waivers from the Health Department and that any relief granted by the ZBA would be subject to this, as well as to the Plans of record.

The Petitioner stated he had not met with the Board of Health, but did have a conversation with the Health agent, Kevin Fogue, who allegedly did not see anything in the proposed plans being an issue.

Chairman Gray asked the height of the addition.

The Petitioner stated it is listed as 22' in height on the Plan, but that he and his wife and their builder were discussing the possibility of going to perhaps 24' maximum. Vice-Chairperson Clarke advised the Petitioner that the Board would act on the Plans as submitted and he needed to be sure they had been finalized.

Member Poirier asked if perhaps the Board should conduct a site visit. Member Casey concurred, stating he would like to visit the property.

At this juncture, Vice Chairperson Clarke asked the Petitioner to have the four corners of the proposed addition staked out for the site visit.

Board members agreed to schedule a site visit on Saturday, January 8, 2022, at 9:00 a.m.

Board members decided to continue the Hearing to the next meeting date of Tuesday, January 11, 2022, at 7:00 p.m.

Chairman Gray asked for public comment at this time.

A direct abutter, Mr. Robbins, stated he had no problem with the proposed construction and stated he thinks it will look fine in the neighborhood.

Chairman Gray asked if there were any additional comments from the Board.

Member Mello thanked the Petitioner for putting together a well-detailed Application. Board members agreed.

F. Public Hearing: Case 82-1-1R: Petitioner: Keith and Carol Howes requesting a Special Permit pursuant to Sections 2245(c), 5221, and 5300 et. seq. of the Carver Zoning By-law, for property located at 223 Meadow Street in Carver, MA (Assessors Map 82 Lot 1-1-R), so as to construct a 30 x 60 (1800 square feet) detached garage (maximum allowed is 700 square feet) in a Residential-Agricultural District.

Petitioner, Carol Howes, was present.

The Public Hearing was opened and the Petitioner testified that she was seeking to construct a 30 x 60 square foot detached garage (1800 square feet) on her property located at 223 Meadow Street. This proposed garage would be detached and large enough to park three (3) vehicles, as well as to store yard equipment, seasonal decorations, and other items.

The front of the proposed garage would have two (2) bay doors and the rear would have one (1) door. It would be constructed with the same siding as the house and would be the same color. The height of the peak of the proposed garage would be approximately the same as the peak of the existing house.

The proposed garage would have two floors, the second of which would be a loft only that would be used for additional storage.

No dimensional relief was deemed necessary, other than for size. The Petitioner stated that there is plenty of room on her 25.8 acre lot so that the proposed garage will not appear crowded on the lot or overdone.

No opposition was received from any member of the public.

Member Barrington asked what the height of the garage would be.

The Petitioner stated she was thinking a story and a half. She said it would not be higher than the house height.

Chairman Gray asked what else was on the property, if anything, as it is a lot of acreage (25.8).

Ms. Howes stated she is considering a solar project at the back of the property, as it is very dry. However, there is no concrete plan as yet.

The Petitioner stated the proposed garage might be plumbed and wired for electricity.

Vice Chairperson Clarke stated she would like to see plans of the actual proposed garage before voting on the matter. Chairperson Gray agreed, advising that the Board needs a concrete plan before it can move forward.

Vice-Chairperson Clarke recommended a site visit on January 8, 2022 at 10:00 a.m. and requested Plans be sent to the Board ahead of the January 11, 2022 meeting. The Board Members agreed and continued the Case to these dates.

G. Public Hearing: Case 100-6-OR: Petitioner: Wenham PV I, LLC requesting dimensional Variances pursuant to Section 2320 and 5222 of the Carver Zoning By-Law for property located at 27 Wenham Road in Carver, MA (Assessors Map 100, Lot 6, OR) so as to construct a "dual-use" solar project in the Residential Agricultural District. Variances are being requested due to the irregular shape of the parcel and the need for frontage relief (the subject lot has 105 feet of frontage; minimum requirement is 150 feet).

Attorney David P. Berson was present with the Project Developer, Lucas Faria, of Galehead Development.

Chairman Gray read a letter from the owner of the property into the record.

The Petitioner, through counsel, testified that it planned to construct a so-called dual use solar array in which solar panels would be installed high enough above cranberry bogs on 27 Wenham Road that farming activities could still occur under them.

It was represented that farming activities were guaranteed for 20 more years at the site for the proposed project to receive the State aid for which it had applied.

Counsel argued that the Petitioner required a dimensional variance of 45 feet and that without such relief it would not be able to pursue the proposed project (150 feet of frontage is required; the property has only 105 feet of frontage).

Making a "shape" argument per M.G.L. c 40A, it was alleged that the subject property is irregular in shape and a so-called "choke point" or narrow neck of land exists at the entrance to the property which widens considerably further in.

A concern was expressed by the Board that large trucks might not be able to negotiate the narrow section of pathway off the public way in order to access the property further within and, also, public safety vehicles might not be able to gain access easily or at all.

The Petitioner did not come to the Public Hearing with any plans and questions from Board Members about the solar array itself could not be answered definitively at that time.

Chairman Gray remarked that he was uncomfortable proceeding without more detail. Further, it was disclosed by the representative of the Petitioner that the subject property had water on it and would require review by the Conservation Commission, as well as site plan review by the Planning Board, before the proposed project could proceed.

Chairman Gray suggested that the Petitioner could be "putting the cart before the horse" in this Case by appearing initially before the ZBA before any review by the Planning Board or Conservation Commission.

Board Members suggested, and the Petitioner agreed, that the Case be continued to its next meeting date so that the Petitioner could have time to consult with the Planning Board and the Conservation Commission about the proposed project. If additional time beyond the next meeting date were to be needed, the Board indicated it would be amenable to another continuance.

In the meantime, the Petitioner was asked, through counsel, to send an email requesting a continuance formally.

Member Mello made a Motion to continue the case to the January 11, 2022 meeting and was seconded by Member Poirier. The Motion passed unanimously.

OTHER:

Chairman Gray advised that there was an Open Meeting Law Complaint filed against the ZBA and he needed a Motion to have Town Counsel respond to the filing.

Member Poirier made a Motion to acknowledge receipt of said OML Complaint and to allow Town Counsel to respond to it on behalf of the Board. The Motion was seconded by Vice Chairperson Clarke. The Motion passed unanimously.

CORRESPONDENCE:

Chairman Gray read a letter from Cornelius Shea into the record and stated that the letter was beyond the jurisdiction of the ZBA, as it related to a request having to do with the assessment of a certain property in Town.

Vice Chairperson Clarke made a Motion to adjourn and was seconded by Member Poirier. The Motion passed unanimously at 8:55 p.m.

Respectively submitted,

Patricia A. Pacella