

Approved 1/19/23

ZONING BOARD OF APPEALS

Meeting Minutes of August 23, 2022
@ 7:00 p.m.
CARVER TOWN HALL
MEETING ROOM #4

Present: Stephen G. Gray, Chairman. Frances Mello, Vice Chairperson. Members: Mark Poirier and James Barrington. Alternate Member, Jennifer Cullum, was also present.

Absent: Member Sharon Clarke

Meeting opened at 7:00 P.M.

A. Approval of Minutes:

Approval of Meeting Minutes of July 19, 2022. Vice Chairperson Mello made a Motion to accept the minutes as written and Member Barrington seconded the Motion. The Motion passed unanimously.

B. Discussion concerning Board policy regarding submission of documents in advance of Public Hearings.

Chairman Gray stated this is an issue that has arisen in the last few years, especially when there are controversial subjects and cases. He indicated that he drafted a policy that requires that written submissions need to be sent to the Board no later than six business days prior to a meeting (with some limited exceptions), absent compelling circumstances, or they may not be considered. Responses or oppositions need to be sent no later than three days prior to a meeting, absent compelling circumstances, or they may not be considered. He reviewed the written policy with the Board members. He commented that it was unfair to the Board to receive material the day/night of a meeting and that this has happened in the past.

Vice Chairperson Mello remarked that she agreed with the policy and wondered if the timeline was enough time for review by Board Members.

Chairman Gray stated he would like to propose that the Planning Department add this policy to the application package when it is given to petitioners upon filing.

Member Poirier made a Motion to accept the policy as written and have it sent to the Planning Department to give to petitioners upon filing. The Motion was seconded by Ms. Mello. The Motion passed unanimously.

Continued Public Hearings:

- C. Public Hearing: Case 100-6-OR: Petitioner: Wenham PV I, LLC** requesting dimensional Variances pursuant to Sections 2320 and 5222 of the Carver Zoning By-law for property located at 27 Wenham Road in Carver, MA (Assessors Map 100, Lot 6 O R) 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).

Chairman Gray opened the continued Public Hearing. He stated he was in receipt of a letter dated July 13, 2022 from David Berson, Esq. representing Wenham PV I, LLC. In this letter he requested that the Petitioner be allowed to withdraw its application without prejudice.

Member Poirier made a Motion to accept the withdrawal without prejudice for Case 100-6-OR, Wenham PV I, LLC and it was seconded by Member Barrington. The Motion passed unanimously.

D. Public Hearing: Case 1-20-OR: Petitioner: Richard Antoniotti, II and Thomas C. Benner, Trustee requesting a Special Permit and/or Variances in accordance with Sections 2245, 2254, 2260 et seq., 5221, 5222, and 5300 et. seq. of the Carver Zoning By-law, for property located at 92-B South Main Street in Carver, MA (Assessors Map 1 Lot 20-O-R), to demolish two existing cottages and construct a new 30 x 40 (1200 square feet) house with an attached accessory dwelling unit in a Residential-Agricultural District.

Chairman Gray opened the Hearing by stating that this was a new Application. He remarked that the new Application was filed on May 16, 2022, after a former application for the same property had been withdrawn.

Chairman Gray reviewed the new Application with the Board, remarking that the Petitioners were now proposing to modify and extend two pre-existing, non-conforming structures by demolishing the existing houses on the lot at 92B Main Street, as well as two sheds located thereon. In their place, a new 30 x 40 square foot home would be constructed, together with an attached accessory dwelling unit. This construction was alleged to improve existing setbacks, to wit: rear of existing house now @ 12.6 feet from the water -- proposed construction to be @ 36.5 feet from the water; westerly side of existing house now at 23.6 feet from sideline -- proposed construction to be 24.1 feet from the sideline; easterly side of existing house now a @ 20.3 feet from sideline -- proposed construction to be @ 20.8 feet from sideline. The current cesspool which is located @ 15 feet from the water, would be replaced with a new, compliant system @ 170 feet from the water.

Chairman Gray stated that the Conservation Commission was said to have approved the Site Plan for this proposal.

Chairman Gray indicated for the record that the Board had conducted a site visit on July 30, 2022.

Chairman Gray noted that a left elevation deck was now depicted on the Plans, as well as a bath, closet, and washer/dryer on the first floor of the accessory (which primary purpose was to serve as a one car garage to the accessory). These were observed to increase square footage, thereby requiring additional sideline relief as well as relief under the accessory Bylaw (2262b) due to its now enlarged size (by @210 square feet to @990 square feet; 800 square feet allowed by right).

Upon further discussion, the Petitioner, Mr. Antoniotti, agreed to remove entirely from the Plans the left elevation deck and the bath, closet, and washer/dryer on the first floor of the accessory.

Board Members commented on the height of the proposed house (at 35 feet) but remarked that there were other houses in the neighborhood with similar height.

It was represented to the Board that at least part of the new construction would be in the footprint of the existing dwelling.

The Board was assured that the siting of the new house will follow the depiction on the Site Plan, dated April 24, 2022.

Chairman Gray asked if there were anyone present who wanted to speak in favor and/or opposition to the Petition. No public comment was received.

Vice Chairperson Mello made a Motion to close the Public Hearing and was seconded by Member Poirier. The Motion passed unanimously.

Vice Chairperson Mello made a Motion that the Board find that the benefits of the proposed use outweigh its detrimental impacts on the Town and neighborhood, in view of the characteristics of the site and the proposal in relation to that site. The Motion was seconded by Member Cullum. The Motion passed unanimously.

Vice Chairperson Mello made a Motion to adopt a finding that the proposed construction is not substantially more detrimental than the existing nonconforming structures to the neighborhood. The Motion was seconded by Member Barrington and passed unanimously.

The Board then voted unanimously to grant a Special Permit under Article V, Section 5330 and Section 2254 of the Town of Carver Bylaws.

The Board discussed Conditions and they are as follows:

1. Subject to the Plans of record which must be revised to eliminate the left elevation deck and the bath, closet, and washer/dryer on the first floor of the accessory before a Building Permit can issue.
2. The siting of the new house is to follow the depiction on the Site Plan, dated April 24, 2022, and incorporated herein by reference.
3. The siting of the new house will be, at least in part, within the footprint of the existing dwelling.
4. The height of the new house will not be greater than 35 feet.
5. The first floor of the accessory will house no more than one vehicle and will otherwise be used for storage only. It is not to be finished for the purpose of adding living space to the accessory.

Vice Chairperson Mello made a Motion to adopt the five Conditions as discussed and was seconded by Member Poirier. The Motion passed unanimously.

- E. Public Hearing: Case 127-15-2: Petitioner: Brian J. Tamagini** requesting a Special Permit pursuant to Sections 2245 (c), 5221 and 5300 et. Seq, of the Carver Zoning By-law, and/or a variance for property located at 48 Deer Hill Lane (Assessors Map 127, Lot 15-2), so as to construct a 30 x 45 square foot detached garage workshop (1350 square feet, 700 square feet allowed as of right) for the purpose of storing the collector vehicles of the Applicant in a Residential-Agricultural District.

Chairman Gray stated that the Board conducted a site visit on July 30, 2022. He said the proposed construction is going to be located on the side and back of the existing dwelling. He remarked that it would be wired for interior electrical service. He stated the structure is approximately 18 feet in height.

The Petitioner stated that there are approximately twenty trees that have been or will need to be taken down.

Chairman Gray indicated that the proposed construction would be a Morton-style building with three bay doors.

Led by Vice Chairperson Mello, discussion ensued concerning the shape, soil and topography of the lot relative to requirements under M.G.L. c 40A for the requested variance. The lot is pie shaped and the septic is located in the front of the house. Topography is such that the lot slopes downward and is below the grade of the street, as described above. It was maintained by the Petitioner that any one or all of these conditions limit severely the developable area of the subject lot and would visit a hardship on him if the proposed construction were not approved per the Plans.

Chairman Gray asked if there was anyone from the public who wanted to speak in favor of, or in opposition to, the Petition. No commentary was received.

Member Poirier made a Motion to adopt a finding that, owing to circumstances relating to soil conditions, shape and/or topography of the structures or lot, but not affecting the district generally, a literal enforcement of the provisions of the Bylaw would involve substantial hardship to the Petitioner. Relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. This Motion was duly seconded and voted unanimously by the Board.

A Motion was then made, duly seconded, and voted unanimously to grant a variance under M.G.L. c 40A, S 10, for a dimensional variance of 650 square feet from the Carver Zoning Bylaws, Section 2245c, for the construction of a garage/workshop of 1350 square feet.

The Grant was conditioned on the following, per unanimous vote of the Board:

1. Subject to the Plans of record.
2. No running water in the garage/workshop.
3. No exterior lighting affixed to, or in the immediate vicinity of, the garage/workshop.

In other business, Chairman Gray discussed a case that had come before the Board recently in which the Petitioner was granted the necessary relief to construct an addition, subject to the Plans of record. Thereafter, the Petitioner brought different Plans to the Building Department, depicting a larger addition. Chairman Gray stated it was asked of him what needed to be done and he stated that the Petitioner would have to return to the Zoning Board of Appeals.

Chairman Gray stated that after this requirement was discussed with the Petitioner by the Building Department, he decided to keep to the original Plans that had been presented to, and approved by, the Board.

Chairman Gray said that at this juncture, there were no additional scheduled Board meetings, but would keep the Board informed if any new cases were received.

Chairman Gray also noted for the record that the Petitioner, Save the Pine Barrens, has appealed from the most recent Decision of the Board and that Town Counsel would be representing the Board.

Correspondence (if any): None.

Adjournment:

Member Barrington made a Motion to Adjourn and was seconded by Alternate Member Callum. The Motion passed unanimously.

Respectfully submitted,

Patricia A. Pacella