

approved 3/8/23

## **ZONING BOARD OF APPEALS**

Meeting Minutes of January 19, 2023  
@ 7:00 p.m.  
CARVER TOWN HALL  
MEETING ROOM #1

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

The meeting opened at 7:00 P.M.

### **A. Approval of Minutes:**

Approval of Meeting Minutes of August 23, 2022. Vice Chairperson Mello made a Motion to accept the minutes as written and Member Barrington seconded the Motion. The Motion passed unanimously.

Member Clarke abstained as she was not present on August 23, 2022. Accordingly, Alternate Jennifer Cullum voted on this matter.

### **B. Discussion:**

1. The Board Members discussed that a regularly scheduled day of the week for its meetings would be helpful to establish both consistency and regularity which would be useful to them, the Planning Department, and Petitioners.

The Board Members agreed on Wednesday as the best date suitable in view of their respective schedules.

Member Poirier made a motion that the 2<sup>nd</sup> Wednesday of the month be a regularly scheduled day for meetings of the Zoning Board of Appeals. The Motion was seconded by Member Clarke and passed unanimously.

2. Request in Case #: 1-20-0-R; Property location: 92B South Main Street; Petitioner: Rick Antoniotti – for clarification regarding whether the approved accessory dwelling unit may be constructed prior to the construction of the principal dwelling unit and if the accessory dwelling unit may be permitted in view of design differences between the Plans approved previously by the Board vs. the revised Plans submitted to the Building Department.

Chairman Gray informed the public that he received emails from counsel for the Petitioner and has shared these with the Board Members.

Present for the Petitioner was Attorney D'Ambruoso. Mr. Antoniotti was not present.

Attorney D'Ambruoso stated that he had a discussion with the current interim Building Commissioner who indicated he needed direction from the ZBA on whether the Petitioner could build the accessory dwelling unit prior to the construction of the principal dwelling unit. He was alleged to have said that it

was the sequencing of the units that was in question, not their design or placement. Attorney D'Ambruoso also stated there would be changes to the roof line, as it would be a more traditional look and lower in height (so it is less visually intrusive). This would reduce the size of the structure by @60 square feet, also a change to the "original Plans" approved by the Board.

Chairman Gray advised the Board Members they had to determine whether these were substantial changes from what was approved previously. If a substantial change, the Petitioner would need to refile and republicize, he said.

Chairman Gray stated that, in his opinion, the size and location of the revised proposed structure is consistent with what was approved previously by the Board. In fact, it was actually @60 square feet smaller.

In its previous Decision, the Board did not identify anything about sequencing, i.e. which dwelling had to be built first.

Member Barrington understood that the construction was intended to be done in two phases with the accessory being built first.

Member Clarke stated that the accessory dwelling is actually as of right and this was not necessary to put in the Decision. Also, she remarked she would like to see a letter from the Interim Building Commissioner as to what specific guidance he had allegedly requested from the Board.

Chairman Gray reviewed what he believed were the three options facing the Board: it could issue a letter to the Interim Building Commissioner stating a substantial change to the Plans approved originally by the Board was not now being made; two, it could state a substantial change was being made to the Plans approved originally by the Board and that the Petitioner would need to refile; or three, it could table the discussion and continue the Case until it received information from the Interim Building Commissioner as to what concerns he had or the specific guidance he was requesting from the Board.

Chairman Gray suggested the Board could vote that evening that it had no issue with the "revised" Plans, subject to receipt of a letter from the Interim Building Commissioner outlining his concerns and/or the guidance he supposedly was seeking before issuing a Building Permit.

Member Clarke made a Motion to ask for such a letter from the Interim Building Commissioner and that upon receipt of this letter, the Board would endorse the project, as the changes made to the "original Plans" were insubstantial. Member Mello seconded the Motion, and it was passed unanimously.

Chairman Gray asked Vice Chairperson Mello to draft a letter to the Building Commissioner requesting that he put in writing his concerns as expressed above.

### **C. New Public Hearings:**

- 1. Public Hearing: Case 40-15-OR: Petitioner: Michael Silva requesting a Special Permit and Variance in accordance with Sections 2245, 2320, 5221, 5222, and 5300 et.seq. of the Carver Zoning By-law, for property located at 155 Center Street in Carver, MA (Assessors map 40, Lot 15-0-R), so as to construct a 3 car metal garage, 31.5 x 29.9 (941.85 sq feet, 700 square feet**

**allowed as of right). A variance is being requested due to the need for side setback relief. The subject property is located in a Residential-Agricultural District.**

Mr. Silva was present and explained that he wanted to construct a 3-car metal garage that would be 942 square feet. He said he believed he needed three feet of side setback relief on each side of his property. He explained that his lot is long and narrow and the proposed garage would not be visible to his neighbors on either side due to the presence of woods. He stated there would be electricity in the garage, but no plumbing. Some exterior lighting was planned. An old shed on the property would be removed.

Member Clarke remarked that, per Carver Zoning By-law, 2245 (b) [“a permitted one-story accessory structure may be located within a required rear or side yard provided that it is not located within 10 feet of any property line or in front of the front line of the principal building.], it was her opinion that no side setback relief was required in this case and that a variance grant was unnecessary.

There was no opposition received from any member of the public as to the proposal of the Petitioner.

Member Clarke made a Motion to close the public hearing for Case 40-15-OR which was seconded by Member Barrington. The Motion passed unanimously.

Chairman Gray suggested that the Board adopt the following findings which he reviewed with the other Board Members and the Petitioner, Mr. Silva:

1. That the Board find 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.

Member Clarke made a Motion to adopt Finding #1, which was seconded by Member Barrington. The Motion passed unanimously.

2. That the Board find that the proposed construction is not substantially more detrimental than any existing nonconforming structures to the neighborhood.

Member Clarke made a Motion to adopt Finding #2, which was seconded by Member Barrington. The Motion passed unanimously.

3. That the Board find that no variance grant was necessary due to the provisions of Carver Zoning By-law 2245 (b).

Member Clarke made a Motion to accept Finding #3, which was seconded by Member Barrington. The Motion passed unanimously.

Member Barrington made a Motion to grant the Special Permit for Case 40-15-OR, so as to allow Mr. Silva to build the proposed 3-car garage, not to exceed 942 square feet. The Motion was seconded by Member Poirier and passed unanimously.

The grant of the Special Permit was conditioned unanimously by the Board, as follows:

1. Subject to the Plans of record.
2. Exterior lighting to be installed will be of the "gooseneck" style that points downward towards the ground;
3. There will be no plumbing in the garage;
4. The old shed on the property is to be removed completely within six months of completion of the garage.

Member Poirier made a Motion to adjourn which was seconded by Member Barrington. The Motion passed unanimously.

Respectively submitted,

Patricia A. Pacella  
Recording Secretary