



# TOWN OF CARVER

## ZONING BOARD OF APPEALS

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### ZONING BOARD OF APPEALS

#### MINUTES

**September 10, 2014**

#### **Posted in Accordance with the Provisions of M.G.L. Chapter 30A, Section 20B.**

The Carver Zoning Board of Appeals held a meeting on Wednesday, September 10, 2014, at 7:00pm, in the Carver Town Hall, Meeting Room # 4, 108 Main Street, Carver, Massachusetts.

**PRESENT:** Stephen G. Gray, Chair; Sharon Clarke, Vice-Chair; Steven Maynard; Fran Mello; Eric Mueller; James Nauen

**ABSENT:** Walter Collins

**ALSO PRESENT:** Dan Warren, Trustee of Warren Enterprises Realty Trust; Atty. James Marsh, Shephard S. Johnson, Jr. & Associates, PC; Atty. Thomas Urbelis, Urbelis & Fieldsteel, LLP; Paul Matos, GAF Engineering; William MacKenzie, Alpha Surveying & Engineering; Thomas Butler; Bob Belbin; Kathy Kay, Clerk; members of the public

Mr. Bob Belbin announced that he was videotaping the meeting.

Chairman Stephen Gray opened the meeting at 7:02pm.

#### **NEW BUSINESS**

**A. PUBLIC HEARING, 7:00 PM: Case No. 14-965 -** Petitioner: Dan Warren, as Trustee of the Warren Enterprises Realty Trust, c/o Shepard S. Johnson, Jr. Esq. of Shepard S. Johnson Jr. and Associates, P.C., 628 Pleasant Street, Suite 428, New Bedford, MA 02740. The petitioner is appealing the Carver Building Commissioner's decision not to revoke a Building Permit concerning 18 Shaw Road, and as grounds for the appeal the petitioner is stating that the issuance of the Building Permit is in violation of the Town of Carver Zoning By Law (minimum lot size and minimum lot width per the Dimensional Table at 2320).

#### **DISCUSSION AND POSSIBLE VOTE**

Mr. Gray opened the public hearing, reading out the above notice. He then stated that he has had contact with the Petitioner outside of this meeting. Mr. Gray disclosed for public record that his contact with the Petitioner has no relation to the case, but due to the appearance of a conflict of interest, he recused himself and turned the meeting over to Ms. Sharon Clarke.

Ms. Clarke introduced the Zoning Board members and asked Mr. James Nauen if he could make a fair, impartial judgment on the case, as he had sat on a previous case involving this property involving the Conservation Commission. Mr. Nauen answered yes. Ms. Clarke then asked the Petitioner if he had any problems with Mr. Nauen sitting on the Board. Atty. James Marsh, representing the Petitioner, said that one of the issues in the case was the existence of a vernal pool, about which Mr. Nauen knew, and so Atty. Marsh believed there to be a conflict of interest

and stated Mr. Nauen should recuse himself. Ms. Clarke advised the Petitioner that if Mr. Nauen recused himself, it would be a Board of four. Mr. Nauen noted that the issue of the vernal pool had been addressed by a DEP review, but asked the Board to decide if he should recuse himself. Mr. Dan Warren stated that Mr. Nauen had prejudiced himself with regard to the issue. Ms. Clarke asked Mr. Nauen to step down, and he did.

Ms. Clarke advised Mr. Warren that he had thirty (30) days from the date of the permit to file an appeal. The permit was issued May 20, 2014 and the appeal was filed July 21, 2014 (Exhibit 2), thirty-two (32) days after issuance. Ms. Clarke asked the Board if they had jurisdiction over the case. The Building Commissioner affirmed his decision of the permit on June 19, 2014 (Exhibit 3). Atty. Marsh stated that if the 30<sup>th</sup> day fell on the weekend, an appeal had till the next Monday to be filed. He said that Massachusetts General Law (MGL) states the weekend does not count. Mr. Jack Hunter, Town of Carver Director of Planning and Community Development, said he had spoken with Town Counsel (Kopelman and Paige) who confirmed that the thirty day time frame was valid.

Atty. Marsh introduced himself as representative for Mr. Warren, abutter of 18 Shaw Road, Carver, MA. He presented the fundamentals of the building permit issued May 2014 for 18 Shaw Road, based on an Approval Not Required (ANR) plan drawn up by GAF Engineering (Exhibit 4). Atty. Marsh stated that the lot line does not meet building requirements as the easement cannot be used for frontage, making it undersized.

Atty. Marsh then stated that American bald eagles use this locus for hunting and foraging. Ms. Clarke noted that that is a conservation issue and the appeal of the building permit is a zoning issue. She also said that the Conservation Commission has already addressed the question and issued an Order of Conditions (OOC). There was further discussion about the land and its environmental function and Mr. Marsh showed a brief video of the area.

Atty. Marsh stated there are vernal pools on the lot which are ecological resources and within 80' of the proposed septic. Title V regulations require septic systems to be 100' away from wetlands. Atty. Urbelis stated that the septic plan had been approved by the Board of Health and that there were no vernal pools on the plot.

Atty. Urbelis introduced himself as representative for Mr. Ernest Stevens, owner of 18 Shaw Road. He said the Superior Court had dismissed the case with regard to issue of a vernal pool and a July 20, 2012 report of the Division of Fisheries and Wildlife (DFW) documented there were no vernal pools at the location. Atty. Urbelis also noted that the DFW have not mapped Sampson Pond as an area for bald eagles.

Atty. Urbelis informed the Board that Town Counsel, Kopelman and Paige, supported the Building Commissioner's decision (Exhibit 5).

Mr. Paul Matos of GAF Engineering explained the specifics of the ANR plan and defended the legality of the lot size. The Board reviewed plans presented by Mr. Thomas Butler, builder for Mr. Stevens, which show the approved septic.

There was further discussion about lot lines, location of the proposed house, and removal of trees. Ms. Clarke asked the Board if they wanted to do a site visit. They answered no, as one had already been done. Mr. Bob Belbin stated he had recorded the site visit.

Mr. Belbin further questioned the legality of the lot, noting that the Planning Board meeting minutes for the receipt of plans for Betsey Wimperis for the ANR do not state an approval from the Board. Mr. Hunter said the minutes were incorrect but that the ANR plans were signed and dated and recorded with the Registry of Deeds.

**MOTION:** by Mr. Maynard to close the public hearing

**SECOND:** by Ms. Mello

**APPROVED UNANIMOUSLY**

The Carver Zoning Board of Appeals public hearing for Case No. 14-965 was closed on September 10, 2014, at 8:27pm.

Ms. Clarke clarified that a motion in favor would repeal the building permit for 18 Shaw Road and a motion against would keep it in place.

**MOTION:** by Ms. Mello to deny the Petitioner's appeal to revoke the building permit

**SECOND:** by Mr. Maynard

**APPROVED UNANIMOUSLY**

Ms. Clarke will write up the decision for the Board to sign.

## **MINUTES**

Mr. Gray stated that the Zoning Board meeting minutes of October 17, 2013, November 21, 2013, December 12, 2013, January 9, 2014, February 13, 2014, March 13, 2014, and April 10, 2014 (Exhibit 6-A – 6-G), and executive session minutes of November 21, 2013, December 12, 2013, January 9, 2014, and March 6, 2014 (Exhibit 7-A – 7-D), were received by the Chair within 48 hours of the meeting, as the previous secretary did not have them ready before.

**MOTION:** by Mr. Maynard to accept the minutes of 10/17/13, 11/21/13, 12/12/13, 1/9/14, 2/13/14, 3/13/14, and 4/10/14 as written

**DISCUSSION:** Ms. Mello noted that there are typographical errors in the minutes of 3/13/14 to be corrected

**SECOND:** by Mr. Mueller with corrections

**APPROVED UNANIMOUSLY**

Ms. Clarke stated that the executive session minutes had been cleared to be released.

**MOTION:** by Mr. Nauen to approve and release the executive session minutes of 11/21/13, 12/12/13, 1/9/14, 3/6/14, as written

**SECOND:** by Mr. Mueller

**APPROVED UNANIMOUSLY**

## **ADJOURNMENT**

**MOTION:** by Mr. Mueller to adjourn

**SECOND:** by Ms. Mello

**APPROVED UNANIMOUSLY**

**The Carver Zoning Board of Appeals meeting was adjourned at 8:39pm on September 10, 2014.**

Respectfully submitted,  
Kathy Kay, Clerk

### **Table of Documents**

Exhibit 1	Meeting Agenda – September 10, 2014
Exhibit 2	ZBA application of Dan Warren, 7/21/14
Exhibit 3	Frank DeFelice letter dated 6/19/14
Exhibit 4	ANR Plan for Betsey Wimperis
Exhibit 5	Kopelman and Paige letter dated 6/18/14
Exhibit 6-A	Carver ZBA minutes of 10/17/13
Exhibit 6-B	Carver ZBA minutes of 11/21/13
Exhibit 6-C	Carver ZBA minutes of 12/12/13
Exhibit 6-D	Carver ZBA minutes of 1/9/14
Exhibit 6-E	Carver ZBA minutes of 2/13/14
Exhibit 6-F	Carver ZBA minutes of 3/13/14
Exhibit 6-G	Carver ZBA minutes of 4/10/14
Exhibit 7-A	Carver ZBA Executive Session minutes of 11/21/13
Exhibit 7-B	Carver ZBA Executive Session minutes of 12/12/13
Exhibit 7-C	Carver ZBA Executive Session minutes of 1/9/14
Exhibit 7-D	Carver ZBA Executive Session minutes of 3/6/14
Exhibit 8	ZBA 9/10/14 meeting sign-in sheet