

**Carver Zoning Board of Appeals
Carver Town Hall – Meeting Room #4
Meeting Minutes for March 8, 2016**

Members Present: Stephen Gray, Chairman; Sharon Clarke, Vice-Chairman; James Nauen; Eric Mueller (not a voting Member on Case #16-973); Steven Maynard; Frances Mello.

Also Present: Marlene McCollem, Planning Director; Christine Champ, Recording Secretary.

At 7:12 P.M., Chairman Gray opened the March 8, 2016 meeting of the Carver Zoning Board of Appeals.

A. Continuation of a PUBLIC HEARING: Case No. 16-973: Petitioners: Timothy & Deborah Dempsey, 22 Cranberry Circle, Carver, MA 02330.

The Petitioners are seeking a variance, pursuant to Sections 2320 & 5222 of the Carver Zoning By-Law, in order to build a garage within the minimum setbacks in a Residential Agricultural District, shown on Map 42A, Lot 19.

Mr. Timothy Dempsey, with his service dog, Bear, are present for the Continuation of the Hearing. The Board did attend a site walk on Saturday, February 20, 2016, and met with the Petitioner and observed measurements as to the boundary line with the neighbors on the side where the proposed garage is to be built. The Board posed a number of questions to the Petitioner and these neighbors. It was noted that on the side of the proposed garage, the neighbors' bedroom window is very close. The neighbors made their concerns known at that time. Mr. Dempsey provided a new, revised plan with notes. (Copy for record)

Mr. Dempsey had the following notes added to the Plan: "1. Front of foundation not to be built beyond the existing front house foundation; 2. Garage to be attached to the existing house; 3. Garage to be designed for handicapped access; 4. No work to be completed within ten feet of the side garage property line; 5. No windows to be installed on the side of the garage that faces the garage side property line; 6. Rear access to the garage will be accomplished by installing a ramp to the existing back porch. (Two additional notes which Mr. Dempsey is instructed to add to Plan are: 7. No lights to be installed that face the garage side property line; 8. There is to be screening vegetation planted between the side of the garage and the property line).

Chairman Gray asked Mr. Dempsey if he had anything further to add. Mr. Dempsey stated that he followed instructions and is prepared to do what is necessary. Chairman Gray stated for the record that there were no "instructions." Chairman Gray inquired whether there had been any further conversation with the neighbors, and Mr. Dempsey stated that they seemed generally happy with what had transpired to that point.

Chairman Gray asked for any additional comments from the Board. Ms. Clarke said that she believed the relief needed was for a straight dimensional variance.

Chairman Gray read a portion of Section 3 of Chapter 40A of the Massachusetts General Laws that Mr. Nauen had brought to his attention. Section 3 provides that dimensional lot requirements in local zoning by-laws shall not be applied to “handicapped access ramps” on private property. Following an inquiry by him, Mr. Nauen had received an email from the Massachusetts Office of Disability. This email suggested a broad interpretation of this Section of the law which it believes is not limited just to the statutorily referenced access ramps, but any structure that would allow a handicapped person to move around better on their property. Chairman Gray stated that he is of the opinion that the words in the statute say what they mean and mean what they say and he was not prepared to expand the language of Section 3 in the manner proposed by the Office of Disability, without supporting case law which was not provided.

Chairman Gray suggested closing the Hearing and taking a vote. There were no further comments.

Mr. Maynard moved to close the Hearing. The motion was seconded by Mr. Nauen. The motion passed unanimously.

Findings of the Board

Motion was made by Mr. Nauen and seconded by Mr. Maynard that, owing to circumstances relating to the soil conditions (in situ septic system and leaching field) and topography of the lot (steeply sloped pond front), 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.

The motion passed unanimously.

Decision

Motion was made by Mr. Maynard and seconded by Mr. Nauen that, based upon the authority of the Carver Zoning Board of Appeals under S5222 of the Carver Zoning By-Law, a variance under Chapter 40A, Section 10, for a dimensional variance of 20 feet was granted from the Carver Zoning By-Law Section 2320, side-yard setback, owing to the soil conditions (in situ septic system) and topography (steeply sloped pond front) of the lot.

The motion passed unanimously.

Motion was made by Ms. Mello and seconded by Mr. Nauen that the Plan entitled, “Plot Plan of Land in Carver, Mass., prepared for Tim Dempsey by Webby Engineering Associates, Inc., dated October 27, 2015, and as revised on March 8, 2016, is hereby incorporated and made a part of this Decision.

The motion passed unanimously.

Conditions of the Grant

Chairman Gray wanted to make sure that all the following notes are included on the Plan, above-referenced, as conditions to the Decision of the Board:

1. Front of foundation not to be built beyond the existing front house foundation; 2. Garage to be attached to the existing house; 3. Garage to be designed for handicapped access; 4. No work to be completed within ten feet of the side garage property line; 5. No windows to be installed on the side of the garage that faces the garage side property line; 6. Rear access to the garage will be accomplished by installing a ramp to the existing back porch; 7. No lights to be installed that face the garage side property line; 8. There is to be screening vegetation planted between the side of the garage and the property line.

There was further discussion regarding the type of screening vegetation. It was suggested that white pines could be planted. Mr. Nauen thought a Christmas tree type fir would be better.

Motion was made by Mr. Maynard and seconded by Ms. Clarke that the above 8 Conditions be adopted by the Board and be made part of its Decision granting the requested relief.

The motion passed unanimously.

Mr. Dempsey wanted to know if there is a waiting period. Ms. Clarke addressed this question and informed him that after the Decision is filed, there is a 20 day appeal period. After 20 days has passed, the Town Clerk will contact him and the Decision of the Board must then be recorded at the Plymouth County Registry of Deeds. After recording at the Registry, he must then bring the Decision to the Building Inspector.

B. Minutes - December 15, 2015 & February 18, 2016

Chairman Gray thanked Vice-Chairman Clarke for editing and resubmitting the minutes.

Motion by Mr. Nauen and seconded by Ms. Clarke to accept the minutes of December 15, 2015, as written.

The motion passed unanimously.

Motion by Ms. Mello and seconded by Mr. Maynard to accept the minutes of February 18, 2016, as written.

The motion passed unanimously.

C. Discussion - possible request through the Massachusetts Housing Partnership's (MHP) Technical Assistance program in advance of the March 18th Hearing for a proposed Comprehensive Permit (40B).

Chairman Gray began the discussion by referencing Ezra Glenn who provided the Board with a "training seminar" on December 15, 2015. He also noted that Ms. McCollem has considerable experience with 40Bs based on her previous job in Falmouth.

Ms. McCollem stated that Judy Barrett is very experienced with 40Bs and is a housing expert who works for RKG Associates. She also has held the position of Director of Municipal Services for COG in Boston where she worked as a housing consultant. Additionally, she serves as Chairman of the Duxbury Zoning Board of Appeals. As a consultant to the Board, no cost or expense would accrue to the Town, as she would be paid under a State grant.

Chairman Gray inquired what kind of help the Board could expect to receive from Ms. Barrett. Ms. McCollem responded that Ms. Barrett would be present to answer questions in real time and would be creating her own file and would double-check everything. She would also help draft the Decision. Ms. McCollem stated that she would be attending the meetings on the 40B as well.

Vice-Chair Clarke asked if the 40B case could be decided within statutory deadlines by conducting one meeting a month.

Ms. McCollem recommended that the case not be dragged out and that maybe more than one meeting a month could be scheduled.

Ms. McCollem provided a draft letter from the Board, dated March 8, 2016, addressed to Laura Shufelt of Massachusetts Housing Partnership, requesting consulting services, to include assistance by Ms. Barrett.

Motion by Mr. Nauen, seconded by Ms. Mello, to send the above-referenced letter.

The motion passed unanimously.

Chairman Gray stated the Board may need further expert consultants (civil engineer; environmental scientist; real estate appraiser). Ms. McCollem indicated that the Developer would be responsible for paying their fees and the Town would escrow the money and then draw down, as needed. Mr. Nauen wanted to know if there is a list of experts from which choices could be made. Ms. McCollem stated that she and Ms. Barrett will obtain a list. She also remarked that she will use best business practices. Chairman Gray opined that consultants will likely be very instrumental as to the 40B case.

Chairman Gray discussed that Board Members should not be contacted by interested parties to the 40B and if this occurs, any conversations should be terminated immediately. He suggested instead that all communications of any kind be redirected to Ms. McCollem. Chairman Gray also instructed Board Members not to respond on social media.

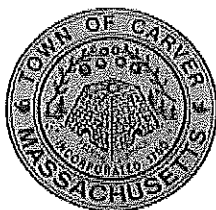
The Hearing on April 7th, 2016, will be in Room #1, the Selectmen's Chambers.

Adjournment:

On a motion of Vice-Chairman Clarke, seconded by Ms. Mello, the meeting adjourned at 8:21 P.M.

Attachments:

1. Agenda of the ZBA meeting of March 8, 2016
2. Minutes of December 15, 2015, and February 18, 2016
3. Correspondence of March 8, 2016 to Laura Shuflet of MHP
4. Plot Plan of Land in Carver, Mass., prepared for Tim Dempsey by Webby Engineering Associates, Inc., dated October 27, 2015, and as revised on March 8, 2016



TOWN OF CARVER

Zoning Board of Appeals

108 Main Street
Carver, MA 02330

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PUBLIC MEETING NOTICE

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, SECTION 20B

CARVER ZONING BOARD OF APPEALS

March 8, 2016

7:00 PM

Carver Town Hall Room #4

AGENDA

POSTED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. CHAPTER 30A, SECTION 20B

- A. Continuation of a PUBLIC HEARING: Case No. 16-973:** Petitioner: Timothy & Deborah Dempsey; 22 Cranberry Circle, Carver, MA 02330.

The Petitioner is seeking a variance, pursuant to Sections 2320 & 5222 of the Carver Zoning By-Law, in order to build a garage within the minimum setbacks in a Residential Agricultural District, shown on Map 42A, Lot 19.

- B. Discussion:** possible request through the Massachusetts Housing Partnership's (MHP) Technical Assistance program in advance of the March 18th hearing for the proposed Comprehensive Permit.

- C. Minutes** - December 15, 2015 & February 18, 2016 – Discussion and possible vote.

- D. Correspondence** (if any)

- E. Adjournment**



TOWN OF CARVER

Zoning Board of Appeals

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Carver, MA 02330

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March 8, 2016

Ms. Laura Shufelt
Massachusetts Housing Partnership
160 Federal Street, 2nd Floor
Boston, MA 02110

Re: MHP Ch. 40B Technical Review Assistance Program

Dear Ms. Shufelt:

At its meeting of March 8, 2016, the Carver Zoning Board of Appeals voted to request that MHP provide consulting services to the Town to assist with the review of the Comprehensive Permit application that was received on February 18, 2016.

We are aware that you have been in contact with Marlene McCollem, Carver's Planning Director, and that we will be working with Ms. Judi Barrett, of RKG Associates. We look forward to collaborating with Ms. Barrett on this very important project.

Sincerely,


Stephen Gray
Chairman