



approved  
2/26/19

CARVER ZONING BOARD OF APPEALS  
MINUTES OF January 15, 2019 MEETING  
Room 4 @ 7 pm.

Present: Stephen G. Gray, Chairman; Sharon Clarke, Vice-Chairperson; Members Eric Mueller; Frances Mello; Alternate, Alan Germain. Also present: recording secretary Patricia Brennan

MEETING MINUTES:

The Minutes of November 5, 2018 were reviewed.

Eric Mueller made motion to accept the minutes. Seconded by Sharon Clarke, voted and passed unanimously 4-0.

PUBLIC HEARINGS:

**PUBLIC HEARING (Continued from November 5, 2018): Case No. 24-4A:** Petitioner: David Mulcahy, d/b/a oh Deer South Shore, PO Box 340, Kingston MA 02364. The Petitioner is requesting a Variance pursuant to Section 5222 and Section 2230 of the Carver Zoning by Law for property located at 157 North Main Street in Carver, MA (Assessors Map 24, Lot 4A) to construct an addition to the rear of a pre-existing nonconforming residence in a Highway Commercial District, said addition for the purpose of an office and the storage of business materials.

Mr. Gray has received two letters. One dated November 15, 2018 from Attorney Serkey representing the petitioner. The second was dated January 14, 2019 from attorney Serkey addressed to Mr. Gray. These letters state that Mr. Serkey had a meeting with the towns building commissioner Mr. Francis.

In the letter dated November 15, it was Mr. Serkey's determination that the definition of tradesman as defined in article 6 of the Carver zoning bylaw would be guided by the view of the planning board. The planning board apparently has voted to support a determination that Mr. Mulcahy is indeed a "tradesman". Mr. Serkey is requesting that Mr. Francis make that determination himself as the building inspector by countersigning the letter dated November 15<sup>th</sup>. Mr. Francis did sign the letter on November 29, 2018, certifying that in his opinion the definition of tradesman is such that it would not require relief from the zoning board of appeals.

In the letter dated January 14, 2019 from Mr. Serkey he makes reference to the letter dated November 15, 2018. He then goes on to request that the petition before the board from Mr. Mulcahy, dba OhDeer South Shore be withdrawn.

Sharon Clarke is concerned with the way the planning board is defining a tradesman. She believes this is something the town needs to address. Mr. Germain agrees with Ms. Clarke that it sets a bad precedent. Ms. Clarke states that her opinion on this has no bearing on this partition. Fran Mello stands with the towns lawyer.

Mr. Serkey says in his initial petition to this board he requested a variance to the extent necessary to construct the addition. Mr. Serkey said he did not believe he had to present this to the zoning board, but that Mr. Francis requested it. Mr. Francis wanted the planning board to vote if Mr. Mulcahy was indeed a tradesman. The planning board then voted that under their reading of the bylaw Mr. Mulcahy was a tradesman. Mr. Serkey then went back to Mr. Francis with the results from the planning board at which time Mr. Francis changed his mind. Which led to Mr. Francis countersigning the request to withdraw the petition.

Ms. Mello asked Mr. Serkey why he did not go to the planning board first. He responded that according to Mr. Francis the petitioner needed a use variance. The planning board does not grant use variances.

Sharon Clarke would like to close the hearing. Frances Mello would like to seek town council on if a petitioner can withdraw once a case has been opened.

Fran Mello made a motion to continue this hearing for one month, seconded by Mr. Mueller. Voted and passed unanimously 4-0.

In the meantime, the board is going to seek town council in regards to withdrawals. Alan Germain and Sharon Clarke will both attend the planning board meeting on Jan 22<sup>nd</sup> to address this issue as well.

The next zoning board meeting will be February 12, 2019.

Fran Mello made a motion to draft a letter to the planning board outlining their concerns as they relate to this case and the broad interpretation of a tradesman. Sharon Clarke will draft the letter and Alan Germain will edit the letter. Then all board members will sign. Seconded by Sharon Clarke. Vote was unanimous 4-0.

**PUBLIC HEARING (Continued from November 5, 2018): Case No. 49-53:** Petitioner: David Taylor, 27 Leonard Street, Carver, MA 02330. The Petitioner is requesting a Variance pursuant to Sections 2300 of the Carver Zoning by Law for property located at 27 Leonard Street in Carver, MA (Assessors Map 49, Lot 53) to construct a free standing 28X28 detached garage in the side yard in a Residential Agricultural District.

Mr. Taylor was present along with his wife.

Stephen Gray announced that the board did conduct a site visit. Mr. Taylor let the board know that the DPW also made a site visit as well as the conservation committee. There were no concerns presented to Mr. Taylor.

Mr. Taylor explained that he has revised the plans for the garage by pushing it back 50 feet from the street and rotating it. Stephen Gray asked Mr. Taylor what he seeks by way of relief from the board at this time based upon his new revised plan. Mr. Taylor answered location. The corner of the garage is in front of the house. Without a zoning permit it would not pass Mr. Francis building requirements. The size is also over 700 square feet. Stephen Gray asked Mr. Taylor if his new plan meets all dimensional requirements. The answer was yes.

Sharon Clarke thanked Mr. Taylor for being so cooperative with the board during this process.

Sharon Clarke made a motion to close this hearing. Fran Mello seconded the motion. Vote was unanimous 4-0.

Sharon Clarke made the following motion. The board found that owing to circumstances relating to the 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. Mr. Mueller seconded. Vote was unanimous 4-0. Sharon Clarke made a motion to grant relief requested to construct a garage no larger than 784 square feet. The variance will be given to site 22-45 B as 10 ft and to site 22-45 C as 784 ft as per the plans drawn. Mr. Mueller seconded. Vote was unanimous 4-0.

**D. PUBLIC HEARING (Continued from November 5, 2018): Case No. 8-26:** Petitioners: Clark A Griffith, Trustee and Suzanne R. Lyons, Trustee, P.O. Box 127, South Carver, MA 02330. The Petitioners are requesting a Special Permit pursuant to Section 5300 of the Carver Zoning Bylaw for property located at 7 Lakeview Street in Carver, MA (Assessors Map 8, Lot 26F) to modify the use of the existing home office, established for the purpose of harvesting/billing, to an office for rent in a residential agricultural district.

On Dec 22<sup>nd</sup> 2018 Stephen Gray received a letter from the petitioners attorney. This letter was asking for the case to be withdrawn.

Sharon Clarke made a motion to close the hearing. Mr. Mueller seconded. Voted and passed 4-0.

Sharon Clarke made a motion to allow to withdraw the request without prejudice. Fran Mello seconded. Voted and passed 4-0.

Fran Mello made a motion to adjourn. Mr. Mueller seconded. Voted and passed 4-0.

Respectfully submitted,

Patricia Brennan