



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

April 7, 2010

Present

Robert Cadle, Chairman
Cynthia Maxwell, Member
Mark Mulligan, Member
Chase Duffy, Alternate Member
Jay Prager, Member

Not Present

Alison Manugian, Member
Harris McWade, Member
Megan Mahoney, Alternate Member
Bruce Easom, Alternate Member

A quorum was attained. The meeting was called to order at 7:30 pm.

Preliminary Agenda

- McCarthy hearing
- Casella/Collins clarification
- Eliot hearing
- Sign Bills
- Approve Minutes
- New business

Meeting Minutes

Chairman Cadle reconvened the meeting, noting that Atty. Anctil, agent for McCarthy, requested a continuation for 35 days, until May 12, 2010 because the PB hasn't finished their review.

Mr. Mulligan moved to continue the McCarthy hearing to 7:30 pm on May 12, 2010 with the condition that the time period for filing the decision also be extended by the same time as the requested hearing extension, i.e., the new deadline for filing of the decision shall be 35 days from May 12, 2010 (or later if the hearing is further continued). Mrs. Duffy seconded and the motion passed unanimously.

Atty. Collins said that his client, Mr. Casella, received a special permit (#4-09) for four units, two of which are affordable and age restricted to 55+. He said he then went to PB Site Plan Review and the Board questioned whether all units need to be age restricted and whether the houses could be on separate lots. He said the PB wants clarification that 50% of the units, those in the duplex, be age and income restricted and whether the dwellings could be on three separate lots. He said he pointed this out to the PB and showed them prior decisions made by the Board, noting that when he was on the PB, a footnote to the bylaw was added for developments under this section of the bylaw.

Chairman Cadle thought there might have been a recent court decision about the percentage of affordable units and lot separation.

Atty. Collins said he was unfamiliar with any cases.

Discussion ensued regarding what the PB wants from the Board.

Mr. Mulligan said he was acting chairman for the application and recalls that the duplex was age restricted and affordable and the houses were not.

Discussion ensued regarding whether Atty. Collins' letter should be submitted and signed by the Board. Mr. Prager said that the first three paragraphs are sufficient.

Mr. Mulligan moved that the Board, at the request of Atty. Collins, submit a letter outlining and clarifying its decision to the PB.

Mrs. Maxwell seconded and the motion passed with three yeas (Mulligan, Duffy, Maxwell) and two abstentions (Cadle and Prager).

Chairman Cadle convened the Eliot hearing by reading the Legal Notice.

The applicant submitted an outline in support of the variance request.

Ms. Eliot was present with her son-in-law, noting that they are in the process of trying to finish construction that began in 2005. She said an arbor was originally planned to attach the two dwellings, but when they went to place the footings, they found that the well was in the way. She said they changed the shape and size of the porch to accommodate the well but noted it would be difficult to construct the arbor. She said the arbor would also affect snow removal. She said the dwelling was built as a by-right two family home; and when they originally applied, *detached* two family homes were allowed. Bylaws §218-13. She said the by-law changed last April by deleting "detached" and inserting "attached" in place thereof.

The Board asked for clarification about whether this is a two family house or an accessory apartment.

Ms. Eliot said that it was constructed as two-family and no special permit was required, noting that they are not increasing the number of bedrooms. She said they are removing one bedroom from the existing house

and putting it into the second dwelling. She said that both structures share the septic system and well and will have a total of four bedrooms, which is in compliance with the BOH. Additionally, she said that she has a deed restriction that the dwelling will remain four bedrooms, noting that the structure is built and almost ready for an occupancy permit.

Discussion ensued regarding how to apply the facts of this case, especially in light of the 2009 amendment to the bylaws deleting “detached” and replacing it with “attached.”

Mrs. Duffy asked whether the arbor would show from the road.

Ms. Eliot said the attachment is not visible from the road, noting that only one little peak of the roof of the second structure shows.

Mrs. Duffy asked whether plantings could be used to tie the two structures together.

Ms. Eliot said that the structures are designed to go together, with similar landscaping, painted the same color, etc.

Chairman Cadle said that Mr. Prager raised a good point: that two family detached dwellings fall under the use regulations and the Board doesn't have the power to grant a use variance.

Mr. Prager said he doesn't have a problem with the project but stressed there is a technical problem that needs to be addressed.

Ms. Eliot said she feels that under the hardship section the Board could grant a variance.

Chairman Cadle said that hardship is only one of the things that need to be proved.

Mr. Prager said the use bylaw talks about attached dwellings.

Ms. Eliot said she is not changing use.

Mr. Mulligan asked whether if the construction had been completed sooner, an occupancy permit could have been obtained under the laws at that time.

Discussion ensued regarding what the stance of the building inspector was regarding whether the buildings needed to be attached.

Mr. Prager suggested that a decision could be made with the finding that the use is grandfathered because a building permit was issued prior to the bylaw change of 2009.

Ms. Eliot said the well was there originally.

Mr. Prager asked why the arbor would affect the well.

Discussion ensued regarding what would be problematic. Ms. Eliot said the well would be impacted and snow removal would be difficult. Ms. Eliot's son-in-law said that because of the angle of the houses, it would be difficult to attach the arbor.

Mr. Prager asked about relocating the footings and arbor so that they are out of the way of the well.

Ms. Eliot said that would be a huge hardship.

Chairman Cadle asked whether the applicant had had an architect look at the plan.

Ms. Eliot said she used Maureen Giattino and hasn't had an architect look at it.

Discussion ensued regarding what could be done to change the pergola so that construction was possible.

Mr. Mulligan wondered if a variance or waiver could be granted based on the fact that the 2005 permit was acted on and then the bylaw changed.

Chairman Cadle said the problem was that the original building permit was obtained with a pergola in the design.

Mr. Prager asked what footings could be in place and satisfy both the applicant and Building Inspector.

Ms. Eliot said the footings would be in the way and would affect snow removal.

Mr. Mulligan asked whether the BI would or could amend the building permit.

Ms. Eliot said she did think he would.

Chairman Cadle suggested using two iron beams instead.

Discussion ensued regarding a number of different possibilities for the pergola.

Mr. Prager asked how wide the footings needed to be to get a snow blower through.

Ms. Eliot's son-in-law said six feet would suffice.

Ms. Eliot said there would not be enough space.

Mr. Prager said he still doesn't understand why it wouldn't work.

Chairman Cadle said it would be helpful if water lines were drawn on the plan.

Ms. Eliot showed the approximate water lines.

Mr. Prager asked what would prevent the footings being put in around the water lines with small modifications of the original plan.

Ms. Eliot said that if there is a problem with the well, it couldn't be serviced, and this hardship is because of the pergola. She said that she made a change in the original plan because of the location of the well.

Mr. Prager said he had a problem with granting a permit to get rid of the pergola, noting that he doesn't understand why such support is needed for something that is nonstructural.

Mrs. Duffy asked whether this is on restricted land.

Ms. Eliot said no, that it is only under 61A for tax purposes.

Mr. Prager said that when the building permit was issued this was within the use regulations because two units could be detached. He noted that the applicant got a building permit when there was a clause for two-family detached, prior to the bylaw change in April of 2009.

Chairman Cadle said despite the fact that the pergola was included in the plans, it was not a necessary requirement.

Discussion ensued regarding whether the Board can grant a variance under 218-13, Schedule of Use.

Mr. Schulman said it seems to be a general question, that if one gets a permit and then the rules change, what applies. He said it seems to be unfair that this has to be met now, noting that he doesn't think it is a variance and feels it is a good question for town counsel. He said that construction occurred before the bylaw change.

Mr. Prager said that given that the pergola piece of the plan was not required when the building permit was obtained and structure is already built, a variance is not required.

Mr. Schulman said that the best recourse would be if the Board states that a variance is not required for the above reasons.

Mr. Prager said a variance was not required to remove the pergola from the plan because it was not necessary at the time of permit issue and construction.

Ms. Eliot said she wants the hardship issues addressed.

Mr. Prager said he feels that would complicate the matter.

Mr. Prager moved that the Building Inspector is notified that the original permit was issued prior to the change in 218-13; thus, the original plan did not require a pergola with footings and therefore removal of said pergola should not prohibit the issuance of an occupancy permit because the plan without a pergola was within the by-right requirements of the bylaw. Mr. Mulligan seconded and the motion passed unanimously.

Bills/Minutes

No bills were authorized for payment.

The following minutes were approved: Chairman Cadle moved to approve 2/3/10 minutes. Mr. Prager seconded and the motion passed unanimously.

New business

Mrs. Maxwell moved to adjourn at 9:00 pm, Mr. Mulligan seconded and the motion passed unanimously.

Minutes approved 6/23/10.