



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

April 25, 2012 – Ward, Juskalian

Present

Mark Mulligan, Chairman
Cynthia Maxwell, Member
Robert Cadle, Member
Carol Quinn, Associate Member
Bruce Easom, Associate Member

Not Present

Alison Manugian, Member
Megan Mahony, Associate Member
Jay Prager, Member

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

Meeting Minutes

Ward Special Permit

Chairman Mulligan convened the hearing by reading the Legal Notice.

Dan Wolfe of Ross Assoc. was present as agent for the applicant. He said this is both a non-conforming lot and house, built 200 years ago. He said there are two additions: one from the 1920's and one built later. He noted that the single bedroom addition from the 20's is being removed and another addition is proposed on the west side of the house. He said an existing bedroom will be replaced in the addition, as well as adding a dining room and garage. He said the addition will be no closer to the front lot line and will be no more non-conforming. He said it is appropriate to request a special permit, noting that all work would be done outside of the wetland buffer zone so no Cons. Comm. comments are necessary.

Mr. Easom said he wants to know the height of the existing house and the addition.

Mr. Wolfe said the house is a story and one half and less than 25 feet. He said the addition would be less than this.

Mr. Cadle asked whether the driveway would be closer to the road.

Mr. Wolfe said the current driveway hooks to the left and because of the location of the proposed garage, the driveway will have to hook left slightly sooner.

Discussion ensued regarding the barn and the status of such is that no changes are proposed.

Chairman Mulligan asked whether there would be any impact on either the septic system or well.

Mr. Wolfe said the well is recently installed and the septic works well. He said there is no change in number of bedrooms.

Mrs. Collette, Land Use Director, noted for the record that the BI, as zoning enforcement officer, made the decision that a special permit and not a variance is required. She said this is the first application since the Gale decision so town counsel was asked to weigh in and he agreed that no variance is required and thus could be handled as a finding via special permit.

Mr. Wolfe said the existing house has an overhang of less than 10 inches and the addition will match this.

Mr. Easom asked for clarification that this application is filed under 218-6 and Mr. Wolfe said it was.

Mr. Easom made a motion to grant a special permit to allow the alteration of a non-conforming structure, which includes the moving of a bedroom into an added addition as shown on plan L-11139, dated March 22, 2012, to lot 218-4, 151 Long Hill Rd.

A finding was made that this alteration of a non-conforming structure would not be detrimental to the character of the neighborhood, and is keeping with the intent of the Groton Zoning Bylaws.

Mr. Cadle seconded the motion and it passed unanimously.

Juskalian Special Permit

Chairman Mulligan convened the hearing by reading the Legal Notice.

Atty. Collins, agent for applicant, submitted a new letter and better copies of the plan of the house. He said Dale Lane is off Indian Hill Drive, noting that this is a large property with better than 15 acres, ten or more of which will be subject to a conservation deed restriction. He presented a map of the property, noting the reason they are here is because of the height of the roofline. He said the dwelling is designed to be an extended cape and the correct pitch of the roof is 12, which makes the center section of ridge four feet

higher than allowed in the bylaws. He said that a variance usually involved land and wants to walk through the Chapter 40 section language. He said the height bylaw is so that abutting properties are not affected and there are no abutting structures/dwellings, and thus denying this permit would be a hardship. He said they are here because of the shape of the structure, which is unique to this design and not applicable to other properties in the district. He said the shape of the building is unique to this structure and reflects back on the setting clause, noting hardship if the structure is not constructed this way. He said that a Cape constructed without the proper roof pitch would be an eyesore, noting that the bedrooms would be affected by the change in roof pitch and would cramp headroom in the passageway. He said his clients' daughter has medical issues that affect vision and it would be hardship to not have bedrooms on the second floor. He said the structure is at least 500 feet from the road, there are no structures within 1500 feet and is heavily treed. He said that even though the house is in an elevated position, it would still not be visible and thus doesn't impact negatively the public good, etc. He said the height limitations really apply to a line of houses on a street, noting that this house is secluded, with very unique circumstances. He said the Board has authorization in Mass General Law, noting that there is a case on point from 2007 in which a variance was granted to allow sufficient height on the top floor. He said the Court upheld the ZBA because a top story should be usable and a denial would be a hardship.

Discussion ensued regarding the court case and where to find it.

Chairman Mulligan asked about the cupola.

Atty. Collins said the bylaw does not include cupolas or chimneys.

Mr. Cadle said variances are typically based on circumstances related to land.

Atty. Collins said the shape of the structure is also included and thus a variance can be granted.

Discussion ensued regarding what the grant of a variance in this instance and future instances mean.

Mr. Cadle said he thinks there is case law that doesn't support what Atty. Collins said about the structure/variance criteria.

Atty. Collins said this is his first time before the board with a structure issue rather than a land variance.

Chairman Mulligan asked whether any other designs were contemplated.

Atty. Collins said not to his knowledge and said there is no requirement to look at other designs.

Discussion ensued regarding the hardship.

Atty. Collins said it is a stylistic choice, driven by a design they chose.

Mr. Cadle asked for clarification regarding where Dale Lane is.

Ms. Quinn said she has a question about the memo dated March 20th, about other structures in the area.

Atty. Collins said along Old Ayer Road, there are barn and silos that are much higher than 35 feet.

Mr. Easom asked what consideration is made for a self-created hardship.

Atty. Collins said that when it is associated with land, the hardship could not be land created. He noted a court case in which a building constructed with a top story and the hardship was met even though self-created. He said they have to meet all the other criteria.

Mr. Easom asked whether an argument could be made that a hardship is met if a hired architect designs a structure not in compliance with zoning bylaws.

Atty. Collins said that the proposal could not nullify the intent of the bylaw or cause detriment.

Discussion ensued regarding where to draw the line regarding a self-imposed hardship.

Mr. Easom asked whether there was a restriction prohibiting any further development on that parcel.

Atty. Collins said five acres is needed for a hammerhead lot and ten acres were restricted.

Mr. Easom asked whether there were any cases that didn't uphold the ZBA.

Atty. Collins said he didn't find one.

Mr. Cadle said he wants to look at the case law.

Atty. Collins also suggested a site walk, noting that he feels the design would be a credit to the neighborhood.

Chairman Mulligan noted that there is a sizeable audience and asked for comments.

Ed McNierney, Indian Hill Road resident and president of the Conservation Trust, noted that the house is sited on the highest part of the site and said that anything built there would be very visible from the entire length of Indian Hill Road. He said that from Indian Hill Road, all one sees is the hill. He said there is no structure here, just a design and the Bylaw refers to existing structures and how they relate to the land. He said otherwise one could design whatever one wants. He stressed that there is the blankest of blank slates and that the applicant can't argue that there is only one place to put the house, etc, because there is no lot yet.

Atty. Collins said the statute is not limited to existing structures so it would be possible to grant a permit. He suggested that one could not tell that the structure is 39 feet instead of 35 feet.

Of note: there is a four foot four inch variance being requested.

Mrs. Collette, in response to Mr. McNierney, read the Bylaw, noting that height limitations are for fire protection reasons and the fire department's ability to fight fires. She suggested reaching out to the fire department to ask whether they could fight fires there.

Atty. Collins said the fire department would require either a cistern or sprinklers and he thinks his client will have sprinklers.

Erica Reynolds, Indian Hill Road resident, said she wants clarification regarding the size of the lot and the conservation restriction.

Atty. Collins said the house lot is 5.7 acres and the driveway is on ten acres. He said the total lot area will be about 28 acres, for all three parcels (which don't exist yet).

Mr. Easom said conservation restriction would go away after 30 years.

Atty. Collins agreed.

Mr. Dillis said Natural Heritage would weigh in in 30 years if someone wanted to do something on the property.

Camilla Blackman suggested that the applicant is putting the cart before the horse since the lots have not yet been approved by the PB and the house was not designed to fit in with the bylaws. She said she wouldn't choose a design that is not in compliance and said she feels the process has gone forward before it's time. She said she thinks they could build a beautiful house that complies.

Paul Funch, trails committee, said he feels there will be an impact and said he thinks the lot should be redesigned so the house is not on top of the hill so everyone can see. He said they should take into account the character of the town.

Stuart Schulman, former ZBA member and a current Selectman noted that he feels the hardship is totally self-imposed. He said a variance is not a right and the board doesn't have to grant one. He said he urges the board to do some homework and read up on the statute, noting that he is not convinced he agrees with Atty. Collins' interpretation and worries about the precedent setting quality of this.

Atty. Collin said he knows a variance is not a given but noted there will be a house there, by right, whether it is 35 or 39 feet tall. He said he is not here for a location variance and even though it is a sizeable site, there is not a lot of leeway to place the house. He stressed that his clients want the view, as the other homes on Indian Hill enjoy. He said they wouldn't waste the time and money to build the house below. He said there is nothing wrong with continuing hearing to do more research.

Chairman Mulligan asked about the accessibility of the site.

Mr. Dillis said it is very accessible.

Bob Watts, 163 Indian Hill Road, said he first learned of the hearing yesterday. He said his house looks out on a row of hills, etc. that is a completely structure free view. He said he took some photos this morning and feels any further change would permit the structure to rise even further above the tree line. He said he would suggest this doesn't rise to the criteria that it is free from negative impacts.

Atty. Collins said the trees are about 50 feet in height and the house would not be above them. He said it is not a valid consideration that no houses are in view now, but whether the extra four feet are more visible from Indian Hill Road.

Chairman Mulligan asked whether the board wanted a continuation for a site walk, etc.

Mr. Cadle said he is not comfortable taking a position now.

Chairman Mulligan said he is not sure of his position but needs to acknowledge that a house of some sort will be built there.

An abutter from Worthen Drive said she is concerned that trees will be removed and the house will be very visible and loom over her property. She noted that there are two unsold lots on her street and she doesn't want a precedent being set with this height variance.

Chairman Mulligan said each variance stands alone.

Mr. McNierney said these were valid concerns, noting that the bylaw requires three things. He said the intent of the bylaw is to give people flexibility with the hand they have been dealt, but here there is no structure. He said he doesn't think the intent of the bylaw is for non-existent structures.

Atty. Collins said he is not citing the bylaw, but rather enabling legislation.

Discussion ensued regarding whether there has been a change in Section 10 since Groton Bylaw was adopted.

Mr. Watts said four feet is a lot and offered photos to the board and into record.

Ms. Reynolds said that because there is no lot yet, the board doesn't know how much clearing will happen.

Mrs. Collette invited everyone to attend the PB hearing on May 10th, for a special permit for a hammerhead lot hearing.

Chairman Mulligan asked whether the board wanted to continue to after the PB hearing and whether an opinion from Town Counsel should be obtained about the self created hardship, etc.

Mr. Cadle said he wants to know about self-imposed hardship.

The Board wanted a site walk also, scheduled for May 5, 2012 at 9 AM/.

Mrs. Blackman suggested going up Indian Hill Road and to the conservation area after the site walk.

Mr. Watts submitted photos of the area.

Mr. Blackman said four feet could make a big difference, noting that he has been short all his life.

Mr. Easom made a motion to continue the hearing to May 30th at 7:30 pm. Mr. Cadle seconded and the motion passed unanimously.

Other business

Minutes and Bills

Mr. Cadle made a motion to approve the minutes from March 7, 2012. The motion was seconded and passed with three yeas and two abstentions.

Groton Herald and computer repair bills were signed.

Mr. Cadle made a motion to adjourn at 9:00 pm. Ms. Quinn seconded and the motion passed unanimously.

Minutes approved 7/11/12.