



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### June 7, 2012 - 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

#### Juskalian Variance

Chairman Mulligan reconvened the hearing.

Atty. Collins submitted a new letter based on Town Counsel's memo, along with a copy of the Bylaw in Chapter 40A, highlighted. He said the Board may grant a variance provided that statutory grounds are met, noting that he wanted to go over Chapter 40A, clause by clause. He said that the issues are around soil, shape or topography, or the shape of the structure. He said if one has a unique circumstance related to shape that doesn't relate to structures in the area, the Board can grant a variance if it doesn't derogate from the intent of the bylaw or cause harm to the town or neighborhood. He said his client wants a 12-pitch roof and this is unique to this structure. He said there is hardship because if the requirements of the bylaw were met, aesthetically the house wouldn't look as it should via design and there would have a height/headroom problem in the hallway that might not meet code. He said they would potentially have to relocate the master bedroom across the house, noting that there would be problems with the internal flow of the house.

He said the reason the Town has the height bylaw, is to protect nearby houses from encroaching on each other. He said the other part of the intent is to not have something look ridiculous, noting that his client wants to keep the dwelling harmonious. He stressed that in this instance, no one will see house, noting that height balloons were hung up to 100 feet and not one was seen from the public way. He said this meets the statutory requirements and thus the Board can grant without legal detriment. He also said the original height bylaw is in direct correlation to sideline setbacks, and hasn't been touched since adoption, noting that a lot of towns have more high tech versions of a height bylaw.

Mr. Easom said he missed the balloon test and asked what would obstruct the line of sight from Indian Hill Road.

Atty. Collins said that trees would obstruct the line of site, noting that both the PB and ZBA saw balloon tests, and no balloons were seen off site.

Mr. Easom asked whether the trees could be removed.

Atty. Collins said the PB special permit prohibits/limits tree removal.

Chairman Mulligan asked about buffers, etc, from the house

Atty. Collins said there are three tiers of trees/buffers.

Mr. Cadle asked why the architect did not design a structure that complied.

Atty. Collins said he could have but noted we all have seen houses that aren't designed properly and sited a house on Rt. 119 in Littleton that didn't have the proper roof pitch and thus could never be a classic cape. He said that if it were designed in compliance, the dwelling would not look right and would have interior access issues.

Mr. Cadle said he is not from the design police but wondered why the dwelling has to be a cape.

Atty. Collins said it is a matter of choice and the fact of the matter is that this design needs a variance and the Board has the authority to grant a variance.

Mr. Cadle said the Board has been asked to grant a variance for design and not a structure since the structure doesn't yet exist. He said the applicant is hanging his hat on structures nonetheless.

Atty. Collins said it is a structure, even if it doesn't exist, noting that the variance is for a design of a structure and not the land.

Mr. Cadle said the Campbell case is about a structure that already exists.

Atty. Collins said it was a matter of choice to add a third floor ala Campbell.

Mr. Cadle said that if the structure already existed he would consider it a hardship, but since it doesn't exist, there is not a hardship.

Mrs. Maxwell said she had a question about the middle hallway, noting that she doesn't understand why they would have to lower the interior ceiling if the roof pitch is lowered.

Atty. Collins said the structural members would get in the way of the hallway.

Mrs. Maxwell said she doesn't understand why the hallway can't be kept separately.

Mr. Cadle said the dwelling is not in existence and asked why this wouldn't apply as well to a small lot needing other variances.

Atty. Collins said all variances are unique, citing other variances that dealt with not yet existing structures.

Bob Lotz, resident of Indian Hill Road, asked about the height of the peak of the roof, noting that he knows the cupola doesn't count but asked whether it will be raised/lowered depending on the roof height. He asked whether the cupola would be used for anything.

Discussion ensued regarding whether there was any access to the cupola.

Mr. Lotz, referencing the site plan, noted that the driveway seems to loop from lot 1 onto the Sandquist land. He said he feels the conservation/deed restriction on the Sandquist land only affects the bottom half, and thus the trees from the top part of the land could be removed.

Atty. Collins said that is incorrect, per Planning Board special permit restrictions. He also said there is a limited disturbance as shown on the ANR plan, which limits tree removal.

Discussion ensued regarding how that could or would impact a height variance.

Mr. Lotz said he looked at an overlay plan and asked for clarification of what was protected either via conservation restriction or Planning Board special permit restrictions. He said he feels there could be cutting of trees that would make a difference.

Atty. Collins said he is being blunt and asked why his client's putting a single home where 24 lots could be created is not appreciated, noting that under Chapter 40B there could be 80 units.

Chairman Mulligan said that the chopping of trees is a valid concern, but regardless of the height of the roof, there will be a structure there and the trees could be chopped in the future.

Mr. Lotz said he is not a planner but wanted to come to share his concerns, noting that if this is an optional design, four feet is a big change.

An abutter said she didn't want it construed that neighbors are not embracing this, but she wanted to be doing due diligence.

Discussion ensued regarding balloon visibility.

Atty. Collins said the property has been on the market for more than five years and asked why the neighborhood didn't look into purchasing it to prevent development.

Mr. Easom said trees could be taken down by others than humans.

Chairman Mulligan asked for the opinion of other members.

Mr. Cadle said he is voting against this now, but if the language of the bylaw was written differently he would vote for it, since it wouldn't be visible from anywhere, via restrictions, etc.

Atty. Collins said special permits are forever unless modified, noting that an order of conditions has a limited life but has some leeway when there is a violation.

Ms. Quinn said she agreed with Mr. Cadle, noting that the Board is being asked to give a variance on design and the hardship is caused by a non-existent structure. She said the design could be changed at this point.

Mr. Cadle said this is a self-imposed hardship that could be corrected fairly easily with a different design.

Mr. Easom said he agreed with members Quinn and Cadle.

Atty. Collins said he would ordinarily ask for a withdrawal, but said he feels he could use this later and thus wants a vote.

Mr. Cadle made a motion to deny because the variance does not meet the criteria based on Chapter 40a section 10 and 218-20 and 218-32, because variances are supposed to be granted sparingly and this case involves a self-created hardship that could be remedied by the applicant. Further, there is no existing structure and the case doesn't fit within Section 4 of the Groton Zoning Bylaws.

Ms. Quinn seconded the motion.

The motion passed with three yeas (Cadle, Quinn, Easom), and two nays (Maxwell and Mulligan).

## **Other business**

A reorganization meeting was scheduled for 7/11/12 at 7:30 pm.

### **Minutes and Bills**

No minutes were approved and no bills were signed.

Ms. Maxwell made a motion to adjourn at 8:30 pm. Ms. Quinn seconded and the motion passed unanimously.

Minutes approved 8/1/12.