



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

August 1, 2012 – Georgia/Cypress-Scira

Present

Mark Mulligan, Chairman
Megan Mahoney, Associate Member
Robert Cadle, Member
Bruce Eason, Associate Member
Jay Prager, Member

Not Present

Alison Manugian, Member
Carol Quinn, Associate Member
Cynthia Maxwell, Member

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

Meeting Minutes

Chairman Mulligan convened the Sciria/Cypress hearing by reading the legal notice.

Atty. Collins, agent for Scira, said no. 8 Cypress is the first cottage on the street and is a left over pre-lost lake development. He said there is a 14x36 derelict cottage that his client wants to rebuild with complying setbacks. He said the lot needs sewer, which is likely, or a Title V septic system that needs to comply on a small lot. He said a building permit could be obtained if they can get septic and well permits, noting that now he needs a special permit to build. He also said he would need a variance if he tore down the house because he would lose its grandfathered status. He said his client would replace the cottage within the life of the special permit if the permit is granted and sewer comes to Lost Lake. He said this just a concept because no money will be spent on architectural plans until sewer has been approved by town meeting vote. He said in addressing Mr. Grossman's memo that this is only dealing with zoning and not BOH septic issues because there is no BOH grandfathering. He said structures like this were the norm when he was a child and many were not in use. He said many structures have been replaced and are no longer blight to the neighborhood, noting that Lost Lake is unique and this is a unique situation. He said this has been dealt with in the first master plan because decaying structures needed to be replaced, noting that the elimination

of this structure and replacement with a modest structure are benefits to the community. He said there would be no impact on traffic while serving a community need, with no overtaxing of services and will generate more tax revenue. He said the dwelling would not be near wetlands or the lake so there is no environmental impact, noting that it is also a benefit to the community to get rid of a dilapidated structure.

Mr. Prager asked hypothetically, whether if the property fell under 218-16 nonuse, would he be entitled to a special permit.

Atty. Collins said he is not sure because the bylaw doesn't say that if there is nonuse then the Board is not allowed to grant a special permit.

Mr. Prager said he feels that nonuse is reconstruction or renovating of an existing building. He said that here the footprint is totally different and it also seems like the building has fallen down, per a drive by today.

Of note: the building has fallen down.

Atty. Collins said that to replace this structure, they would need to meet setbacks or be in the existing footprint, noting that he envisions that.

Discussion ensued regarding front setback. Atty. Collins said it is shown to be 51 feet back.

Chairman Mulligan asked Atty. Collins whether his argument is that the only non-conformity is lot size.

Atty. Collins said yes, noting the irony here is that if this lot was empty, they would not need to be before the ZBA.

Mr. Cadle noted that it seems they are here only for zoning issues and not BOH problems.

Atty. Collins said he feels that a septic system couldn't be designed to fit on the lot.

Mr. Cadle said he is putting the cart before the horse and asking for an advisory opinion from the Board.

Atty. Collins said he is getting permission for his client to tear down the house without losing the grandfathered status, noting that this permit would allow him to tear down the house.

Mr. Cadle asked what the applicant proposed if there is no septic or sewer available.

Atty. Collins said they would have an empty lot.

Discussion ensued regarding similar issues with other properties in the lake area.

Mr. Cadle asked about the affordability argument and whether the house would be rented or sold.

Atty. Collins said he imagines this dwelling would be at the lower end of the scale of cost.

Chairman Mulligan asked whether the lots are currently owned by Atty. Collins' client.

Atty. Collins said they were.

Mr. Prager asked whether if these properties fall under the nonuse provision, would this prohibit any building on the lots because of their size.

Mr. Cadle thinks a variance would be required.

Atty. Collins said they probably would need a variance if nonuse is an issue, but said he thinks the board could grant a special permit without addressing nonuse. He said getting rid of the structure is a benefit to all.

Mr. Prager asked what his client's position on the nonuse issue is.

Atty. Collins said this hasn't been addressed with him but he will do so.

Mr. Cadle noted that the PB memo said there has been no GELD service since 1998.

Atty. Collins said this is probably true but the impasse on issues like this is what keeps dilapidated structures up.

Discussion ensued regarding why the applicant couldn't just get a demolition permit. Atty. Collins said he would lose his grandfathered status.

Mr. Prager said he is sympathetic to the argument that the dwelling should be torn down, but is uncomfortable with granting a permit on a conceptual basis depending on the sewer going in. He said he is not sure whether building a structure on that lot falls under 218-6E.

Discussion ensued regarding whether the proposed dwelling could be considered a reconstruction under 218-6E.

Atty. Collins said that the house in the sketch meets all setback requirements.

Further discussion ensued re: reconstruction/replacement, etc.

Atty. Collins said he feels Town Counsel has addressed the need for a special permit here.

Chairman Mulligan asked whether Atty. Collins had any “gut feelings” about the nonuse issue.

Atty. Collins said he doesn't think that that bylaw superseded the alteration of a non-conforming structure bylaw.

Mr. Prager said he doesn't understand that argument, noting that he feels the bylaw says that any non-conformity shall not be reestablished and thus a variance is required.

Mrs. Collette said she spoke to Town Counsel and provided him with facts, including that GELD stated there was no electricity for some years, and noting that TC said he would be happy to address the nonuse issue if asked. She said the whole question of abandonment is based on Chapter 40A and our bylaws, and is the heart of the issue. She said a scenario whereby the house is torn down and maybe replaced in the future when sewer comes has problems because the board has no documentation of exactly where lot lines are and where the house would be located. She stressed the need for a certified plot plan, noting that there is also an issue about increasing the height, which would require a finding from the ZBA. She said she does not know what the board would be granting a permit for.

Atty. Collins said that impasses such as this have kept structures like this standing for 50 years, noting that the new dwelling will comply with setbacks and wouldn't be higher than what is currently there.

Mr. Prager said the board has granted permits without a plan in the past.

Ms. Mahony said she wants to see a plan.

Chairman Mulligan said his stumbling block is the nonuse issue.

Atty. Collins said a special permit would nullify the nonuse issue.

Ms. Mahony said that is a higher burden than just a replacement special permit.

Atty. Collins said that is correct, noting that one of the purposes of this section is to deal with replacements at the lake.

Mr. Prager said he thinks this hinges on the nonuse issue.

Ms. Mahony said she has a problem with the lack of plans, noting that there are too many other hurdles. She said she felt that granting a special permit is going out on a limb.

Mr. Prager said the nonuse issue needs to be addressed.

Atty. Collins said that the special permit trumps nonuse.

Discussion ensued regarding when to continue the hearing to and the site walk.

Gary Whittemore, abutter, said he wants something done with the site, noting that he is not opposed to a new structure but wants it built to code. He said he wants it done soon and October is too late, noting that the pine trees are bad.

Dan Johnson, abutter, asked about the abandonment issues and whether the town would take over the property.

Chairman Mulligan said that if the property is non-conforming and abandoned, then it makes the lot unbuildable. He said this seems economically unfair but it can happen.

Mr. Johnson asked about other structures like this in the area.

Mr. Easom suggested that neighbors could acquire lots to make them more conforming.

John Geiger, PB, said he believes it is appropriate for a factual inquiry regarding whether the property has not being used for the last two years, and said it is further appropriate to do so in conjunction with waiting for the town meeting vote. He stressed that the issue needs to be understood and dealt with.

Mr. Prager agreed that timing is at issue.

Mr. Geiger asked what exactly is being proposed here.

Atty. Collins said that the replacement structure will be something conforming.

Carol Quinn, Lost Lake Sewer Committee, said she wants town counsel opinions sooner rather than later so they can know about betterment fee assessments.

Mr. Cadle said he is on Atty. Collin's side, noting that he doesn't have a problem with the nonuse issue in light of Section 6 in the Gale decision, which seems to say that a finding of non-substantial detriment trumps local bylaw and ordinances. He said he doesn't find any substantial detriment with this proposal, noting that he feels it fits the special permit criteria and if the applicant is willing to condition to adequate septic/sewer, he thinks the board should grant and be done with it.

Mr. Prager said he is sympathetic to the neighborhood that they want to get rid of the structure. He said that maybe there could be a finding that nonuse doesn't trump a special permit.

Atty. Collins said he is more than happy to continue but agrees with Mr. Cadle that a permit could and should be granted tonight.

Mr. Prager said he felt this is not true because Town Counsel said the Board may be going on a fact finding mission re: nonuse, noting that this needs to be tied down, as related to the Gale decision.

Mr. Cadle said he could not recall which application mentioned quick demolition.

Atty. Collins said he has price quotes for both and will likely do it before the snow falls.

Discussion ensued regarding a site walk.

Mr. Prager made a motion to continue the hearing to September 12, 2012 at 7:00 PM, which was seconded and passed unanimously.

A site walk is scheduled for 9/8/12 at 9 am.

Chairman Mulligan convened the Scira/Georgia road hearing by reading the legal notice..

Atty. Collins said this application is the same but for two marginal differences: this lot has 80 feet of frontage and 8000 square feet. He said the Board granted a variance in the 90's, and a septic plan was made, but all have lapsed. He said his client ants to rip it down the dwelling and replace it.

Mr. Prager made a motion to continue the hearing to September 12, 2012 at 7:15 PM. Mr. Easom seconded and the motion passed unanimously.

Other business

Minutes and Bills

A Groton Herald bill was signed.

Chairman Mulligan made a motion to approve the 6/7/12 minutes. Mr. Easom seconded and the motion passed with three yeas and two abstentions.

Mr. Prager made a motion to approve the 7/11/12 minutes. Mr. Easom seconded and the motion passed unanimously.

Mr. Cadle made a motion to adjourn at 8:45 pm. Mr. Easom seconded and the motion passed unanimously.

Approved 10/10/12.