



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### January 29, 2014 – Field/M&M, Rosa, Johnson, Harrower-Price

#### **Present**

Mark Mulligan, Chairman

Robert Cadle, Member

Alison Manugian, Member

Bruce Easom, Associate Member

Jay Prager, Member

#### **Not Present**

Megan Mahoney, Associate Member

Cynthia Maxwell, Member

A quorum was attained. The meeting was called to order at 7:00 pm.

#### **Meeting Minutes**

##### **Field Special Permit**

Chairman Mulligan reconvened the Field hearing.

The applicant requested a continuation because one sitting member was unavailable.

Member Easom made a motion to continue the Field hearing to February 19, 2014.

The motion was seconded and passed unanimously.

Geraldine Hefner submitted several photos into the record.

##### **Rosa Special Permit/Variance**

Chairman Mulligan convened the public hearing by reading the legal notice.

The applicant's agent opted for a four-member board with the understanding that the vote must be unanimous.

Member Prager asked for clarification as to what the correct lot number is.

Atty. Collins, agent for applicant, said the record should reflect that it is actually Lot 129-214.

Member Easom asked whether the applicant thinks the abutter notification is correct.

Atty. Collins said it was. He said this is an interesting application because the site has every Lost Lake issue, from steep topography to an esker and a finger of land sticking out into the lake. He said the top of the esker is a little off from what the plan shows and thus the road is slightly in the wrong place. He said the existing dwelling is a small 1920's cottage that will be replaced by a small 1200 square ft house. He said there would be a new Title 5 septic system and they will use a wall of the existing house foundation as a kind of retaining wall. He asked what the negative impact would be of replacing the cottage with a dwelling that is up to code with a Title V system that can be constructed with no variances. He said it won't over tax utilities and would increase tax revenue, noting that the neighborhood would be better if the cottage is replaced. He said a variance is tougher but he has the statutory requirements such that if the house were placed back 50 feet from the road, the front of the house would sit 30 feet below the street. He said houses in the neighborhood either hug the street or those across the street are down by the water, noting that several sit on the road as drawn on the plan with an average setback of eight feet. He said the existing cottage sits visually eight feet back, noting if one goes to the plan, it is actually four feet from the roadway. He said this is the logical location and they can use the foundation as a retaining wall.

Chairman Mulligan asked whether the new setback would further increase the non-conformity.

Atty. Collins said it would not.

Member Prager asked about abutting/adjacent structures.

Atty. Collins said there are empty lots abutting, noting that the actual setback is 13 feet from the used roadway, but is incorrect on the plan. He said it makes it look worse on paper than it actually is.

Member Cadle asked about the merger doctrine.

Discussion ensued regarding the ownership of abutting lots.

Atty. Collins said all are owned/deeded separately, by different family members.

Member Easom asked for clarification of the variance request, and whether the house could be limited to 44 feet in width.

Atty. Collins said there is no issue because the house will likely be less than 44 feet in width.

Mrs. Collette cited the Gale case and suggested that there is no need for a variance, reading a letter from Town Counsel into the record noting this. She suggested the board make a determination that a variance is not required.

Atty. Collins said that for caution's sake he applied for a variance also.

For the record, the applicant is correcting the lot number to reflect that it is 129-214.

Discussion ensued regarding whether a variance is required.

There were no questions from the audience.

Member Easom asked about the height of the new dwelling.

Atty. Collins said it is not in violation but is taller than the existing cottage.

Member Cadle asked about the increase in the size of the footprint.

Atty. Collins said it is about three times bigger, noting that the footprint is not changing much but they are adding an additional floor.

Member Cadle asked about town water.

Atty. Collins said not yet but the site has a good well. He said his client's father is working on a project to bring town water down there and when it happens, the property will have town water.

Member Prager made a motion to grant a special permit to Rosa because the proposal is not substantially detrimental to the neighborhood, and no variance is required, with the condition that the width of the building along the road would not exceed 44 feet.

The motion was seconded and passed unanimously.

### **Johnson Special Permit/Variance**

Chairman Mulligan convened the public hearing by reading the Legal Notice.

Atty. Anctil, agent for Johnson, said he is working with Town Counsel on an agreement, noting that he received the photos of the condition of the property and acknowledges it is a mess. He said he wants to preserve his clients rights to rebuild a new dwelling on the property, noting that Mr. Johnson filled out a request for a demolition permit, and said he would keep one wall. He said the BI told him the request to leave up one wall would not comply with a demo order per the BOH. He said he did not file because he didn't want to lose the right to rebuild. He said Mr. Johnson has received quotes for both the demolition Minutes Meeting of January 29, 2014- page

and a dumpster, noting that he now needs a report from a licensed asbestos engineer. He said what he is looking for tonight is an extension of a non-conforming structure, which has two parts: 1) a vote from the ZBA that he can tear down the structure and build in the same footprint as long as it is constructed by December 2015 and the house is torn down before March 30<sup>th</sup>, or 2) if the board looks at drawings that are a slight increase and is inclined to grant with a slight increase, his client will get an engineered plot plan and more detailed plans. He said that procedurally this is where they are at and reiterated that although this has been a long term ongoing issue between the town and Mr. Johnson, he knows there is a desire to clean up the property because it is a valuable asset.

Member Prager asked about the footnote in the application about the non-use issue, noting that he wants clarification and said it is strange that it says on or before for date of use.

Atty. Ancil said this is because of the BOH mandate to tear down the structure by March 2014. He said his client stayed in the house last winter and although Ira Grossman said there is no way he could have used it, his client maintains he slept there.

Member Prager said he wants proof of use through electric bills, etc.

Discussion ensued regarding how to prove use.

Atty. Ancil said he feels that non-use is not going onto the property.

Atty. Ancil said the goal is for his client to be able to rebuild either in the same footprint or a slightly larger one, and to satisfy the BOH.

Member Prager said he feels the property has been abandoned.

Atty. Ancil said his client has stated that he used the property, but the hearing could be continued so he can provide proof through affidavits and electric bills.

Member Prager said he wants further proof.

Discussion ensued regarding what constitutes use.

Mr. Johnson said he still has electricity.

Atty. Ancil said he specifically raised the non-use issue so the board would not say he came unprepared to address it, noting that in hindsight he should have brought proof to this meeting.

Member Cadle said there was a registered pickup truck in one of the photos and suggested that he could use that address.

Atty. Ancil said it probably goes with the other house.

Mrs. Collette said she respectfully recommends a site walk of this property due to its controversy with the BI and BOH, and to consult with David Doneski because there is on-going litigation.

Susan Horowitz, BOH, noted the health agent's letter and said she was asked to come to make the board aware more vigorously that the BOH doesn't want any decision to be made regarding this property tonight. She said Town Counsel has advised the BOH to not make any decision yet also, noting that this has been ongoing for four to eight years. She said last spring the BOH received a letter from Mr. Johnson stating that this would be resolved/torn down by the fall of 2013 and nothing has been done. She said she hopes Atty. Ancil will have a major resolution to this and stressed the importance of a site walk. She said there is no water in the house, the septic system is in failure, and if any heat were being used there would be concern about danger. She asked that the hearing be continued until there is a court resolution.

Dan Wolfe said the presentation was confusing because there are plans showing many different things. He asked for clarification.

Atty. Ancil said his client wants to secure the rights to build in the same footprint but would prefer, if the board agrees, to build a slightly larger dwelling, noting that he will secure plans, etc. if so, but didn't want to spend the money without an okay.

Mr. Wolfe said a lot missing from the application such that it will be difficult for the ZBA to make any decision, noting that there seems to be only a pencil sketch showing setback, etc. He said the board needs to see how this relates to other properties in the area and the sketch doesn't show septic plans, or whether it is passing or failing, or where the new system will be located. He said this has been ongoing for both the town and the neighbors, noting that he gives Mr. Johnson credit for doing a lot of clean up but he has purchased property on Pine Trail that is now collecting stuff like on this property. He said that in granting a special permit, the neighborhood character and fiscal impact on the town have to be considered. He said neighbors have filed for tax abatements due to the condition of his property and they have been granted. He stressed that this is a serious fiscal impact, as well as the service of town counsel, which is not cheap, etc.

Brian Morlow, abutter at 431 Lost Lake, said he lives three houses down towards Whiley Road and he agrees with Mr. Wolfe. Many issues are migrating to property next door that Johnson bought.

Member Cadle asked about a house right next to property that almost abuts it, noting that there is stuff accumulating.

Mr. Morlow said that is new property, noting that the barn is on the property being discussing tonight.

Discussion ensued regarding the exact property locations.

Member Easom said he wants to hear from the applicant's attorney whether continuing would create a hardship for his client.

Atty. Anctil said no, noting that a site walk is a good idea and the BOH needs to be satisfied, although zoning issues are separate. He said he thinks a fully informed board would say yes, noting that this is an opportunity to get a decision that mandates that Mr. Johnson clean up his property and the mess can't move to Pine Trail. He said the town would have enforcement rights. He said either they will reach an agreement or the town will go forward and get a court order that requires the structure be removed. He said his legal position is that some items on the property are not a BOH issue, noting that this filing is a stop gap measure to keep his client's by right ability to rebuild. He said his client would need to get a working septic and well before a building permit is issued.

Member Prager said a by right rebuild would be lost if the property is abandoned.

Atty. Anctil said it makes all these things complicated, noting that this is why his client didn't spend 5000 dollars on an engineered plan before the board makes a determination.

Member Prager said that since this has been going on for eight years the property seems abandoned.

Atty. Anctil said that is why he is asking for a variance, noting that there is a difference between non-use and abandonment.

Member Prager said it is meant as non-use, as cited in the bylaw.

Discussion ensued regarding what constitutes non-use.

Discussion ensued regarding whether a continuation is warranted.

Mary Colontoni, abutter, said property values won't go up if he rebuilds because the Pine Trail property is right there and it will continue to be a mess. She said Mr. Johnson has said at BOH meetings that he has a disease and wants to retire there. She said this disease is difficult to treat and won't go away so that means she can't retire there because of the mess.

Member Easom suggested setting aside the non-use issue and asked whether the one wall standing issue should be addressed tonight or at some other time.

Atty. Anctil said his client is trying to do the right thing and move forward and this creates a procedural conundrum, because if the building is torn down, he loses his building rights and that is not fair. He said he doesn't know if the board can create a vote that only approves the tear down and then leave one wall standing, and keeping all other issues out of it.

Chairman Mulligan said he doesn't know if board can do that.

Member Easom said he wonders if there is a precedent to grant that waiver, noting that he thinks they have complied by coming here before the building comes down.

Atty. Anctil said his client will file for a demolition permit and he needs to get an asbestos inspection done.

Dr. Horowitz said the BOH would prefer a continuation and no vote taken on anything tonight. She said she doesn't fault Mr. Johnson's intentions, but his lack of getting anything done.

Christine Weizel, 18 Pine Trail, said this seems like they are taking a huge time shift forward, noting that this has been going on for more than ten years. She said Mr. Johnson was living in Ayer for three or so years, noting that everyone here can attest that he has been gone for a number of years prior to any of this. She also noted that there was a property down the street that fell into this non-use category.

Member Prager asked about what exactly has been going on for ten years.

Ms. Weizel said the house is now falling apart, noting that this started originally as debris in the yard. She said the structure has not been habitable for many years.

Dr. Horowitz said the BOH original interest was both the state of the property and environmental issues.

Mr. Johnson said the roof fell in this past year.

Abutters said that roof fell in three to four years ago.

Mr. Johnson said he has slept there once a month and has not been alone, so he didn't lose his building rights. He said he has retired and now has more time to address this, noting that nothing has been added to the property for at least two years and much has been removed.

Atty. Anctil said that part of the order would be to get verification that debris has been removed from the property, noting that this should address both BOH and abutters' concerns.

Suzanna Plack, abutter, said that although progress has been made, she is concerned that it seems to be migrating down the hill and that the property is looking as bad as the older property. She said that Mr. Johnson told her to look in the other direction if she doesn't like how it looks.

Mr. Johnson said it is a process and material is being moved down to the new property to assess whether to use it on the new house. He said it is a big job.

Ed Cataldo, BI, said he has been by house on numerous occasions, has been in court, and the judge has seen the pictures. He said he asked for permission to go in to take pictures and the judge said it was too dangerous and he should start the condemnation process. He said it is impossible to make the structure safe and Mr. Johnson will be in violation of the judge's order and he will ask for immediate demolition of the house. He said there is nothing left of house and there is no way he could live in it.

Mr. Johnson said he took the windows out, even if the BI said they fell out, stressing that the house will not fall down. He said that once the house was condemned he stopped staying there but before that stayed once per month.

Member Cadle asked whether it would be safe for a site walk.

Atty. Anctil said yes, but don't go into the house. He said the board should see both properties, noting that there is nothing wrong with the barn on the property. He said there are a number of things on the property, outside of the house, noting that he doesn't know whether there is a mandate to remove the items, but if he were given a permit to rebuild, all would be removed.

Member Cadle asked why he didn't apply for a building permit and then appeal if denied.

Atty. Anctil said he didn't want to go that route procedurally, noting that the neighborhood doesn't get anything if he could build by right. He said the permit could be conditioned that the site is cleaned up, which benefits the neighborhood, noting that the septic system is in failure and the well motor isn't working. He said the most cost effective approach is to come to the ZBA.

Dr. Horowitz said the BOH has determined that all the stuff is trash, noting that the BOH has the ability to make that go away, supposedly, but in eight years, very little has gone away. She said the wood has been condemned by the state and is trash and needs to go into the dumpster, noting her feeling that the dumpster has been used very little.

Discussion ensued regarding whether to do the site walk on the weekend or during the week.

Atty. Anctil said the BOH stated concern in a letter regard possible lot merger, noting that David Doneski said he would address the merger issue if the ZBA wants him to.

Member Cadle made a motion to continue the hearing to 2/19/14 T 7:15 PM. The motion was seconded and passed unanimously.

Discussion ensued regarding what Atty. Anctil will provide to the board. Member Manugian said she wants a site plan as well as electric bills, etc.

Member Easom asked whether a snow storm/hearing cancellation issue should be addressed.

Atty. Anctil said that wouldn't affect the ZBA.

Member Manugian said the board should be willing to address a rebuild in same footprint but she wouldn't want to address the other issues such as rebuilding bigger, etc.

Date for site walk: Wednesday February 5, 2014 at 8 AM.

Discussion ensued regarding whether to solicit opinions from abutters about non-use and/or town counsel.

Atty. Anctil said he would submit a letter prior to the next hearing.



## **Harrower- Price Special Permit**

Chairman Mulligan convened the public hearing by reading the Legal Notice.

Don Price, applicant's agent, said he wants permission to demo the existing structure and rebuild a 2200 square foot home, noting that there is a plan in the packet. He said they are not building anything out of character with the neighborhood. He said he wants to set back the new dwelling 35 feet, noting that the lot is  $\frac{3}{4}$  of an acre, with most land in the back of the lot. He said they are not making the dwelling any less conforming, noting that the front setback improves. He said everything on the site would be removed, including the garage, noting that the house is in disrepair and not worth renovating. He said the site is serviced by town water, sewer and gas is available at the street. He said this will look like it was always there when done, noting that moving the driveway makes it look like a natural division between the two properties.

Member Prager asked about the concrete wall.

An abutter said it is a small wall up along the existing garage.

Mr. Price said they are pulling the driveway away from the wall.

Member Manugian said acreage and frontage are not in the applicant's control and asked whether something specific makes front setback compliance difficult.

Mr. Price said the lot dips down, noting that he wants the setback to be in keeping with abutting dwellings.

Mr. Svarczkopf said 35 feet is further back than most.

Mrs. Henry, 58 Champney, no garage and would like them to build a one car garage rather than two.

Mr. Price said it would be further away than existing garage, which is being torn down. He said the dwelling will have a two car garage with one door.

Mr. Svarczkopf asked whether this is a spec house.

Mr. Price said yes, it would be sold.

Mrs. Henry asked whether the two sheds would stay.

Mr. Price said no.

Member Easom asked about the height of the existing building

Mr. Price said there would be eight-foot ceilings, with a total height 24 or 25 feet, which is consistent with abutting structures.

Jeremy Henry, abutter, said he wondered why they are not using the existing garage.

Jen Spencer, realtor and past abutter, said the existing garage is detached, set much further back and is in bad shape, noting that it would not make sense to tie it in with the new dwelling.

Mr. Price said this plan is best for the parcel/neighborhood.

Discussion ensued regarding the size of the dwelling.

Member Easom made a motion to approve a special permit for 54 Champney Street, because the proposal decreases the non-conformity in side and front setback, such that the side setback is conforming, and said this grant will not adversely affect the character of the neighborhood. The motion was seconded.

Mr. Svarczkopf made a note of the character of neighborhood, saying that vinyl siding/coil stock, vinyl windows are not like most of the homes in neighborhood which have wood siding, etc.

Jen Spencer said there are different sidings in the neighborhood and the existing house is in disrepair, noting that this will be a big improvement.

Member Cadle asked what coil stock is.

Mr. Svarczkopf said it is a way of creating trim, by bending metal over pine.

Member Manugian said the expectation of the board would be that the finished product would look like what was submitted in application/plan.

Member Prager said he feels the board can't control construction materials if they are up to the building code.

Chairman Mulligan suggested that the applicant take the neighbors' concerns into consideration.

Mrs. Henry said there are no houses with vinyl siding on Champney Street.

The motion to approve passed unanimously.

## **Other business**

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## **Minutes and Bills**

Chairman Mulligan made a motion to approve the minutes 11-13-13 and 10-30-13 as drafted. The motion was seconded by Member Manugian and passed unanimously.

Member Manugian made a motion to adjourn at 9:20 pm. The motion was seconded by Member Cadle and passed unanimously.

Approved 3/6/14.