



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

July 9, 2014 – Suslowicz, Board Re-org., Guelin/Matson, Holly, Goudey, Groton Wel.

Present

Mark Mulligan, Chairman
Robert Cadle, Member
Alberta Erickson, Associate Member
Alison Manugian, Member
Bruce Easom, Associate Member
Jay Prager, Member
Cynthia Maxwell, Member

Not Present

Megan Mahoney, Associate Member

A quorum was attained. The meeting was called to order at 6:40 pm.

Meeting Minutes

Suslowicz Special Permit

Chairman Mulligan reconvened the hearing.

Atty. Lyons asked for questions following up the site walk.

Member Prager asked about limiting the height of the structure such that it is not taller than 35 feet from the existing topography.

Atty. Lyons said that is reasonable.

Member Cadle asked about the construction being an overuse of the property per Anctil/Anderson letter, by putting an additional story on.

Atty. Lyons said there would be a basement that may be used, but in essence they are asking for a permit to build on the lot such that it is a standard lot. He said no variances are being asked for; they just want it to be treated as a building lot. He said that many have partially finished basements, noting that the only problem is this is only a 30,000 square foot lot with less than 225 feet of frontage. He said this is not a terribly small lot by many standards (including his own house), noting that because it is limited to a two bedroom septic system, this constrains design and size.

Member Prager said that in one Lyons' letter it said the BOH would determine where the house would be placed on the lot. He said he doesn't understand what the issue is if the dwelling stays within the meets and bounds of both the bylaw and BOH requirements. He said he doesn't think it is appropriate for the board to negotiate design on a house as long as it meets zoning requirements.

Atty. Lyons said that is what they are asking for.

Member Maxwell said she wants clarification about not having a design but wanting a permit.

Atty. Lyons said that is correct.

Member Maxwell said she has a problem with that but feels some safeguards seem to be in place, such as a return to the board if the design is problematic.

Atty. Lyons said that if anything were constructed outside of zoning they would need to return to the board. He said he wants a permit to allow for a safe zone to allow the purchaser to design and build a house by applying for a building permit, noting that this is legitimizing that part of the lot as if a standard building lot.

Member Manugian asked logistically what the board is looking at here.

Discussion ensued regarding the applicable issues.

Atty. Lyons said three parts don't meet zoning, noting that he is asking for a permit for the parts of the lot that meet zoning.

Member Cadle said he feels that the board has dealt with this many times.

Atty. Lyons said the variance granted is still under appeal and the by right request for a permit was denied because of the upland circle requirement. He said that thus, they are here for a special permit for an increase in a non-conformity that is not detrimental to the neighborhood. He said the judge also steered them back to the ZBA for a special permit determination.

Member Prager said that Atty. Lyons wants the board to make a finding that as long as the dwelling is constructed within the 140-foot circle and meets setbacks, then a permit should be granted.

Atty. Lyons said that is correct, that he would like a permit for a 1200 square foot footprint, a two-car garage, with a 35 feet limit from existing topography.

Chairman Mulligan suggested issuing a permit with the conditions suggested.

Member Manugian asked whether it would be a year round residence.

Atty. Lyons said Mr. Suslowicz used it all year round.

Atty. Lyons said he submitted materials re: the non-use issue, that support Mr. Suslowicz' use until his illness prevented it, noting that ever since the variance was applied for and appealed, the court would consider this use. He said he is asking for a specific finding, that based on the materials submitted, the house has always been in use.

Atty. Anctil, attorney for the Andersons said there was an extensive discussion re: use at the last meeting, noting that their opinion as set forth in a letter is that this property does not enjoy grandfather status because there was a period of 2 years, 9 months before any permits were applied for. He said the Town bylaw states two years of continued use is required and there is no exemption, such that a variance should be required. He said a variance was granted and is still under appeal, noting that the judges' decision on a by right permit states that she is not addressing this issue which is an issue of fact rather than law. He said that if board the finds there was use, it will be difficult to prove and uphold in court. He said another concern is where to go procedurally, such as to the BOH and Cons. Comm, noting that the permits have been obtained. He said the BOH permit has lapsed, in which it was conditioned that the house should be no larger than 900 square feet. He said he feels that any permit granted should condition BOH and Conservation Commission approval, given the larger size of the proposed dwelling. He said the BOH might make a determination that it is not a two-bedroom home due to the size, noting that if the neighborhood had town sewer it would be a different story but because they don't, BOH requirements are very important. He said that because there is such an increase in size from the current structure, he wonders how the board could make a determination that it is not more detrimental to the neighborhood without a specific plan. He said there are other methods to build here that don't include such a large structure, etc., noting that the board should look at specific requirements under the special permit bylaw also. He said he also wants to reserve an opportunity for Mr. Anderson to speak.

Member Prager said he thought that if the board granted a permit they would still need BOH and Cons. Comm. review, noting that he has so no problem with conditioning such.

Atty. Anctil said that the heirs want to sell the house lot, get a house design and then go back to BOH and Cons. Comm. He said the BOH originally said the dwelling should be limited to 936 feet, and the board should require that.

Member Prager said that if the board conditions BOH review then the house may not be 2400 square feet. He said he assumed all along that the BOH and Cons. Comm. would get a bite of the apple.

Att. Anctil said the Cons. Comm. order of conditions is still valid so they would not need to go back to them.

Atty. Lyons said that even if the BOH permit was still in effect, a new permit would be required if the house is more than 936 feet.

Discussion ensued regarding which plan is the most current and what bylaws need to be looked at.

Atty. Ancitil said he read a recent case that if a dimensional change is being proposed, a variance rather than a special permit is required, even with the Gale case.

Mr. Anderson, abutter, said the board has been flooded with much information that is mostly irrelevant, noting that the issue is the 2.7 years from Thanksgiving 2002 until when permits were requested where there was zero use of that lot. He said Mr. Suslowicz lived with his sister, then in assisted living and then a nursing home, so there was no property use then.

Atty. Lyons said he has a situation that will bring this back to reality, noting that he has a client that is moving to Hong Kong for more than two years and doesn't want to rent out his house. He asked whether they could move back there after two years if the house was not used. He asked whether the town would tell someone that if a relative gets sick and dies, then the family loses the house.

Discussion ensues re: what creates none use.

Member Prager said he feels that if someone is ill, that doesn't constitute none use.

Atty. Lyons said this is a situation whereby the ZBA can be fact finders, noting that he wants the board to make a finding that illness does not constitute none use.

The Suslowicz relatives present said they did maintenance based on very limited funds, noting that their uncle was sick.

Atty. Lyons cited an example of what occupying the land means, noting that Barney got sick and did not intend to abandon the property. He said it was his home and his family took every step to keep it up.

The heirs said they applied for permits in 2005, noting that their uncle died in 2006. He said they were trying to sell the property to keep him in the nursing home because they had no money.

Member Prager said that Atty. Ancitil made an argument in another case that walking around a property constitutes use. He then asked whether the owner has to walk the property or can an agent.

Atty. Ancitil said an agent should be able to, noting that the only mention in the bylaw of what use is, relates to year round conversions. He said they are arguing that the property was not used.

Member Prager said he felt that use should provide that one needs to be able to use the property.

Atty. Anctil said the board could say that use is driving by a property once per year, but his clients are arguing that that isn't use.

Member Prager asked whether if Mr. Suslowicz had recovered after that two-year period, would they argue that he couldn't use the property.

Atty. Anctil said the problem is with the bylaw, but Mr. Suslowicz did not use the property for more than two years.

Discussion ensued regarding what the board could do to determine use, ie does sickness preclude standard interpretation.

Atty. Anctil said there is no guidance re: residential use vs. none use and how to re-establish use. He said the board has the authority to grant variances, which should be the case here. He said that if a special permit is granted, there is a need to determine that there was use.

Chairman Mulligan noted that after Mr. Suslowicz fell ill, he was still paying taxes, electricity, and thus the property was in use.

Member Prager said that if the building had fallen down, then maybe they could argue none use.

Chairman Mulligan said that because the permit was being applied for while he was still alive further bolsters the argument that there is no non-use.

Atty. Lyons said to point to the five things presented and all documents submitted to the board in support of none use, such that the board doesn't get confused with other cases before them. He said he is asking the board to act as fact finders.

Member Maxwell said she feels that due to circumstances of illness, the board can't make a finding of none use.

Member Cadle agreed, particularly since permits were applied for before he died.

Member Prager said illness precludes the non-use issue.

Member Prager made a motion that the board finds that the property did not fall into none-use prior to the filing of this special permit application. Member Manugian seconded for discussion, but disagreed that intent aside, there was no use.

Chairman Mulligan said that if the board determines there is none use, there is no going forward.

Member Cadle asked whether it should be up to the filing of this case or to the Cons. Comm/BOH filing.

Discussion ensued regarding what time frame should be used to frame the non-use issue.

Atty. Lyons suggested using the date the applicant applied for permits.

Language for the motion was changed to read “prior to the filing of Notice of Intent in July 2005”.

The motion passed with four ayes and one nay.

Atty. Lyons asked whether there is any more information the board needs prior to closing the public hearing.

Chairman Mulligan asked for questions or comments from the audience.

Member Cadle asked what the neighborhood consists of.

Atty. Lyons said it is up to the board to decide, but he would consider it what is in view, which is primarily residences (3 to 4 residences in somewhat close proximity).

Member Maxwell asked how they could make a finding that it is not detrimental to the neighborhood if there is no plan.

Atty. Lyons said the key is language, that it is not more detrimental, noting that if a permit is not granted, the property is stuck in limbo.

Member Cadle said that if the board grants an approval, then an unknown permit is out there.

Atty. Lyons said the idea of the bylaw is that if the board makes a finding that it is not detrimental, the permit can be approved.

Chairman Mulligan said that regardless of what is built there, the applicant has no control over the issues that make the lot non-conforming. He said he agrees that this is not typically how permits are granted, but feels the applicant still has hoops to jump through.

Member Prager said he thinks the limitations of the 1200 square foot footprint and height not to exceed 35 feet above the existing grade would prevent something being built that could be so detrimental.

Discussion ensued regarding what limiting the square footage in the permit would do to any BOH size limits.

Member Manugian made a motion to grant a special permit with the condition that construction not be more detrimental than what exists, all construction impacts to be within the yellow shaded area of the plan dated 6/4/14, that the final plans are presented to both the BOH and Conservation Commission and receive approval., that the height be limited to 35 feet measured from the existing topography/grading and that the

structure be limited to no more than. 2400 sq. ft (1200 sq. ft house and 500 sq. ft. garage). Member Prager seconded and the motion passed unanimously.

Board Reorganization

Member Manugian made a motion to keep the current configuration of Mark Mulligan as Chairman and Robert Cadle as Clerk. Member Maxwell seconded and the motion passed unanimously.

Guelin/Matson Special Permit

Chairman Mulligan convened the hearing by reading the Legal Notice.

Mr. Guelin described the project.

Discussion ensued regarding how the measurements were taken, such that the property line is different than the street line.

Member Manugian said that is very common.

Member Prager asked whether the measurements were done by a surveyor.

The applicant said he got the information from the town website, which shows the house to be 40 feet from the property line and 50 feet from the street.

Chairman Mulligan asked whether that part of the deck is the only portion that infringes on lot line setback.

The applicant said yes.

There were no comments from the audience.

Member Manugian made motion to grant a special permit with finding that the alteration is not more detrimental to the neighborhood. Member Maxwell seconded and the motion passed unanimously.

Holly Special Permit

Chairman Mulligan reconvened the hearing.

The applicant requested a continuation to August 6, 2014 at 7:15. Member Manugian made a motion to continue; the motion was seconded and passed unanimously.

Goudey Special Permit

Chairman Mulligan convened the hearing by reading the Legal Notice.

The applicant said he and wife live in one side of the subject property and his parents live in the other.

Chairman Mulligan asked whether the deck is the only part of the project that will encroach on the sideline setback.

The applicant said yes.

Member Prager asked whether there is already a deck on the property.

Mrs. Goudey said there was, but noted that this deck will make easier access for the parents, should their mobility decrease.

Member Prager said he felt this is an odd place to put a deck, but because it is a special permit rather than variance, the requirements are different.

There were no comments from abutters.

Member Manugian said she has no dramatic concerns but wonders why the deck can't be swung around to the front.

Mrs. Goudey said there is a window there now, and no door.

Mr . Goudey said they were going to take one of the existing windows and make it a door for the new deck.

Member Manugian made a motion to approve a special permit as requested because it is not more detrimental to the neighborhood. Member Prager seconded and the motion passed unanimously.

Groton Wellness Special Permit

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

The applicant said he wants both a temporary trailer and a storage pod located where a dumpster currently sits.

Member Maxwell said this is temporary so there is no issue.

Chairman Mulligan noted that they have the blessing of the condo association.

Member Cadle asked whether there was room for a trailer.

The applicant said there is plenty of room behind the building and no parking will be infringed upon.

Discussion ensued regarding the amount of bond requested.

Member Manugian made a motion to grant a special permit as requested with a bond posted to the treasurer's office.

Member Cadle seconded and the motion passed unanimously.

Other business

.

Minutes and Bills

No bills were signed.

Member Manugian made a motion to approve the 5/7/14 minutes as drafted. The motion was seconded and passed unanimously.

Member Manugian made a motion to approve the 5/21/14 minutes as drafted. The motion was seconded and passed unanimously.

Member Manugian made a motion to adjourn at 8:45 pm. The motion was seconded by Member Cadle and passed unanimously.

Approved 10/8/14.