



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### October 21, 2014 – Field/Roche/Ancil

#### Present

Cynthia Maxwell, Member

Robert Cadle, Member

Bruce Easom, Associate Member

Mark Mulligan, Chairman

Berta Erickson, Associate Member

#### Not Present

Jay Prager, Member

Megan Mahoney, Associate Member

Alison Manugian, Member

A quorum was attained. The meeting was called to order at 6:00 pm.

#### Meeting Minutes

##### Roche/Field/Ancil Variance/Special Permit

Chairman Mulligan convened the hearing by reading the legal notice.

Chairman Mulligan read the Building Inspector's email into record, which stated that both a variance and special permit are required.

Atty. Ancil submitted a letter from the BI into the record, to Thomas Roche re: non-use, noting that he thought he only needed a special permit because of this letter and was not trying to mislead the board. He then submitted a plan showing lot lines, septic outline and house location. He said they would need some fill to level off the site, noting that the existing house is 7 feet from the side and will be 15 feet from the side on the Lost Lake street side.

Mr. Field said it is 15 feet from the rear corner and 22 from the front.

Chairman Mulligan noted that all setbacks seem to be improved with the new structure.

Atty, Anctil said yes, although the difference now is that they for sure need a variance. He said all use variance discussions focus on more intensive uses within a structure. He cited a case where a variance was granted for a four family home on the ocean, noting that they had a hardship because they needed to build a big sea wall and the only way it would work financially was to have a 4 family. He said the decision was appealed and denied but all cases dealt with intensification of none-use. He said here they are just trying to reestablish a single-family use, noting that Mr. Roche was here and will testify that it was not used because of rapidly deteriorating health. He said the new dwelling will be in keeping with the neighborhood in size and looks and the existing dwelling is very run down such that this will be an improvement.

Member Cadle said he spoke much of the use variance and in the context of the BI's email, his is focusing on the use issue.

Atty. Anctil asked how it should be classified, noting that they need a variance from that provision, because the only use would be to join another abutting parcel.

Chairman Mulligan said it is confusing.

Atty. Anctil said it is only non-conforming because it is not being used. He said they need a special permit to rebuild but because the property hasn't been used for more than two years and it is a non-conforming use to reestablish residence. He said they could build a shed but not a dwelling. He said that in the Suslowicz case the board did look at the health of the owner, which is why he is mentioning it tonight.

David Hefner said he was sorry about the failing health of Mr. Roche, although he feels that that is the story they are going with now. He said Atty. Collins read an affidavit that Mr. Roche did use the property and he then read the non-use bylaw for the board.

Discussion ensued regarding whether a residence could be re-established.

Member Manugian asked why the dwelling couldn't be further back from Lost Lake Drive.

Mr. Field said the septic is part of the problem, along with the garage, noting that even if the house was slid back, the garage would be closer to the lot line. He said the house will be on a slab and can be closer to the septic system, noting that the septic can't move without a variance from the BOH and Title V. He said he has the area for a 3 bedroom septic but Groton laws only allow for a two bedroom septic.

Chairman Mulligan asked where the Heffner's property is.

Mr. Heffner said he is to the side, noting that he wants this to be done right and nothing has been shown that this is going to happen.

Mr. Field said he should go see other properties he has developed.

Chairman Mulligan asked Mr. Heffner what he would be satisfied with.

Mr. Heffner said that any building would be illegal.

Member Cadle said the ZBA can't issue a use variance.

Atty. Anctil said it is not really a use variance because they are not changing the use. He said he is not trying to put a business in a residential neighborhood, noting that he needs a waiver from the non-use provision but is not trying to do something prohibited here.

Member Easom said if the argument is that the building or lot has been subject to non-use and one can apply for a special permit or variance, he asked about the bylaw prohibiting that.

Atty. Anctil said this is not a use variance.

Chairman Mulligan said he interprets this as not being reestablished by right and thus why there is a need to come to the ZBA.

Discussion ensued regarding what permits if any would be necessary if no structure had ever been on the lot.

Atty. Anctil said that if no permit were granted, the neighborhood would continue to have a disaster at the site. He said the property as it stands now is an attractive nuisance, noting that it will be better for the tax roles with a nice dwelling.

Member Cadle said variances are only supposed to be granted sparingly, noting that soil conditions, shape and topography are the criteria and these don't relate to non-use.

Atty. Anctil said they are looking for a variance from the non-use provision that doesn't apply to soil, shape and topography, and although he feels he could make the standard variance arguments, he feels this is unnecessary.

Member Cadle said he has a hard time making the jump.

Of note: A variance from area, frontage and setback could be discussed.

Discussion ensued regarding what the intent of the bylaw is and whether a residential use could be reestablished via the variance route.

Atty. Anctil said that if no variance is granted, it makes the property useless except to sell to a buyer/s.

Discussion ensued regarding the bylaw and which chapter/s are applicable.

Atty. Anctil said all the cases spoke of intensity of use, noting that here it is not changing the intensity but just reestablishing residential use in a residentially zoned neighborhood.

Member Manugian said they should set aside the variance for a moment to determine special permit conditions.

Of note: 1664 sq. ft. existing dwelling and proposed is 2632 sq. ft., including garage.

Member Manugian said the setbacks are still a far cry from the required 50 feet.

Chairman Mulligan said these are the cases that bother him because if the applicant finds no relief, the property becomes useless, even though they are paying taxes, etc.

Atty. Anctil said the structure and land are currently valued at \$170,000.

Member Manugian said she is uncomfortable reestablishing residential use either through a special permit or variance but doesn't have a problem with the whole proposal conceptually, noting that it is not out of keeping with the area.

Member Maxwell agreed, as does Member Cadle.

Member Maxwell asked about how many years the dwelling was not used.

Mr. Roche said he hasn't been able to spend much time there for some time.

Mr. Heffner said the definition of a seasonal residence is that it has to be used for less than 180 days.

Member Manugian made a motion to interpret 218-6B to allow for the reestablishment of a residential use in accordance with the chapter, and that a special permit is granted to allow reconstruction on a non-conforming lot as shown on Plan #2 as prepared by Markey/Ruben on 5/28/13, stamped 10/17/14, and with conditions to include full compliance with BOH requirements including but not limited to that the dwelling not exceed two bedrooms. The motion was seconded and passed four to one, with Member Easom voting against.

## **Other business**

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## **Minutes and Bills**

No minutes were approved and no bills were signed.

Member Manugian made a motion to adjourn at 7:00 pm. The motion was seconded and all voted aye.

Approved 12/17/14.