



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

**November 18, 2015 – Black, 8 Flavell, Tarbell/McGoniagle, Groton Inn**

### **Present**

Cynthia Maxwell, Chairman

Robert Cadle, Member

Mark Mulligan, Member

Bruce Eason, Associate Member

Berta Erickson, Associate Member

### **Not Present**

Alison Manugian, Member

Jay Prager, Member

A quorum was attained. The meeting was called to order at 7:05 pm.

### **Meeting Minutes**

#### **Black Special Permit**

Chairman Maxwell convened the hearing by reading the legal notice.

Ms. Black described the project, which would entail removing two windows with porticos and replacing them with a farmer's porch to preserve the integrity of the building.

Member Erickson asked whether any other improvements are proposed.

Mr. Black said this was the project proposed at this time, noting that some electrical work has been done to improve.

Mrs. Black said they are making the building better and safer.

Discussion ensued regarding which building was being worked on.

Member Cadle said that on the plot plan the porch is shown to be setback 35 feet.

Mrs. Black said that is correct.

Discussion ensued regarding what the exact distances are.

Mrs. Black said the porticos jut out about 4 feet and the porch will jut out about eight feet.

Member Easom clarified the setbacks on the plot plan. He said he wants to compare the other non-conformities and wonders if this is the proper permit to apply for.

Dan Wolfe, Ross Ass., prepared the plan, noting that this is less of an encroachment than the existing non-conformity. He said they can take an average of other homes in the neighborhood so they don't need a variance, but said he feels the special permit process trumps that because the non-conformity is not being increased, and rather is being decreased.

Dan Wolfe said that under a special permit, the board needs to determine whether this is detrimental to the neighborhood and this is clearly an improvement. He also noted that this is the correct permit.

Michelle Collette noted her support of this application and cited the bylaw that uses historic setbacks in averaging and said this is in keeping with an historic small town village. She said the house is historic and in the town center, and this is in keeping with other structures.

Member Cadle asked whether there would be access for all apartments.

Mr. Black said the porch would only provide access to the two entrances to the main box building.

Member Easom said that the averages are about 29 feet setback and thus this is closer than the average. He said he is not saying he is for or against this, but wanted to lay everything out on the table.

Member Cadle asked about the current access.

Mr. Black said there is a brick walkway off the driveway.

Mrs. Black said the porch would not come out further than the current brick area.

Further discussion ensued regarding access to the apartments.

Member Cadle asked what is between the two porticos.

Mr. Black said an electric panel that has probably since been removed. He said all the sidewall attachments have been problematic over the years and feels that creating this roof style would change all that.

Member Erickson said it is one of the better presentations.

Member Easom said that in the historic picture presented it looks like there was a porch.

Mr. Black said that is the back of the house and it did have a farmer's porch.

Member Easom said for record, that there is 280 square feet of non-conformity but if the average is taken, it is only 3 feet outside of the average.

Member Easom made a motion to grant a special permit as requested to the Blacks to construct a farmers porch as shown on plans submitted. The motion was seconded and passed unanimously.

## **8 Flavell Road Special Permit**

Chairman Maxwell convened the hearing by reading the legal notice.

Neil Gorman, Ross Assoc. was present as representative for the applicant, and presented a plan showing the existing house and described the location as the second house on the right. He said there are two similar houses, built in 1954, prior to zoning adopted in 1956, noting that there is only 75 feet of frontage and 10,000 s.f. area. He said a new sewage disposal system has been installed, noting that his client wants to remove the existing structure and build a new dwelling. He said the new house is generally in the same footprint, noting that it meets current side and rear setbacks. He said the new footprint is slightly larger and he is here because it is a preexisting nonconforming structure and lot. He said the dwelling can't be moved back because of the septic system.

Member Cadle said the house is in rough shape and asked when it was last occupied.

Mr. Gorman said he is unsure.

Brian Myers, abutter said about two or three years because of water damage.

Mr. Gorman said they are in the process of making it livable, including hooking up to town water, noting that the septic system was constructed this year and presented as-built septic plans.

Member Erickson asked about length of time of use.

Mr. Myers, abutter, said the pipe broke about two winters ago and caused severe water damage.

Mr. Gorman said his client has been working to repair and improve the property, noting that Ira Grossman has been out several times to see the improvements and a compliance certificate has been issued by the board of health.

Karen Reif, an abutter living at 20 Flavell Road , asked if they are planning on a cellar or a crawl space.

Mr. Gorman said they are building on a slab because of high ground water and proximity to the leach field.

Ms. Reif said there is a ledge problem in that area, noting that she feels every earthquake.

Mr. Gorman said he feels the proposal not detrimental to the neighborhood, noting that the dwelling will have a drive-in garage. He said the BOH has restricted it to two bedrooms and a deed restriction has been filed.

Member Easom said he wants to visit the question of non-use. He said under town bylaws they can't discuss abandonment and can only address non-use, which is as a residence and can't be for more than two years. He said the applicant has to prove that the use of the residence has not been forfeited.

Mr. Gorman said the applicant bought the property in December of 2012. He said there was an active permit to replace the septic system, noting that the permit extension act allows permits to be extended out automatically for up to four years. He said after the new buyer purchased the property he moved forward to complete the septic system, noting that there has been activity over the last year and it is common when making improvements that the contractor/owner does not live there. He said he doesn't have the exact date and if he needs to get that info will ask for a continuation to get data.

Member Cadle said it seems safe to say that it is not occupied, even if activity has been ongoing.

Chairman Maxwell asked about the water damage.

Mr. Myers said plumbers knocked on his door asking for information, noting that he doesn't believe anyone lived there after that so it would be not occupied for two winters.

Member Erickson said she feels this is 'hearsay' and would like to check out actual bills, etc., noting that a reconstruction would be an improvement from what is there now.

Ms. Reif said she has lived next door for 40 years and what is proposed is a great improvement to the area, neighborhood and this side of town, noting that it would be so nice.

Mr. Gorman said this has been quite an investment for the owner to build the septic system. He stressed that activity has been ongoing there and at this point they are coming before the ZBA because it is not worth just repairing what is there. He said if he loses his two-year status his client would have an abandoned home with great financial loss.

Member Mulligan said he feels the current zoning bylaw is for use and that this is subjective. He said he would argue that it has been used by asking for and receiving permits from the town. He said he thinks it is grossly unfair to deny after such active involvement by the town. He also said he feels that paying taxes and utilities satisfies use.

Chairman Maxwell said he is making the dwelling habitable and trying to bring it into compliance.

Mr. Gorman said the well had to be abandoned before the BOH would sign off on a permit.

Mrs. Collette said the town has a form of intent process and no concerns have been expressed by either the BOH or PB.

Mr. Gorman said the applicant wants to get a foundation set in prior to the first frost.

Discussion ensued regarding whether to go ahead or ask for additional proof of use.

Member Cadle said he doesn't know when the dwelling became unoccupied, only that someone bought it to make a profit.

Member Easom said that use is tied into the non-conformity and even if it is not fair, the board has a sworn obligation to uphold the rules. He said the town needs to change the rules at town meeting, even if this is a burden. He said that unless the applicant can provide evidence that the dwelling has been occupied since 2012, he is not inclined to give a pass on the use.

Mr. Gorman said he has a comment on use, noting that this is a residential home in a residential district so it is not a non-conforming use. He said he could understand if it was a non-conforming use but stressed this is an applicable use. He said this is a home, is taxed as a home and will be a home when completed, noting that it is an allowable use. He said the whole point of the permit extension act is to allow the process to be extended because the housing market was so poor. He said to be penalized because of a bad housing market is not fair, noting that this came from a State level.

Member Cadle said he wants to follow up with the bylaw, since non-conforming use or structure is cited, and this is a non-conforming structure.

Member Mulligan said that although he buys into the arguments that there has been some sort of use, the Board has been sued because of this.

Member Easom asked how long it would take for the PB to fix this.

Mrs. Collette said the meeting in two weeks will help and if they get direction, they then will have to go to town meeting in April 2016 and would need a 2/3 majority vote to pass.

Member Cadle said he wants more evidence of use.

Mrs. Collette said GELD information is easy to obtain, noting that they also can get records of excise bills, sworn affidavits, etc.

Member Easom said electricity hookup is not sufficient and that the board needs evidence of actual electricity being used. He said the applicant needs to provide when he knows it to be in use also.

Member Mulligan said severe water damage means that someone can't live there, noting that it maybe was too expensive to repair so the dwelling was just sold.

Ms. Reif asked how structurally sound the existing dwelling is, since there was so much water damage. She said has deteriorated significantly and wonders if it may collapse come spring.

Member Erickson asked Mrs. Collette to review what boards have been involved.

Mrs. Collette said only the BOH but the FOI process sends proposal to all town boards and comments and concerns get flushed out quickly. She suggested getting comments from Mr. Grossman, Health Agent, if the hearing is continued. She said the BOH is first in the line of defense re: rental property and habitability.

Discussion ensued regarding the difference between this and 101 Lost Lake Drive.

Member Easom made a motion to continue to December 9<sup>th</sup>. The motion was seconded and passed unanimously.

### **Tarbell/McGonaigle Special Permit**

Chairman Maxwell convened the hearing by reading the legal notice.

Mr. McGoniagle said he has been before the board several months ago and they determined that he needed to meet with the PB and return. He said he got approval from the PB for plan B, which is now before the ZBA. He said the plan includes a six car detached garage, which allows two garage bays per unit.

Member Cadle said that he originally had three options and now is choosing the separate garage plan.

Mr. McGoniagle said yes, noting that he has covered glare, landscaping, etc.

Member Cadle asked why he was here if the plan was approved by the PB.

Mr. McGoniagle said it was a condition of the ZBA decision, but asked the same question.

Alison Manugian, as an abutter, said she felt that because there were originally three options the board couldn't grant a permit without knowing which option was going to be used.

Member Easom said they now have a definitive plan but he wants a summary of non-conformities, etc.

Mr. McGoniagle said he needs to be more specific.

Member Easom said applicants generally list the relief requested.

Mr. McGoniagle said he is using the building as a residential 3-unit instead of a school.

Mrs. Manugian said he is also here because it is an undersized lot and he is adding much more building space.

Mrs. Collette said he is here because of Decision #8-15 filed with the town clerk that conditions that he needs to come back if any additional buildings are proposed. She said the PB granted a permit for this plan, noting that there is nothing in zoning other than the alteration of a non-conforming structure/plan, etc.

Ms. Manugian said she wants to speak of the process from an abutter's standpoint. She said the applicant has had conceptual approval for three units and was hoping the PB would address abutters' concerns and these have not been addressed. She said this is a neighborhood is of small homes with no or one car garages, noting that this location maximizes the impact on the neighborhood. She said the condos are okay but not the garages, noting that a 5500 sq. ft of roof is not typical of the neighborhood.

Member Cadle said she is not asking him to tear down the building.

Ms. Manugian said no, but before there were other plans including an under garage.

Mr. McGoniagle said he can't determine whether the under garage would be viable because he would have to totally gut the building to even figure out if it would work. He noted that there have also been many meetings and stressed that he wants to work with neighbors. He said he will be living there so will be his neighborhood too, noting that the overall responses have been positive.

Member Mulligan asked about outside parking spaces.

Mr. McGoniagle said there are six spaces in front that will be maintained and deeded to each unit for visitor parking.

Chairman Maxwell asked for clarification regarding the number of garage spaces.

Mr. McGoniagle said there would be three two-car garages in the building, noting that he could stake out the site.

Member Easom said that in referencing §218-19, under intensity for R-A, asked whether the current plan would have less than 25% coverage.

Mr. McGoniagle said that it is far under, more like 10%.

Member Easom said that it seems that it is less than 3 stories and under 35 feet, and asked about setbacks.

Mr. McGoniagle said it is one story, well under 35 feet in height and meets all setbacks.

Member Easom asked how much additional non-conformity is created with the garage, noting that it seems like there is no additional.

Mrs. Collette submitted Plan B, which was approved by the PB.

Member Mulligan asked whether garages were moved.

Mr. McGoniagle said they were moved closer to the building, noting that concerns about headlights were addressed with plantings and a fence.

Member Cadle asked Ms. Manugian what is so bad about the garages.

Ms. Manugian said that if you look at the special permit criteria, the plan does not improve the neighborhood because the majority of dwellings don't have two car garages and thus it is not in character. She said there has been long-term community use of the property for sledding, which has been eliminated by the garages. She said she finds herself in the uncomfortable position of having to be here tonight because no compromise has been reached.

Mr McGoniagle said there is not a single house in the neighborhood that conforms to today's zoning, noting that this is not an outsized structure for that lot. He said sledding will still be available and the garages have been set into the hill. He said that half of the lot would be open for public use and that is a big compromise, noting that town meeting voted to sell the property and this fixes an abandoned building which is an eyesore. He said that without two-car garages unit marketability is affected and a denial would be a deal breaker.

Member Cadle asked about one-car garages.

Mr. McGoniagle said it would affect marketability.

Member Cadle said that even with one car garages there would be ample parking.

Ms. Manugian said the abutters suggested covering some of the front parking spaces and/or attaching the garages to the building



Mr. McGoniagle said setback prohibited that as well as architectural issues and aesthetics. He said the PB suggested painting the garage the same color and using the same roof materials, putting in drywell to the rear, gutters, etc., stressing that he has tried to be as cooperative as possible.

Member Erickson said she knows the building has been vacant for a long time and feels that this is a good and viable solution to a long-term problem. She said it is a win-win except for Ms. Manugian, noting that it was also approved by the PB. She said she feels the board should accept the plan.

Member Cadle said he admires Ms. Manugian's perseverance.

Ms. Manugian said the town meeting agreement was use for the rear of the property.

Mr. McGoniagle said that is not so, noting that much of the site is still there for public use.

Member Cadle asked what would stop him from doing the project and in a few years deciding he doesn't want the liability and removes the playground equipment.

Mr. McGoniagle said it is in the purchase agreement and the town will handle the liability. He said the pavement will be reduced by less than half.

Ms. Manugian said the character of the neighborhood would be much better with the garages out in front and the back left open.

Discussion ensued regarding the negative aspects of putting the garages in front.

Mr. McGoniagle said all neighbors are satisfied except for Ms. Manugian, noting that he felt it was presumptuous to use the term neighborhood.

Ms. Manugian said none of the concerns raised in letters were addressed and the PB waived most storm water analyses.

Mr. McGoniagle submitted a letter from Ross Associates re: drainage review.

Discussion ensued regarding the drainage review letter.

Mrs. Collette said that drywell was required to deal with any potential storm runoff with a 25-year storm.

Member Easom said there is a vehicle for enforcement via the zoning enforcement officer.

The board went over special permit criteria:

1. Getting a property onto the tax rolls; public use of play/sledding areas; upgrade deteriorating structure and preserving an historic building.

2. Less traffic than school and/or superintendents office and handled under site plan review.
3. New septic and water department has completed hookup and gas lines available.
4. Difference of opinion as to whether this fits appropriately with neighborhood, but the board found that the proposal has primarily a positive impact.
5. Environment improved because 8,000 square feet of pavement has been removed and grass planted and the town has put in a new septic system.
6. Fiscal is positive.

Discussion ensued regarding conditions. Mrs. Collette said the PB did not want to get involved with any public use provisions as this is under the authority of the BOS.

Member Easom said this issue came up re: character of the neighborhood and feels the board should make sure it is recorded, noting that he would be disappointed if the deal got done and nothing is recorded at the registry of deeds.

Mr. McGoniagle said that would not be an issue.

Condition: The applicant shall comply with BOS contractual negotiations regarding placing a deed restriction on allowing public access/use for recreational/sledding area.

Member Cadle made a motion to grant the applicant a special permit to allow the construction of garages as shown on Plan B, received May 26, 2015, Plan B being the plan with three two car garages detached from the Tarbell School with the conditions as discussed along with all conditions as set forth in site plan review, together with the findings under 218-32.1.C, criteria for special permits. The motion was seconded and passed unanimously.

### **Groton Inn Variance**

Chairman Maxwell convened the hearing by reading the legal notice.

Atty. Anctil, agent for applicant, said they are here for a variance for 128 Main Street, the Groton Inn site. He said they have a new group to partner with and are all set with financing, noting that the new group wants a different plan, with one main building and a detached restaurant. He said a wing would be added to building for a total of 60 rooms, noting that they tried to comply with the 35-foot height requirement, adding that the residential and commercial height requirement is the same. He said they would be unable to develop a world class hotel and comply with the 35-foot requirement. He said numerous options were sought to make the structure comply but a solution was found and thus they are seeking a four-foot variance. He said the group involved in this project worked on the Mt. Washington Hotel, noting that they wanted to replicate the original Groton Inn as much as possible and not have to go before the Conservation Commission. He said they were in front of the HDC and although they did not issue a Certificate of Appropriateness because they want them to comply with the height requirement, he noted that a lot of other buildings are taller than 35 feet, particularly buildings in LA and the apartment building on the corner of Rt. 119 and Boardmeadow Road. He said they also have constraints re: handicapped accessibility so that drives the base level from an architectural standpoint, noting that the hotel can only be constructed with a four-foot variance. He said this property is unique and is within HDC purview, noting that they want to

create a structure as historically accurate as possible. He said they are keeping the existing elevation and did not want to go further back on the property due to wetlands. He said they also want parking behind the building, noting that all mechanicals cannot be created underground.

Member Mulligan asked whether the development group is the same.

Atty. Anctil said some are and there are some new members. He said all cottages have been removed from the plan. He said there would be continental breakfast at the hotel and the detached 100-seat restaurant will compliment the hotel and be open to the public.

Mr. Amaral, project manager said he is very involved with the sewer department and there is ample capacity for both hotel and restaurant.

Atty. Anctil said they have decreased the total sq. ft of construction from 58 to 56,000, increased green space and the structure/s are further away from the wetland area, etc. He said in sum, they are constrained by the HDC and they want to create a facility that is as similar as possible to the old Inn and thus it needs to be as close to the original elevation as possible. He said that after they set the baseline elevation, in order to get all mechanicals in place, the height is at 38.5 feet and thus are asking for a four-foot variation to allow 39 feet in building height. He said that if they don't get a variance, they will have to go back to the drawing board and the project would not be viable.

Discussion ensued regarding whether the original inn was the same height. Atty. Anctil said there are no records but there are a number of buildings that predate zoning that are higher than 35 feet.

Atty. Anctil said there are a number of other potential uses for the property but not the reconstructed inn without a variance. He said that there were a number of additions over the years to the original inn.

Mr. Amaral discussed some of the landscaping features of the project that strive to keep pedestrian areas open and an natural feel to the rear field area, which will be open to the public.

Member Erickson asked about the size of the lawn area, which Atty. Anctil said he thinks will be about three acres, noting that the total acreage is 8.9 acres.

Member Mulligan asked about a construction time line.

Atty. Anctil said there are some other hurdles with the HDC and PB but they would like to break ground in April. He said they met with the land use department and feels that there is general satisfaction with the plan. He also discussed height variances issued in other towns and cities, stressing that they have done everything they could to avoid being before the ZBA and could not find another way. He said they want this to be better than other inns in the area.

Discussion ensued regarding HDC approval vs. ZBA approval.

Member Cadle asked how many rooms are in the original plan (43 rooms plus 6 3 bedroom townhouses), vs. current plan (60 rooms in main building only).

Member Easom asked whether they wanted to continue until after HDC and PB.

Atty. Anctil said no, noting that those are separate and they can't build without HDC, PB and ZBA approval so he would like to continue tonight.

Member Cadle said he wants to look at the variance section before making a motion, noting his concern about granting a variance for a project that is otherwise unapproved.

Atty. Anctil said the board could make it contingent on PB site plan approval and an HDC certificate of appropriateness.

Member Cadle asked whether the original plan was approved at town meeting.

Atty. Anctil said yes and no, because town meeting is just a concept plan approval and they still need PB approval. He said he would also argue that this is less dense.

Member Cadle said he is wondering if this needs to go back to town meeting.

Mr. Amaral said he met with Mrs. Collette when they first made the changes and she said that because the square footage is being reduced it is not necessary and she as town planner felt just a modification was sufficient and the PB agreed and voted such. He said he is very cognizant of this.

Discussion ensued regarding whether town meeting approval would be re-required.

Member Cadle said he feels that this is only addressed as a want for a world-class hotel.

Atty. Anctil said that with the set elevation where HDC wants them to set it, they couldn't place all mechanicals without going up. He said the topography is demanding that they keep the structure at the present base level. He said the main issue is topography based, the structure needs to be 57 feet from the road and needs to be at 365 topo and they can't build down or out because of wetlands. He said they also need to comply with ADA, which mandates this elevation. He said the HDC mandates that the elevation be as close to the existing one as possible.

Mr. Amaral said they are trying to satisfy from all sides: PB, HDC, Conservation and Zoning.

Member Cadle asked why this is not a self-created hardship.

Atty. Anctil said it is not self-created because they need to satisfy HDC and PB re: drainage. He said the building is a by right structure that can't fully comply.

Member Easom asked what efforts would be made to determine the height of the original building.

The architect said the HDC said they should use old photos and count the siding.

Atty. Anctil said the HDC is not concerned re: height from a zoning perspective as long as it is consistent with mass.

Member Cadle noted that if they want to make a modern inn look like the old one, they need to move ceilings to accommodate modern mechanics.

Member Cadle made a motion to grant the petitioners' request for a variance from building height requirements under §218-20 of the Groton Zoning Bylaw to allow the project to have a maximum height of 39 feet as shown on plans submitted with the application, due to the specific topography of the site and especially affecting that site, and because a literal enforcement of the height requirement would make a significant hardship both financial and otherwise, and relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of Groton Zoning Bylaws.

The motion was seconded and granted unanimously.

### **Other business**

Member Easom made a motion to release the GELD trailer bond of 1501.80 plus accrued interest. The motion was seconded passed unanimously.

### **Minutes and Bills**

Minutes from July 15 and October 22, 2015 were approved.

One Groton Herald bill was signed.

Member Easom made a motion to adjourn at 10:30 pm. The motion was seconded and all voted aye.

Approved 1/27/16.