



## Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

### February 24, 2016 – Busser, Corbett, Scalley

#### Present

Cynthia Maxwell, Chairman

Robert Cadle, Member

Mark Mulligan, Member

Jay Prager, Member, participating by teleconference

Alison Manugian, Member (Scalley)

Bruce Easom, Associate Member

#### Not Present

Berta Erickson, Associate Member

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

#### Meeting Minutes

##### Busser Variance

Chairman Maxwell convened the hearing by reading the legal notice.

Deborah Busser, applicant, was present, noting that she signed a purchase and sale for 17 Broadmeadow Road. She said the dwelling is in poor condition including rot and water damage. She said she wants to save as much of the dwelling as she can, noting that the oldest front section will be brought down to the studs. She said the addition in the back was built in the 60's or 70's, noting that the renovation/reconstruction will have the same look and feel and in be in the same footprint.

Member Prager, via phone, asked how long ago the structure was used.

Stuart Schuman, executor of the estate of Mr. Breen, noted that he passed away after a stay in Apple Valley for some years.

Michelle Collette, Land Use Director, said the applicant was advised by The Building Inspector that because a variance is being requested non-use is not an issue.

Member Prager says the bylaw does not differentiate between non-use with a special permit or variance.

Chairman Maxwell clarified that this project is rebuilding what is there, but up to code.

Member Prager asked about the existing vs. new structure.

Ms. Busser said they are using the existing footprint and will be adding some second story space throughout the structure by peaking the roofline. She said the appearance of the roofline will be improved, and the height in the middle of the structure is changing by about five feet. She said the front of the structure would be the same.

Member Prager asked about a height variance.

Ms. Busser said the height would be in compliance even with the increase, noting that the overall height is not changing.

Member Mulligan said variances are for how the property currently exists. He said nothing is changing or increasing.

Member Cadle said he feels that if not for the non-use issue, this could be done by right, noting that he feels it is not a variance issue but should be by special permit.

Discussion ensued regarding the non-use issue and whether the applicant even needs to be here because it is in the existing footprint.

Mrs. Collette said the applicant is here because of the direction of the Building Inspector. She said they are working with a group to address the non-use issue in amending the bylaw but currently the remedy is to apply for a variance. She said it is an either or but an applicant can't apply for both. She said they were advised by both town counsel and the building inspector to proceed via variance if there is any non-use question.

Discussion ensued regarding how to proceed.

Of note: this is not a change in residential use, but because of the non-use issue, a variance is the proper route.

Further discussion ensued regarding how to proceed.

Member Mulligan said that if they go the special permit route, the non-use issue would come up.

Member Prager said he feels they shouldn't make non-use an issue here.

Discussion ensued regarding what bylaws should be considered when there is non-use.

Member Mulligan said that in fairness to the applicant, there is an application before them and they need to act on it.

Member Prager said it doesn't meet the variance criteria.

Member Cadle said he agrees it doesn't meet the criteria but the applicant wants to get the permit into compliance.

Variance criteria: 218-33b2 soil conditions, shape, topography, affect on district. The board felt that only shape is relevant in this case, along with hardship. Member Cadle said topography could relate but nothing is due to the actual work being proposed.

Member Cadle asked about town sewer, which is available, along with town water.

Member Easom suggested denying the variance with the finding that it could be done by right.

Ms. Busser said she is concerned that if they are denied the variance, which was what they were told to apply for, they could not move forward.

Member Mulligan suggested a loose interpretation to allow for topography, etc.

Mrs. Collette said as storm water management drainage goes, this soil is tough and is the only way to improve drainage on property.

Member Mulligan said he is okay with that justification, noting that the board needs to act on the application as before them.

Member Prager said he thinks this is a dangerous precedent that just because the BI says it should be shoe horned that the ZBA does it that way. He said he would vote for it in spite of that.

Member Cadle said he is tired of the non-use issue, noting that the owner before death was in a long term care facility and this should be granted as a by right permit.

Member Mulligan made a motion to approve the variance as applied for, relative to area, frontage and building setback based on circumstances related to shape and topography, specifically related to drainage and that a denial would be a severe hardship. Conditions: the building shall not exceed the existing footprint and the height shall not increase from tallest existing roofline. Further, the board made findings that non-use is not an issue and does not apply. The motion was seconded by Chairman Maxwell, with Easom, Cadle, Mulligan, Prager and Maxwell all voting aye.

## **Corbett Variance**

Chairman Maxwell convened the hearing by reading the legal notice.

Several abutters were present, speaking in opposition to the proposal.

Thomas Corbett, applicant, said he plans to raze the 3-bedroom existing structure. He said the front offset will be 50 feet with the new design, and there will be a new septic system. He said the utilities are still hooked up and the front of the new structure will start at the rear of existing garage, which will be removed. He said a new garage as part of the house will be where the existing curb cut is now.

Member Prager asked who is living there now.

Abutters said the owner is in assisted care.

Discussion ensued regarding who has lived there, and where the owner currently lives. Of note: the owner has lived away since 2006.

Member Prager noted that the owner is still alive even if he hasn't lived there for several years.

Member Mulligan said that in an effort to avoid the issues of non-use, the Building Inspector is sending applicants via the variance route such that non-use is not an issue.

Discussion ensued regarding whether a variance should be granted.

Mr. Corbett said he is not increasing the non-conformity but noted he is not building in the same footprint. He said he is increasing the height and size of the structure but it is all within the building code.

Member Prager said that as a rational human being he is in favor of the variance.

Member Mulligan said this application is more in line with a variance.

Cindy Smith, abutter, submitted a letter from an abutter who was unable to attend and did not receive legal notice (administrator received returned notice as undeliverable with no forwarding address).

The chairman read a letter in opposition from Mr. Binder, abutter unable to attend.

Discussion ensued regarding the size of the proposed house, which will be about double the size of the original dwelling.

Ms. Smith asked about future attic space.

Mr. Corbett said he could not have more than three bedrooms because of the septic system, noting he submitted a standard house plan.

Michelle Collette said she is speaking not as an abutter but as someone who has known and loved the Sherwins for years. She said she wants them to be able to sell their property but agrees with what the abutters have said about the size and scale of the proposal. She said it is a small lot in a neighborhood of small houses and any proposal should be in keeping with what is in the neighborhood. She said this is a house that should be in a new subdivision and not in a village area. She said the size is out of scale with the neighborhood and she would like the applicant to consider a smaller dwelling.

Discussion ensued regarding what is proposed and how to proceed.

Member Prager said it seems to be about 50 to 60% larger than the existing dwelling, but it meets all setbacks. He asked whether there are specific plans.

Member Mulligan asked whether he would consider a smaller plan.

Mr. Corbett said he could, noting that he just submitted a standard plan for the packet.

Ms. Smith said most dwellings are long into the lot, with farmers' porches, etc. She stressed that this proposal is not in keeping with this neighborhood.

Brian Mayer, 106 Townsend Road, said he lives one house away and this is not in keeping with the lot or neighborhood, noting that it is a pie shaped lot that has a lot of runoff issues. He said this is a plan for a big house and there is not a lot of places to put water.

Mr. Corbett said there is 20 feet of sideline setback on both sides.

Member Mulligan said only the variance is frontage and area and no setbacks.

Ms. Smith said he should build a house that does not increase the non-conformity, noting that this plan is not consistent with the neighborhood. She said a bigger house is more non-conforming.

Member Prager said he feels they should have a site walk.

Member Easom said that under §218-33b2, the applicant needs to demonstrate or argue that there is a substantial hardship financial or otherwise for constructing this building in this location.

Mr. Corbett said the existing dwelling would not meet code, noting that he has to make a decision as to whether it is worth fixing.

Member Prager asked why there is any financial hardship if no money has been invested yet.

A niece of the Sherwins said she wants to sell the property to keep her uncle in Rivercourt, noting that the neighboring houses are not all smaller.

Member Easom said the hardship criteria is for the applicant and not anyone else.

The niece said she was told that the existing 3-bedroom is not worth saving.

An abutter said the existing is in keeping with the neighborhood and pleasant to the eye.

Member Prager suggested that the Sherwins should be the applicants.

Mrs. Collette suggested that the applicant be allowed to submit a different plan after a site walk. She said she does not object to rebuilding but just to the size and scale.

Discussion ensued regarding how to proceed, with the applicant saying he is within building code and scope of variances requested not changing.

Ms. Smith suggested a site walk and suggested the board notice that all houses in the area are long and not wide with small garages to the side or none at all. She asked about the existing trees and the variance being requested from the BOH.

Mr. Corbett said he is leaving trees along the lot line but can't make any other promises.

Member Easom said under a special permit, the character of the neighborhood is considered but under a variance the language is different.

Discussion ensued regarding possible conditions, etc, whether there should be a site walk and whether the applicant should submit a different plan.

Ms. Smith said that on behalf of her new neighbors directly next door, a site walk and continuation is in order.

Discussion further ensued re: site walk, profit margins, etc.

The niece of the Sherwins said some abutters wanted to purchase the property but they needed to get the most money, which is why they went to a developer.

Mr. Corbett asked what impact the plan will make on a variance granted.

Member Mulligan said the variance could be conditioned on plans submitted.

Member Cadle said it is worth coming to an agreement with the neighbors, noting that it makes the ZBA job easier if the neighbors are on board.

Mr. Corbett said it would not be totally in keeping with all houses in the neighborhood.

Discussion ensued regarding continuation and site walk dates.

A site walk was scheduled for March 26, 2016 at 9:30 am.

Member Easom made a motion to continue the hearing to 3/30/16 at 7:30 PM. The motion was seconded and all voted aye by roll call vote.

### **Scalley Special Permit**

Chairman Maxwell reconvened the hearing and then read into the record an email from the BOH and Conservation Commission.

Don Black said he was here for the applicants, and just to review, they were sent to work with the BOH and Cons. Comm., which they have done. He said the existing dwelling is on Knops Pond and they want to rebuild. He said the existing dwelling is 700 square feet and the new is 1300 s.f., with a garage. He said the new dwelling would have a foundation, unlike the existing one. He then described abutting properties that are accessed via easements from Whiley Road. He said they were all camps at one time that have been converted to two story dwellings. He then described the relatively new septic system and also described swales, etc to divert storm water. He showed a plan of what they would like to build, which is a two-bedroom structure as limited by the septic system. He said there is power to the home at this time and they are fully compliant with Title V.

Member Prager asked whether they are not increasing the non-conformities.

Mr. Black said the board could answer that.

Mr. Scalley said there is 15 feet on all sides, noting that the height is 27 feet 7 inches to the ridge.

Member Prager said that is an increase as related to 218-6.3, noting that he wanted to know where the front property line is.

Of note: there were no comments from abutters.

Member Cadle asked about open issues with the Cons. Comm.

Mr. Black said there were none, but the Commission couldn't sign off on it last night. He said they got an okay from Natural Heritage.

Member Easom said it has become straight forward since Natural Heritage weighed in that it is okay.

Member Prager suggested conditioning findings for the BOH and Cons. Comm..

Mr. Black said well digging equipment was too large to get on to the site.

Member Manugian make a motion to approve as the application meets the criteria outlined in §218-32.

Member Prager seconded with the condition that the project has to meet both BOH and Cons. Comm. approval. The amended motion was seconded and approved with all members voting aye by roll call.

### **Other business**

Co-sponsorship of Bylaw amendment 218-6 with the Planning Board. Discussion ensued re: cosponsoring and ramifications of such.

Member Manugian made a motion to co-sponsor the amendment with the PB; all voted yes by voice vote.

### **Minutes and Bills**

One Groton Herald bill was signed.

Minutes from December 9, 2015 and January 27, 2016 were approved unanimously, by roll call vote.

Member Manugian made a motion to adjourn at 9:15 pm. The motion was seconded and all voted aye in voice.

Approved 3/30/16.