

MINUTES OF BOARD OF APPEALS MEETING OF December 5, 2012: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairman Peter DeTerra – Opened the meeting at 6:00 p.m.

Quorum/Attendance

Members Present – Chairman Peter DeTerra, Vice-Chairman Francis Cox, Jr., Joseph Borelli, Daryl Manchester, Peg Cook, Rene Fleurent, Jr. (Assoc.), Ken Kendall (Assoc.) and Jaime DeSousa (Assoc.)

Members Absent – Al Silva (Assoc.)

Minutes: Chairman DeTerra asked for a motion to accept the minutes of November 7, 2012. Mr. Fleurent, Jr. motioned to accept the minutes. Mr. Borelli seconded. The vote was unanimous.

II. PUBLIC HEARING:

1. Petitioner: William J. Alphonse, 1 Mina Street, Plat 37A, Lot 612-615; Book 6787 and Page 246, 198-18: Short 11’ of the required 100’ frontage and 2,856 sq ft short of the required 15,000 sq ft for a buildable lot in a RA District.

The petition was read and there were 26 abutters notified. The petitioner stated the land was purchased by his grandfather in 1942 to construct a barn. In 1962 the land passed to his father. In 2004 the petitioner bought the land and would like to place a 3 bedroom dwelling on it for his use or for sale to his niece. Abutters Michelle and William Sauve, 45 Marguerite Street, stated they know nothing of this proposal and would like more information. Abutters William Ashworth and Donna Sowa, 17 Nancy Street, stated they do not know what will be placed here as there are no plans for presentation. There is no space for a driveway. The neighborhood is congested for its rural area. The proposal would block the view, create traffic and would be a hazard for emergency vehicles should the need arise especially with a daycare on the street. Ms. Sowa questions what type of home, the size, location on the very small lot. There are many concerns. The petitioner stated the existing structure will be the site for the garage and there is plenty of off-street parking. The proposal is in keeping with the neighborhood. Mr. DeSousa asked the proposed house size. The petitioner stated about 28’x48’, or as required by the Town.

The Chairman asked the Building Commissioner, Wayne Fostin what the zoning requirements were in 1962 when the lot was purchased by the petitioner’s father. Mr. Fostin stated in 1956 the minimum requirement went from 6,000 sq ft to 10,000 sq ft. In 1962 when the petitioner’s father purchased the land, it was already a non-conforming lot. In 1978 the zoning increased from 10,000 sq ft to 15,000 sq ft. Mr. Borelli asked if there ever was a house on the lot. The petitioner stated no. Mr. Borelli stated there is no grandfathering of this lot as it was held in common ownership. The problem appears to be for the petitioner that the Assessors assessed a sewer betterment fee in 2004 but the petitioner did not question at that time if the lot was indeed buildable.

Mr. Cox, Jr. motioned to grant the Variance. Mr. Borelli seconded.

Members voting to grant the Variance: None

Members voting Not to grant the Variance: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Cox, Jr. and Mr. Fleurent, Jr.

The Variance is DENIED with a vote of five (5) opposed and none (0) in favor.

2. Petitioner: Kathleen Melanson, 87 Green Street, Plat 8, Lot 56; Book 2692 and Page 150, 198-23: A Special Permit is required for a Home Occupation in the Building Trades.

The petition was read and there were 42 abutters notified. No one was present to represent the petitioner. Mr. Fleurent, Jr. motioned to table the petition to the end of the meeting. Mr. Cox, Jr. seconded. The vote was unanimous. At the end of the hearings the Chairman asked if there was a representative for the petitioner. No one was present. Because of the timeline from receipt of the petition to the date of the hearing, a vote was necessary. Mr. Cox, Jr. abstained.

Mr. Borelli motioned to grant the Special Permit. Ms. Cook seconded.

Members voting to grant the Special Permit: None

Members voting to Not grant the Special Permit: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Kendall and Mr. DeSousa.

The Special Permit is DENIED with a vote of five (5) opposed and none (0) in favor.

3. Petitioner: Roberta & William J. Martin, Trustees of the Roberta Martin & William J. Martin Revocable Trust, 10 Gilbert Street, Plat 29A, Lot 220; Book 10481 and Page 318, 198-18: Short 13' of the required 30' front setback, short 10' of the required 20' west side setback and 22% over the maximum allowed lot coverage of 15% all within a RR District.

The petition was read and there were 35 abutters notified. Ms. Martin stated they bought the house in August, 2012 and it was in poor condition. They have continued to upgrade it and now would like to construct a 12'x12' addition for a dining room. Plans and 1 photo were presented along with a letter of support from Stacey Sousa, 8 Gilbert Street, which was read and is part of the record. Ms. Penn, owner of 5 Gilbert Street, a summer resident, stated the zoning code is put in place for compliance. She is against the petition and is worried that a deck will be placed on top of the addition. She also questions if there is to be a second addition at the front of the dwelling. Building Commissioner, Wayne Fostin, stated the dining room addition is what is before the Board. Questions of a foundation and flood zone were referred to the Building Department as these are not under zoning requirements. Mr. Fleurent, Jr. asked if a deck was proposed. The petitioners stated it is a dining room only. Mr. Borelli noted the square footage of the lot on the application is incorrect. However, the calculations are based on assessor records and not the application.

Mr. Cox, Jr. motion to grant the Variance. Mr. Kendall seconded.

Members voting to grant the Variance: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Cox, Jr. and Mr. Kendall.

The Variance is GRANTED with a vote of five (5) in favor and none (0) opposed.

4. Petitioner: Jurrinus & Geraldine C. Ten Brinke, 4 Misty Bay Road, Plat 43C, Lot 86; Certificate # 19766, 198-18: Short 11' on the west side and 4' on the east side of the required 20' side setback, short 8' of the required 30' front setback, 8% over the maximum allowed lot coverage of 25% and 7% over the maximum allowed building coverage of 15% all within a RR District.
Special Permit required for expansion of a non-conforming lot.

The petition was read and there were 38 abutters notified. The petitioners were represented by Ken Ferreira, P.E. of Ken Ferreira Engineering, Co. of New Bedford. The proposal is to demolish the existing house and replace it with a 3 bedroom dwelling. The property is served by municipal sewer and water. Plans were presented for review. Speaking in favor of the proposal was Allen Howe of 6 Misty Bay Road. Speaking against the proposal was Paul Rizzo of 55 Balsam Street an immediate abutter. He is opposed to the placement of a 2nd floor deck that will affect both his view and privacy. Both house lots are small and privacy is a concern. Ms. Ten Brinke stated she does not have a view of the water and the deck will allow that. Mr. Rizzo stated the proposed deck would overlook his deck and would take away his privacy. He recommended that the petitioners remove their two-story shed which would give them a view of the water. Ms. Ten Brinke stated Mr. Rizzo's deck is 28' 10" from the property line as is this proposed deck. She is simply asking for the same variance that was granted to Mr. Rizzo for his house. There were no questions from the Board.

Mr. Cox, Jr. motioned to approve the Variance. Mr. Kendall seconded.

Members voting to grant the Variance: Ms. Cook, Mr. Borelli, Mr., Manchester, Mr. Cox, Jr. and Mr. DeSousa.

Mr. Cox, Jr. Motioned to approve the Special Permit. Mr. Kendall seconded.

Members voting to grant the Special Permit: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Cox, Jr. and Mr. DeSousa.

The Variance and Special Permit are GRANTED with a vote of five (5) in favor and none (0) opposed.

5. Petitioner: Pamela Proulx, 25 Manhattan Avenue, Plat 28A, Lot 261; Book 1394 and Page 296, Certificate #4640; 198-16: A Special Permit is required for the keeping of chickens in a RA District.
198-22: Short 5' of the required 5' property line setback for an animal pen.

The petition was read and there were 58 abutters notified. The petitioner would like to keep the chickens for the fresh eggs, manure for her garden and compost and for environmental benefits.

No one spoke in favor of the petition. Speaking against the petition was Frances M. Souza of 53 Yale Street who stated the pen is less than 150' from his house and he is worried about upkeep and possible odor and rats, West Nile Virus, poaching animals such as foxes and coyotes that could be rabid. Florence Schuck of 21 Manhattan Avenue stated the pen is right under her bedroom window. The lots are small in this neighborhood and the houses are right on top of each other. Ms. Schuck works late at night and comes home to chickens making loud clucking noises as they lay their eggs. She cannot sleep. Experience has shown that the petitioner who owns 3 dogs now is an irresponsible owner. Her dogs have been a problem with non-stop barking and breaking loose. Liz Medeiros of 54 Yale Street stated she is an immediate abutter and is concerned about safety, rats and other animals that prey on chickens. Lisa Moniz of 23 Harvard Street said she is concerned with rats and the runoff from the compost. The property is close to storm drains and drain to Pope's Beach. The petitioner's dogs have chased after her dog. Kathleen Marginson of 30 Harvard Street said she agrees with all of the statements and questions if roosters will be allowed. The pen right now is on the property line. Richard Costa of 31 Manhattan Avenue stated he is concerned about rats. The Board received two letters against the petition which were read and are part of the record: Gary & Patricia Parcella of 20 Manhattan Avenue and Marie Breitz and Rosemary Alexandre of 36 Manhattan Avenue. Mr. Borelli asked how far an animal pen must be from a dwelling in a RA District. Building Commissioner Wayne Fostin stated 20'.

Mr. Cox, Jr. motioned to approve the Variance. Mr. Borelli seconded.

Members voting to grant the Variance: none.

Members voting to not grant the Variance: Ms. Cook, Mr. Borelli, Mr. DeTerra, Mr. Manchester and Mr. Cox, Jr.

Mr. Cox, Jr. motioned to approve the Special Permit. Mr. Borelli seconded.

Members voting to approve the Special Permit: none

Members voting to not grant the Special Permit: Ms. Cook, Mr. Borelli, Mr. DeTerra, Mr. Manchester & Mr. Cox, Jr.

The Variance and Special Permit are DENIED with a vote of none (0) in favor and five (5) opposed.

6. Petitioner: Louise Merrick, 111 Balsam Street, Plat 43A, Lot 114; Book 22 and Page 341, Certificate #22341; 198-18: Short 19' of the required 20' north side setback, 14% over the maximum allowed building coverage of 15% in a RR District. A Special Permit is required for expansion of a non-conforming lot.

The petition was read and there were 44 abutters notified. Matthew Brodo of 21 Cherrystone Road, Fairhaven, the contractor, represented the petitioner who would like to construct a 16'x24' open-walled, pitched roof carport where the existing driveway is. The structure will be constructed to engineered specifications and to code. Speaking in favor of the petition was Ms. Merrick, Mr. & Mrs. Marcoux of 114 Balsam Street, Terry Pereira of 2 Gull Island, Mrs. Pope of 6 Gull Island, Mr. Meredith of 127 Cottonwood Street and Mr. Ristuccia of 192 Balsam Street. A letter of support from Deborah A. Casey of 117 Balsam Street was read and is part of this record. Speaking against the petition was Mr. Caron of 113 Balsam Street, a direct abutter, who is concerned about the structure in high winds with potential fly-off and noise created by the wind through the open structure. Ms. Henry of 126 Cottonwood who stated she lives directly behind the proposal and it will block her view, it is not in keeping with the neighborhood, she is concerned other large items will be placed in the carport and that lighting within the structure will affect her house. She provided pictures of her and the petitioner's properties. She prefers something smaller and narrower for this small lot. Mr. Brodo responded that the structure will be 13' in height and will only be used for vehicles, not boats. Mr. Fleurent, Jr. asked Mr. Fostin if the proposal is to code for wind resistance. Mr. Fostin stated it is to code and will be constructed to withstand 120 mph winds.

Mr. Fleurent, Jr. motioned to grant the Variance. Mr. Cox, Jr. seconded.

Members voting to grant the Variance: Ms. Cook, Mr. Borelli, Mr. Cox, Jr. and Mr. Fleurent, Jr.

Members voting not to grant the Variance: Mr. Manchester

Mr. Fleurent, Jr. motioned to grant the Special Permit. Mr. Cox, Jr. seconded.

Members voting to grant the Special Permit: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. Cox, Jr. & Mr. Fleurent, Jr.

The Variance is GRANTED with a vote of four (4) in favor and one (1) opposed.
The Special Permit is GRANTED with a vote of five (5) in favor and none (0) opposed.

III. OTHER BUSINESS:

ADJOURNMENT

Mr. Cox, Jr. moved to adjourn the meeting. Mr. Fleurent, Jr. seconded. The vote was unanimous. The meeting was adjourned at 7:45 PM.

Respectfully Submitted,
Patricia Fowle, Secretary
To the Board of Appeals