



**CITY OF GLOUCESTER
ZONING BOARD OF APPEALS
3 POND ROAD, GLOUCESTER MA 01930**

**ZONING BOARD OF APPEALS
Remote Participation Meeting Minutes
January 14, 2021**

Board Members Present:

Joseph Parisi III, Chairman
Catherine A. Schlichte, Esquire, Vice Chair
Adria Pratt, Esquire, Secretary
Michael C. Nimon
Peter Cannavo

Also in Attendance:

Bill Sanborn, Building Commissioner
Alison Battle, Clerk

The Chairs calls the meeting to order, introduces the members of the Board and reads the Open Meeting Laws.

Old Business:

Minutes:

Ms. Schlichte moves to approve the minutes of 12/3/20, 12/17/20, 12/21/20 as they are written.

Mr. Nimon seconds

All in favor, 5-0

Election of Officers:

Ms. Schlichte moves to nominate Joe Parisi to be Chairman

Mr. Nimon seconds

All in favor, 5-0

Mr. Nimon moves to nominate Catherine Schlichte for Vice Chairman

Mr. Cannavo seconds

All in favor, 5-0

Ms. Schlichte moves to approve Adria Pratt for Clerk.

Mr. Nimon seconds

All in favor, 5-0

97 Leonard St.

Petition of Carole Bailey and James Tiernan seeking Special Permit, Variance left side yard, rear yard to allow addition of single bay attached garage with storage and addition to existing house right side.

This Application was postponed at the last meeting for all members who had participated to be present for the vote.

Ms. Pratt notes that she has listened to the recording of the meeting that she had missed.

Ms. Schlichte moves to approve Special Permit, Variance left side yard, rear yard to allow addition of single bay attached garage with storage and addition to existing house right side. And reviews her opinion of the Variance.

Mr. Nimon seconds
All in favor, 5-0

86-86R Rocky Neck Ave.

Sal Frontiero, Esq. of Frontiero Law Offices, 46 Middle St. is present to represent, Regina Attaya seeking Special Permit 2.4.3 (b) alter/expand a non-conforming single or two family structure. Special Permit 2.3.1 #3 conversion to two-family modification of existing Variance sec. 1.7.4 to allow petitioner to partially teardown and replace the existing structure and to add an addition to the building for the purpose of converting to a 2 family dwelling.

Ms. Pratt recuses herself.

Atty. Frontiero describes the changes that they have made at the request of the neighbors. They have beveled both first and second floors on the right side of the building for Mr. Liocano, the neighbor on that side to remove the right side encroachment. The Variance that they had originally requested is no longer needed and the new structure will completely comply with the Zoning Ordinance.

The garage in the front will remain and the structure in the back will be illuminated. The parking plans have been revamped. There will be 2 spaces in the front of the dwelling and 2 spaces in the back. These spaces are larger than are required to allow room for the vehicles to go in and out without backing into the 12' way. The garage will be used as a parking space but is not being counted as a required space.

The Members discuss if a Special Permit is still needed with Atty. Frontiero.

Atty. Frontiero reviews the agreed upon conditions between Ms. Attaya and Mr. Liacono.

1. Perimeter deed is completed to make this one lot.
2. It will never be used as an overnight rental or a boarding house.
3. Ms. Attaya will install a fence along the property line in the rear of her property so that the headlights will not shine onto Mr. Liacono's property.
4. Vehicles will pull forward into parking spaces without backing onto Rocky Neck Ave.
5. The run off will be self-contained.

Discussion by the Board:

The Chair notes that the Public Hearing ended at the last meeting. The Members discuss the option of re-opening it as they have received new plans.

The Public Hearing is re-opened.

Speaking in favor:

Michael Faherty is present to represent the Liacono family. They withdraw their opposition to the project and will work with Atty. Frontiero to add some detail to the above conditions before the decision is signed.

Speaking in opposition:

Cynthia and Eric Caplin, 82 Rocky Neck Ave. live directly across the street and question what is considered as a partial tear down and what she should do if it is completely torn down. She is also concerned with the parking and the ease of the vehicles being able to turn around without using her or her neighbor's drive way. They have no objection to a 2 family but feel that this plan is too large.

Bill Heney, is present to represent Cynthia and Eric Caplin of 82 Rocky Neck Ave.

Atty. Heney shares his screen and states that the Applicant has made large changes that were only submitted on Monday and that he hasn't have enough time to review them.

The Chair informs Atty. Heney that he only wants to hear testimony on what is before the Board this evening, which is the parking and the minor changes that makes the building more conforming. They do not want a repeat of what has been submitted or stated at the last meeting.

Atty. Heney states that they plans do not contain the dimensions for the parking and that parking in the front yard in not allowed in the Zoning Ordinance. He feels that the parking is on a very steep slope in both the front and rear yards and he doesn't feel these are parkable areas. Photos are shown of the house. He feels that they Board and neighbors need to see the engineering before a decision is made.

Jennifer DiCarlo is present to represent Elizabeth Paglisi, 84 Rocky Neck Ave. and states that she agrees that the plans came in last minute and is shocked that the plans are as deficient as they are. She discusses the topography of the road as difficult to navigate and feels that they should be requesting Special Permit relief to use the common driveway as parking. They have not applied for a Variance to park in the front yard. The plans do not comply with the ZBA's written instructions for the submission of plans. She states that the Applicant has only appeased one neighbor and not the neighbor that she shares a driveway with.

Mr. Sanborn corrects Atty. DiCarlo's statement as per section 4.1.4 (a) of the Zoning Ordinance, parking is allowed in the front yard for 1 and 2 families.

The Chair addresses a complaint that was received after the last meeting and states that he reviewed the recording of the meeting and there were no hands that were raised that were not addressed.

Rebuttal:

Atty. Frontiero addresses the shared driveway, the conditions of the demolition of the house, parking and states that the barcode on the plans show the dimensions on the plans, He discusses the dimensional requirements of the parking and that all plans have been received in the required time.

Mr. Sanborn states that this project will need to go before Engineering and due to drainage being such an issue in town, they will look at all drainage on the property.

The Chair closes the Public Hearing and comments that he couldn't support the Applicant's project when first submitted, they have done a good job of listening to the Members and neighbors and reduced the size of the project. He informs the people who have spoken that the Members visit all sites, often multiple times.

Ms. Schlichte moves to approve a Special Permit 2.4.3 (b) alter/expand a non-conforming single or two family structure because there is an increase in non-conformity.

Mr. Nimon seconds

The vote is denied, 4-0

It is decided that there is not an increase in non-conformity

Ms. Schlichte moves to approve a Special Permit 2.3.1 #3 conversion to two-family with exterior changes with the following conditions.

1. A Perimeter deed is completed to make this one lot.
2. The property will never be used for short term rentals.
3. Ms. Attaya will install a fence along the property line in the rear of her property so that the headlights will not shine onto the neighbor to the North.
4. The parking is as shown on the plans that were before the Board this evening.
5. The run off will be self-contained.

Mr. Nimon seconds

All in favor, 4-0

302 Western Ave.

Mina Sheedy, Esq., 76 Main St. is present to represent, 302 Western Ave Nominee Trust seeking Special Permit 1.9 for height exception to allow demolition and reconstruction of (2) residential duplexes.

Atty. Sheedy discusses the revised plans that are shared. The roof pitch has been reduced, therefore reducing the height exception to 33' which is 2' higher than the existing structure. They are now requesting a 3' Special Permit. There will be 3 car parking beneath each building.

Speaking in favor: None

Speaking in opposition: None

The Public Hearing is closed.

Ms. Schlichte moves to approve a Special Permit 1.9 for height exception, a Special Permit to alter/expand a non-conforming structure and a Special Permit to demolish and reconstruct the building.

Mr. Nimon seconds

Ms. Pratt states for the record that she listened to the recording and is able to vote on this application.
All in favor, 5-0

192 Washington St.

Mina Sheedy, Esq., 76 Main St. is present to represent, 187 East Main St. LLC seeking Special Permit 1.9 to alter/expand a non-conforming structure convert 1 to 3 family to allow construction of new addition and conversion from 1 family to 3 family.

Atty. Sheedy shares her screen to review the revised plans that were submitted. The Applicant has redesigned the addition so that it is perpendicular to the existing structure and so that it will blend into the existing roof. The size of the units have been reduced from 1008 sq. ft. to 880 sq. ft. They are also now all 2 bedroom units. They are in favor of adding the condition that the tree that abuts the property at 7 Curtis St. not be removed or trimmed greatly. They have added storage areas for all apartments. This project will have to go to the Engineering department for approval.

The Members state that they like the new plans much better and appreciate the effort the Applicant has gone through to meet the Members and neighbors requests.

Speaking in favor: None

Speaking in opposition:

Ms. Provost, 6 Whitmore St. is present to represent her mother who is an abutter. She is still concerned with the addition being close to her home, parking and making it a 3 family. She would like to see a fence dividing the property for privacy.

Jenny Burns, 7 Curtis Sq. is concerned with trash storages and would like them to have an enclosed area for the trash. She would also like them to add some privacy fencing and to keep the before discussed tree.

The chair informs her that the building will be at least 30' away from their property line.

The Chair closes the public hearing.

Rebuttal:

Atty. Sheedy rebuts the comments made by the opposition.
Her client would be agreeable to a condition of trash storage and not removing the tree.

Mr. Sanborn shares his screen of the floor plans for the Board to review the dimensions.

Ms. Schlichte moves to approve a Special Permit 1.9 to alter/expand a non-conforming structure and a Special Permit to convert 1 to 3 family to allow construction of new addition and conversion from 1 family to 3 family with the following conditions;

1. The tree in the rear yard will remain with the understanding that it may be lightly trimmed.
2. That there be a secure enclosed trash area.
3. That there be a 6' fence along the rear property line between the neighbor at Whitmore St. and Curtis Sq.

Mr. Nimon seconds
All in favor, 5-0

New Business:

273 Western Ave.

Robert Visnick, Esq. of Cape Ann Law, 46 Broadway, Rockport, MA is present to represent, Renee & Peter Libro seeking Special Permit 1.9 Alter/Expand non-conforming structure to allow construction of a second floor addition over the existing garage.

Ms. Pratt recuses herself.

The Applicant would like to put an addition on top of their garage for a master bedroom. There will be no changes to the footprint to this structure.

Speaking in favor: None

Speaking in opposition: None

Ms. Schlichte moves to approve a Special Permit 1.9 Alter/Expand non-conforming structure to allow construction of a second floor addition over the existing garage.

Mr. Nimon seconds
All in favor, 4-0

8 Mt. Vernon St.

Atty. Robert Scarano 1147 Main Str. Ste. 106, Tewksbury, MA 01876 is present to represent, Joseph & Maria Frontiero appealing the Building Commissioners decision concerning the construction of a deck located.

Mr. Cannavo states that he filled a disclosure form with the City Clerk today regarding a conflict of interest with the State Ethics Commission, as an abutter to this property is a relative of his. This will not interfere with his decision or weigh in at all and he will be able to make a fair and honest decision.

Ms. Pratt recuses herself.

Mr. Nimon discloses that his son owns a 3 family on 7 Oak St. for which he is the property manager. He has no problem hearing this Application and does not feel that this is a conflict of interest.

The Applicants were directed to go to the ZBA by Bill Sanborn, Building Commissioner for the City of Gloucester, regarding the construction of a deck on their home. They feel that the deck conforms to the bylaws of the Zoning Ordinance and should not need to return to the ZBA for relief.

Mr. Scarano explains that the deck complies with the rear yard setback, however, there is another deck on the property that Mr. Sanborn denied a demolition permit for. Mr. Frontiero wanted to demolish a portion of this deck to make it conforming.

The Chair confirms that the current deck was constructed without a permit and Atty. Scarano states that Mr. Frontiero applied for a demolition permit to demolish the part of the deck that was non-conforming. The last decision that was before the ZBA went to Superior Court. Mr. Sanborn feels that due to the decision in Superior Court, Mr. Frontiero must appear before the ZBA to receive relief for the new roof deck.

Mr. Nimon confirms that the Variance requested will be above the Variance that was granted and Atty. Scarano states that he is correct.

Mr. Sanborn gives the Board an update on what has happened in the past and shows the plans that were agreed upon as part of the settlement.

Mr. Frontiero applied for and was granted a side yard Variance to construct an all glass sun room in 2004, with the condition that Mr. Frontiero cut back the sun room 4'. During a site visit it was discovered that Mr. Frontiero was not building what was approved and was brought back before the Board where his new plans were denied.

They went to Superior Court where it was returned back to the ZBA for a settlement. The ZBA agreed to allow Mr. Frontiero to build what was previously approved by the ZBA. There was no deck on top of the sunroom in the approved plans. It was only a 1 story addition. Mr. Sanborn feels that when you alter the approved Variance, you must go back before the Board.

Mr. Sanborn states that during the research for this meeting the following issues were revealed. The 2 decks off of the sunroom were not approved, nor was an existing enclosed alcove area addition. None of these changes were permitted and brings the lot coverage percentage over the allowed amount. Mr. Frontiero does not have a Variance for lot coverage or for rear yard setback. Mr. Sanborn would like the Board to require a certified site plan by a surveyor.

Speaking in favor: None

Speaking in opposition:

Joel Favazza, Esq. of Seaside Legal Solutions, 1234 Main St., is present to represent the Ferrara Family at 6 Mnt. Vernon St.

Mr. Favazza shares his screen and goes over the plans submitted by Jason Gove. They feel that the plans that Mr. Frontiero is using are inaccurate and that the wood deck is over their property line and does not comply with the required setback.

Ida Shaker, 11 Maple St. feels that the stop work order should be upheld and reads from the structural Engineer report discussing the fence that is attached to the deck that is being discussed along with the integrity of the foundation that the desired deck is on that is crumbling. She is concerned that the foundation will not support the increase in weight of the roof deck and that they should have respected the City's codes.

Rebuttal:

Mr. Scarano doesn't recommend that his client speak during opposition as his hand is raised. They Board does not recognize Mr. Frontiero and lowers his hand.

Mr. Scarano rebuts Mr. Sanborn's testimony.

Ms. Schlichte moves to appealing the Building Commissioners decision concerning the construction of a deck located.

Discussion by the Board:

The option of Mr. Frontiero demolishing the structure that is there and then builds it to conform and require him to come back before the Board for a new permit is discussed.

Mr. Sanborn feels that they would need to come before the Board to look at the whole project and not in pieces and discusses why the Applicant is before the Board this evening.

The Chair discusses the repercussions of reversing the previous Boards decision.

Ms. Schlichte moves to approve the appeal of the Building Commissioners decision concerning the construction of a deck located.

Mr. Nimon seconds

All Members vote No

The appeal was denied, 4-0

6 Mt. Vernon St.

Petition of Kimberly Mackey and John Rogers appealing the decision of the Building Commissioner concerning a zoning violation involving a deck located.

Ms. Pratt recuses herself

Kimberly Mackey, 139 Bray St. is the owner of 4 Mnt. Vernon St. and is appealing the decision on a deck at 6 Mnt. Vernon St.

Ms. Mackey confirms that the Board has received her submissions and gives the Board a summary of her dealings with the Building Department and the Building Commissioner over the past year regarding this matter.

The deck was built 24" from her property line with no permit and is right outside her tenant's bedroom. Ms. Mackey issued several complaints to the Building Dept. beginning in June 2020, and was told by Mr. Cefalo that it took time to get an inspector on the property due to Covid and then that it met compliance. In August she was told by Mr. Sanborn that the Ferrara's were going to hire a surveyor to check where the property lines where. In September, the Ferrara's took 2 feet off of the deck, but not on the side that she feels is over her property line. She spoke to Mr. Sanborn and was told that the Ferrara's made the corrections and that the deck is now in compliance, which she feels it is not. Mr. Sanborn sent an inspector to the site and a stop work order was eventually issued, but not until after the deck was completely built. In October she was told by Mr. Sanborn that he sent someone down to the property to do an inspection and that there is no evidence of new construction on the deck. That the deck was grandfathered in because it was built over 10 years ago and that she would have to prove that it wasn't built over 10 years ago.

The Chair questions what the Board could do in this case as the Building Commissioner has taken action and issued a stop work order and it working on the issue. He informs the Applicant that her complaint is a personnel issue.

Mr. Sanborn understands Ms. Mackey's frustration and agrees that this issue did not get the attention that it should have. The Building Dept. has no records that show what was there before this deck was built. He apologizes to Ms. Mackey for all of the miscommunications. This case has been reopened and is an ongoing investigation. They have put close to 60 man hours into this case in the last 2 months and have asked the Ferrara's to put the deck back to what it was originally. They made an attempt to do so, but Mr. Sanborn feels that it has still not been done and they are still working with them to do so. His department will continue to work with the Ferrara's until they feel it is correct. He has uncovered some documents that he feels gives him a good idea as to what was there before the Ferrara's altered it.

He suggests that the Board continue this Application until they can come back with a finding and make sure that Ms. Mackey is satisfied.

Rebuttal:

Ms. Mackey doesn't feel that she should have to wait any longer. She feels that the rules made by the City should be followed.

The Chair informs Ms. Mackey that these are not decisions that this Board can take action on. She needs to allow the Building Dept. time to finish the process.

Joel Favazza, Esquire of Seaside Legal Solutions, 123 Main St is present to represent the Ferrara's at 6 Mnt. Vernon St. His client understands that Mr. Sanborn is going to require that they return the deck back to its original form and they intend to work with Mr. Sanborn to put it back to where it exactly was. Moving forward they understand that any changes to the deck will require a building permit and that they must keep within the building requirements.

Ms. Schlichte moves to continue this application to the 2/11/2021 meeting to continue to monitor the situation and insure that they restore the deck back to what it originally was.

Mr. Nimon seconds
All in favor, 4-0

New Business:

Discussion by the Board:

The Chair reminds the Members that the decision for the YMCA comprehensive permit is ready to be reviewed and signed.

Motion to adjourn was made at: 10:28 PM

Motion by: Ms. Schlichte
Second by: Mr. Nimon