



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

ZONING BOARD OF APPEALS

Meeting Minutes

7:00 P.M., March 29, 2018

Kyrouz Auditorium, City Hall

Board Members Present: Francis S. Wright, Chairman
David B. Gardner, Vice Chairman
Michael C. Nimon
Joseph Parisi, III
Sage Walcott

Alternates: Kris Howard
Adria Reimer-Nicholosi

The Chairman called the meeting to order at 7:00 p.m.

Previous meeting minutes of February 22, 2018 submitted for review, motioned by Mr. Nimon and seconded by Mr. Gardner to accept as written.

Old Business:

Mr. Parisi motioned to accept the changes to the Birch Grove Heights decision and Mr. Gardner seconded.

New Business:

101 Western Avenue; scribe error on decision filed with the Salem Court of Deeds. The date needs to be corrected due to a typographical error, should the board approve this change the decision will be re-recorded. Motion to approve by Mr. Parisi and seconded by Mr. Gardner.

Continued Business:

87-R Wingersheek Rd: Attorney Mark Glovsky, Ruth Bennett Architect, GC and the applicants are present. Attorney Glovsky spoke of the new plans submitted which remove the roof from the existing deck on the ocean side of home. The Conservation Commission voted on these new plans and approved them at their meeting last week. He requests a modification to the application in requesting only a special permit based on case law submitted to the board.

Mr. Wright addressed the request for special permit only and not a variance referencing the Deadrick Case and discussed the position of the board regarding a new non-conformity vs. an intensification of an existing non-conformity.

Attorney Glovsky reiterated the requests in the application as well as the steps being taken to preserve the dune. He indicated the rationale for the variance request includes the topography of sand and soil issues, an extremely narrow lot with limited access and the hardship, which is a significant effect on the use of the home and enjoyment of the property by the owner.

Speaking in support: No one.

Speaking in opposition:

Jay Barry, 89-R Wingersheek Rd, Mr. Barry and his spouse Carol Martini, are against the application. There have been numerous variances granted to this property over the years. There is no hardship here; there is no reason for this structure to get any bigger than it already is, as it is too big for a property of 45 square feet wide. He would like an opportunity to review the newly revised and submitted plans and requested the hearing be continued to give abutters an opportunity to review them.

Mike Galasso, 8 Pebble Path also owner of 1 Pebble Path, attended Conservation meeting, requests the board read the minutes themselves as he feels that their (Conservation Committee) decision may not have been stated accurately. Mr. Galasso has read the zoning laws himself; the board's responsibility is to protect the abutter in his interpretation. The open space alluded to earlier is the space that they enjoy right now. By closing this in, it directly affects the abutters.

Jared Downey and Melissa Sallah of 4 Pebble Path are concerned with statements previously made. If everyone starts pushing out, these homes will be on top of each other. This project seems esthetic in nature, as there is already a walkway to an existing stairway and entrance. Mr. Downey and Ms. Sallah live there year round; the construction does not stop between the two houses owned by the Davis family.

Attorney Mark Glovsky in rebuttal answered the question of square footage by indicating they are not increasing the living space at all, the home is approximately 3,000 square feet. Mr. Wright asked the square footage of the porch; Mr. Glovsky did not have that answer and deferred to the architect. He also stated, when the porch is added the owner is willing to eliminate the roof over the side porch so it is just an elevated walkway. This does not give the result the homeowner would like but they are willing to make this compromise.

Mr. Gardner asked Mr. Glovsky to go over his stance on the need for special permit vs. variance one more time. He responded that intensifying an existing non-conformity would only require a special permit. If creating a new non-conformity, a variance would be required.

Mr. Parisi asked if this theory had been discussed with the Building Inspector, William Sanborn. Mr. Glovsky stated he felt Mr. Sanborn has not taken a position and that he supports the board's position. Mr. Wright stated, for the record, that the City Solicitors office is split on the issue.

Mr. Parisi indicated that when notice was received that the plans were going to change, he expected a bit more. A great deal of the board's concern was that the applicant wants to go to 1 foot 9 from the side yard setback and looking at drawings of front and side elevations there is absolutely no need to take the entire deck to 1 foot 9. He reviewed the drawings, there is no need to go this far out to achieve what is needed, this appears esthetic in nature on a house that already has six decks on it.

Board discussion, Mr. Glovsky asked the architect to step forward and explain the design of the deck. Ruth Bennett, the width is due to an existing bay window in the living room. The deck was widened to get past that window. Mr. Parisi said that is not necessary for the whole deck, that window is sixty feet away. Why are they grabbing at an extra 500 to 600 square feet?

Ruth continued saying, the main entrance is on the east side of the house; one goal was to create a “front door” for the family instead of coming from the side of the house.

Mr. Wright suggested the applicant continue to work on the deck plans and come back with new drawings at the next meeting.

Mr. Parisi motioned to continue the meeting to April 12, 2018 and Mr. Howard seconded the motion.

77 Langsford St:

Mr. Wright and Ms. Reimer recuse themselves. Mr. Gardner assumed the chair. Attorney Joel Favazza presents for the applicants. He had a point of housekeeping an amended dimensional chart was dropped off along with a new sheet A-1 regarding modification to exterior staircase. In 2010, a tree fell and crushed the building that had been on the site. In April 2011, zoning relief was granted to build the structure currently there. Current use is commercial on the first floor and office, studio space on the second. The application is to create a single one-bedroom unit in that second floor space. This is a change in use to multi-use with one dwelling unit. Attorney Favazza addressed the standards which the board would use to vote in favor of this application.

Speaking in opposition: No one.

Speaking in support:

Butch Roth, 1054-R Washington St, He also has a business in Lanesville and lives above it. In the Lanesville area, it is not uncommon to have structures like this one; it is the fabric of the community. He supports this project fully.

Vote of the board: Approved

Voting in favor: Mr. Gardner, Mr. Nimon, Mr. Parisi, Mr. Walcott, Mr. Howard.

31 Old Salem Rd:

Mr. Wright discussed the legal issues of this case, the issues raised by the DPW as well as abutters with issues of access, etc., is very complicated and a lawyer is strongly recommended to assist with this application. Mr. Jabba stated he feels he can explain many of the issues that arose after the chair suggested he retain counsel. He continued, at the last meeting he was given a letter stating many of the issues with this land; since then he has looked into many of these issues. He requested the opportunity to explain what he has learned.

Mr. Jabba provided to the board a handwritten deed, a certificate of taking from the city dated 1907; it is difficult to read at best. His research showed that Old Salem Path is private property; there is no legal basis for public use of the property, which continues through the path and into Ravenswood Park. The city erected the gate prior to 1980 to control entry to the park. Mr. Wright asked if there was a road, private or public, beyond the gate. Mr. Jabba responded there is a walking path but no legal deed or easement by prescription that allows public use. The previous owner had received a letter from the

City requesting to do work on the property to use it as fire access deeper in the woods. However, there is no legal basis for public use or a public road on the path leading into Ravenswood Park. When asked by Mr. Wright why it is not a public road Mr. Jabba indicated that according to the deed and plans portions of the land are private property. On the Certificate of Taking, the City granted abutters use of the road, to pass and be passed for purposes of accessing their property as long as use of the road as taken is not interfered with, that being to access Bond Reservoir.

Mr. Jabba provided the board with copies of a zoning decision granting access and allowing a house to be built on the opposite side of the road; this decision was granted September 25, 1980. This was for 29 Old Salem Road, which is across from where Mr. Jabba would like to build his home. The homeowners are using the same road for access to their home that Mr. Jabba would use to access his. Mr. Wright stated the City's position is that Mr. Jabba has no rights in the right-of-way and that is not something the Zoning Board of Appeals can decide. Mr. Jabba stated the document dated 1907 states he has access, which conflicts with what the City Attorney has said.

Mr. Wright motioned to continue the hearing to April 26, 2018 to give the applicant time to obtain counsel and then return to the board. Mr. Gardner seconded the motion.

5 High St:

Mr. Wright and Ms. Reimer recuse themselves. Mr. Gardner assumes the chair. Tim Thurman of Tree House Design is present on behalf of the applicant who is also present this evening. He provided to the board a site plan with a different parking configuration than originally submitted; he also stated that they were not requesting front yard setbacks. Three letters of support were submitted to the board for review during Mr. Thurman's presentation. This is a single-family dwelling with five bedrooms in it; the applicant would like to change it to a two family dwelling with a one-bedroom apartment on ground floor and a two-bedroom apartment on the second floor. The exterior of the building will be expanded and this requires a special permit. The new building area square footage will be approximately 37 square feet, which is quite modest. As a two family home, a second egress must be added for the second floor apartment.

No one spoke in favor or in opposition.

Mr. Gardner noted there was a letter of opposition from an abutter at 1039 Washington Street, which he read it into the record. Mr. Thurman indicated these abutters are much further forward, facing Washington Street; this really is not affecting them. There is another building, under construction by Mr. Flint and this is what was referred to in the letter; he reiterated the need for smaller rental units for people who want to stay "in town". He does not feel this is detrimental to the neighborhood.

Jim Flint in response to the letter of opposition stated he was quite surprised; he related a conversation he has had with the abutter at 1039 Washington Street, which he feels is contradictory to what she wrote in her objection.

Vote of the board: Granted

Voting in favor: Mr. Nimon, Mr. Parisi, Mr. Walcott, Mr. Gardner, Mr. Howard

35 Fuller St:

Mr. Parisi recuses himself. Attorney Mark Nestor presents for the applicants, Mr. Wright asked if he has seen a for sale sign on the property. Attorney Nestor responded yes, they are looking to do both renovation and sale. No changes just an extension of the decision as requested in the application.

No one spoke in favor of the application.

Speaking in opposition: Jerry McCarthy, 33 Fuller St, direct abutter on the right hand side. He was at the original meeting, and has two areas of concern, those being parking and privacy. There is a chain link fence around the property now. He is concerned about the expansion toward his property and the encroachment of a driveway cut in as well. He would like a fence installed to replace the trees taken out for the driveway. He noted as well, street parking is an issue in this area; especially in the summertime, often a car trying to squeeze into that very last, small space creates troubles getting in and out of his driveway.

Vote of the board: Granted

Voting in favor: Mr. Walcott, Mr. Gardner, Mr. Nimon, Mr. Wright, Ms. Reimer

28 Leonard St:

Mr. Wright recuses himself. Mr. Gardner assumes the chair. Attorney John Cunningham presents with the applicant as well as the architect for the project. The applicant proposes to tear down the existing home and replace it with a modern, energy efficient dwelling. The plans were shown to neighbors and all abutting neighbors supporting the project have signed a petition. The existing lot is non-conforming and the new home will increase the non-conformity being closer to the street in one location. Attorney Cunningham stated the shape of the lot contributes to the hardship.

Speaking in opposition:

Constance Mason, 25 Leonard Street, concerned for the Annisquam Exchange, adjacent to the property. The loss of street parking will negatively affect the Exchange. Walnut Street is too narrow. Rebuttal from Attorney Cunningham who stated Mike Hale of DPW indicated the exchange had space around them that they could use to create additional parking if they wanted to.

No one spoke in support.

Mr. Parisi asked for clarification for a request for a variance to exceed height limits, mentioned in the narrative of Part G in the application. Attorney Cunningham confirmed the request for a variance for front yard setback and lot coverage.

Vote of the board: Granted

Voting in favor: Mr. Parisi, Mr. Walcott, Mr. Gardner, Mr. Nimon, Mr. Howard

Mr. Nimon wanted to go on record stating he wishes the applicants well with their project, he feels "this is a very large house replacing a home not nearly as large; it is a very substantial house, it's going to feel like a substantial house" he is a bit surprised that people living directly in that area have no concerns. This is going to be a very large house. Mr. Howard noted he was in agreement with this statement.

12 Mathieu Hill Rd:

The applicant presents this evening relating the history of purchasing the home three years previously, one reason for the purchase is that it has an in-law apartment, occupied soon by his mother-in-law. The proposed garage would provide storage space, which is lacking due to the apartment in the home. Mr. Wright asked why the garage is located in the area it is; there is a wall mid-way through the yard, which limits building in that direction, he would also like to limit disruption of water views for his neighbors and himself.

No one spoke in favor or against

Vote of the board: Granted

Voting in favor: Mr. Gardner, Mr. Nimon, Mr. Parisi, Mr. Walcott, Mr. Wright

New Hearings:**29 Way Rd:**

Applicants present this evening he and his spouse purchased the home in 2009 and began living there full time in 2014. The proposal will add a bedroom laundry room and bath so they may remain in the home as they age. Until 1994, this house was on a larger piece of property; their lot was carved out of this larger property then, resulting in a lot of approximately 27,000 square feet and a very irregular shape.

No one spoke in favor or against.

Vote of the board: Granted

Voting in favor: Mr. Howard, Mr. Wright, Mr. Gardner, Mr. Nimon, Mr. Parisi

15 Silva Ct:

The applicant submitted a request to withdraw the application without prejudice. Mr. Parisi motioned to accept the withdrawal, Mr. Nimon second the motion. Application withdrawn without prejudice.

Election of Officers:

Mr. Parisi nominated David Gardner for Chairman, Mr. Nimon seconded. Vote of the board: Unanimously in favor.

Mr. Gardner nominated Joe Parisi for Vice Chairman and Mr. Nimon seconded. Vote of the board: Unanimously in favor.

Mr. Parisi nominated Sage Walcott for Secretary and Mr. Gardner seconded. Vote of the board: Unanimously in favor.

A motion to adjourn was made at 9:22 p.m. by Mr. Parisi, it was seconded by

Adjourned.