



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

ZONING BOARD OF APPEALS
Meeting Minutes
7:00 P.M., August 30, 2018
Kyrouz Auditorium, City Hall

Board Members Present: David B. Gardner, Chairman
Joseph Parisi, III, Vice Chairman
Sage Walcott
Kris Howard
Michele Harrison

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

Previous meeting minutes of August 9, 2018 were not ready for review and will be reviewed next at the next meeting on September 13, 2018.

Old Business:

None

New Business:

The Board welcomed its newest member and Clerk, Alison Battle, at tonight's meeting.

Continued Hearings:

4 Pigeon Lane:

William Brown, Owner of 4 Pigeon Lane, appeared at 6:30 pm and asked Mr. Gardner and Mr. Parisi to withdraw his application without prejudice and to not have to remain for the meeting.

Mr. Parisi moves to accept

Mr. Howard seconded the motion

Vote of the board granted

Voting in favor: Ms. Harrison, Mr. Howard, Mr. Parisi, Mr. Gardner, Mr. Walcott

10 Joseph's Way: Ms. Harrison recused herself

Attorney Deborah Eliason, of Eliason Law Offices, 63 Middle St. Gloucester, MA presents on behalf of the applicant Michael and Marny Powers along with their Contractor John Lavie.

Last meeting questions were raised with the application and Attorney Eliason was hired to represent the Powers and ensure that all of the board's questions are answered.

The Powers are demolishing and reconstructing a non-conforming structure. They are increasing the left side yard setback from 2' to 6' and increasing the front yard setback from 10' to 21'. All other setbacks are met which makes it a conforming structure.

Board was concerned at the last meeting as to whether or not to move the house further away from property line at between 8 and 10 Joseph's Way. The Power's prepared a plan to do so, but were told by the building Inspector that they cannot because it would create a new encroachment that would require both a variance and a special permit instead of just a special permit. Due to this they are resubmitting the original plans that were submitted at the last meeting on 8.9.18.

The Powers are moving the house further back so they will not have the need to park in the right of way. Plans are shown to board members.

Mr. Gardner states that the board is surprised that no changes have been made as they were clear during the 8.9.18 hearing that the board felt that moving the home was the right thing to do for the left side neighbor and that the board would be willing to grant a variance for them to move the house over to improve the situation.

The Powers did have new plans drawn up that move the house back that they would be happy to submit if the board will in fact grant the variance discussed previously, but it will create a new non-conformity, as moving the house back will conform to the left side neighbor but also encroach to right side setback.

Speaking in Favor:

John Lavie, Contractor. States that everything on that side of street is non-conforming anyway and that they are happy to do whatever the board decides, they'd just like to get it approved.

Speaking in Opposition:

Gene Limone, 6 Joseph's Way

Questions why can't the Powers just build within the required 10' setback instead of asking for a variance/special permit and scale down the size of the house. He states that the homes in this neighborhood are all small single and second floor cottages not McMansions. He likes that off street parking that has been added, but is concerned with the blasting that will need to be done for a foundation, as there is a full size basement in the plans and they sit on a ledge.

Donald Fox, 3 and 12 Joseph's Way (the parcel at 3 Joseph's Way has not been built on)

He is concerned with the blasting and the fact that the street will need to be pulled up to put in a sewer connection. He feels that the house is too large for the property and that a parking lot in front of the house will ruin the décor and atmosphere of the neighborhood.

Judy Cavagnaro, 8 Joseph Way, Main abutter.

Doesn't understand why they went back to the original plan. She is upset that she will lose her view of a big rock. She states that no other house in the neighborhood has a basement and is worried about her 100 year old foundation being damaged due to the blasting that will need to incur for the basement.

Rebuttal:

Attorney Eliason addressed the issues brought up by opposition.

Mr. Gardner would like Attorney to address the option of the variance and special permit in the hardship.

Attorney Eliason discusses that the lot is a smaller lot that narrows as it goes back. The owners will be moving the house as far back as they can on this lot, however, due to the topography of the land, the house does need to be at the front of the lot.

Discussion:

Mr. Parisi is in favor of the special permit and variance and prefers the plan to move the home as this solution, he feels makes the best of a tough situation. The existing home is smack on the boundaries and very close to the street. He suggests that a condition be made that there be off street parking in this area and not depending on the right of way or the street.

Mr. Parisi states that home is a very modest size, only 27' X 44' if it were any smaller it would be a waste and a horrible opportunity. He thinks that pulling the house back and to the right benefits the neighbor to the left who objected in the beginning. This addresses the concerns of shadowing and privacy and being too close to your neighbor. It's an improvement to owner and neighbor.

In regard to the special permit, he agrees that it is not detrimental to the neighbor, however, keeping it where it is would be more detrimental to the neighborhood. Moving it solves any special permit issues that he would have had. The Fox home is considerable far away. He also stated that the blasting is not the board's jurisdiction and that there are many safeguards in place to protect the other homeowners.

Attorney Eliason requests a motion to include the date of the plan accepted as August 20, 2018, so they understand that the plan being accepted is the one that was submitted tonight.

Mr. Parisi motions to accept the variance and special permit for a right yard setback for the plan dated 8.20.18 that they received tonight, with the only requirement being that they include off street parking.

Mr. Gardner seconded the motion

In favor: Mr. Parisi, Mr. Howard, Mr. Walcott, Mr. Gardener

Vote of the board is granted

**Mr. Gardner requested that Attorney Eliason prepare draft of decision*

35 Norwood Heights

Attorney Mark Glovsky, 8 Washington St. Beverly, MA speaking on behalf of John and Holly Perry. Looking for a variance and special permit.

No opposition during last meeting, Board requested owners to make a more significant effort to increase the lot size to be 20,000'. 41:38

Lot has been expanded as much as possible without encroaching too much on main house lot. They are building a small 1 bedroom house like a carriage house to the main house which is a 4500' 6 bedroom home.

Lot is an island surrounded by 4 streets with an existing non-conforming structure and it's impossible for the Perry's, without raising the structure, to divide the property without relief from this board. They feel they have done what is best for property, neighborhood and neighbors are in agreement.

Mrs. Harrison asked if it will be plumbed. The house will be used as a home office. No plumbing, only electricity.

Mr. Howard questions the board on putting in the previously discussed condition on the main lot as no further divisions of the main lot. The Perry's are fine with this condition as their plan is to preserve the lot as it is now. The lot is just being reconstructed.

No one spoke in favor of the application

No one spoke in opposition.

Discussion:

Mr. Howard defines the criteria before the decision.

Applicants are looking for a variance in respect to lot area in amount that was stated in lot 2 and also front yard for lot 2 is 20.5' for lot 1 need a 10' rear yard.

A Special permit to alter and expand a non-conforming structure use and variances for front and rear yard setback and lot area and for section 3.13 to change size and shape of lot to enable applicants to divide 1 lot into 2 separate lots. Mr. Howard finds that the proposed changes will not increase the property in non-conformity or be a detriment to the neighborhood

Ms. Harrison addresses the issue of hardship and finds that relief should be granted as the lot is an island surrounded by roads with ledge outcroppings in some areas that prohibit construction.

Both are impressed with the public support.

Mr. Howard moves to approve both special permit and variance

Mrs. Harrison seconds

Vote of the board granted

Voting in favor: Ms. Harrison, Mr. Howard, Mr. Parisi , Mr. Walcott , Mr. Gardener

Mr. Gardner requested that Attorney Glovsky prepare draft of decision

New Business:

988 Washington St. Ms. Harrison has recused herself.

Mr. Richard Bernstein owner for 22 years and architect is requesting a special permit for a 1 story addition of the second floor in the rear of house and a deck.

The current house was built in 1888, subdivided in the 1960's where it was put in a non-conforming status. Lot is narrow, ½ of the property is not parallel with the house and existing deck is no longer safe and must be torn down and replaced. Mr. Bernstein would like to put a deck on top of the roof of the addition and a balcony and feels it is in harmony with other homes in this neighborhood.

Mr. Bernstein re-assed the submitted plans due to neighbor's complaints before tonight's meeting and is asking the board for the following;

- A. Approve the plans for a special permit as they have been submitted.
- B. Allow him to submit new plans tonight that take out the deck.
- C. Grant him a Continuance.

Mr. Gardner, states that they will only act on application and plan submitted to the board previously for tonight's meeting. Plans cannot be changed on the night of a meeting.

No one speaking in favor

Speaking in opposition

John Maney, 3 Compass Way

Abutter to 988 Washington St. Mr. Maney submitted a letter of his concerns to the board and gives a summary of these concerns during the meeting. He believes that there are errors and omissions in the plans submitted. Plans do not show foundation type, depth or what will be done if ledge is encountered. Some plans show porches in some plan elevations and not in others. Mr. Maney feels that the property lines and stakes that Mr. Bernstein is using are incorrect and that a surveyor was not used. Mr. Maney Requests that if the special permit is granted, that the board take measures to insure that he is going by the correct property lines and that the neighborhoods right of way property is protected and not used as a dumping ground.

George Spartichino, 23 Flint Rock Road Lexington, MA

Summer Resident. Parents purchased property 50 years ago.

Asks board to not allow anything that encroaches other owners. He is only for doing what is legally allowed on the property. It has been a bad relationship with the neighborhood and Mr. Bernstein.

Marian Marsetta, 8 Mount Locust Place

Read and submitted a letter for Ann Marie Nehme and Curtis Bowman on 994 Washington Street, who could not attend the meeting. They are not in favor of granting Mr. Bernstein a special permit and state that Mr. Bernstein has a long history of putting himself first before other neighbors. Mrs. Marsetta believes that Mr. Bernstein is secretly putting in a 2 family home. She is also worried about blasting and existing runoff. Asking to not grant the special permit.

Maryann McShey, 6 Mount Loucst Place, Gloucester, MA

Retired Police Officer for the Westford Police Dept. Opposed to the special permit. Her house is the old Vernon-Cliff House, A very old and has a stone foundation and there is ledge in the area.

Many calls to police and fire dept. due to issues with septic hose in drain for 4 years. They do not get along. Worried about having to pay to sue Mr. Bernstein if this goes through and there are issues. This would be a hardship for her and her family.

Rebuttal:

Mr. Bernstein addressed the issues brought up by the opposition and requests a continuance to amend his plans and eliminate the deck.

Mr. Howard motioned to continue to Sept 13, 2018

Mr. Parisi seconds and confirms that Mr. Bernstein will be able to produce new drawings in 1 week. Mr. Bernstein stated that he can get them in on Friday Morning 8.31.18

30 Blackburn Dr. (B4)

Attorney Joel Favazza of Seaside Legal Solutions, 128 Main St., Gloucester is representing Varian Semiconductor Equipment Associate Inc., a wholly owned subsidiary of Applied Materials. Known locally as Varian, located in Blackburn Industrial Park where they have .5 million sq. ft. in manufacturing and research space and employ over 1200 people. They have been in the process over the past few years of continuing out into this area and came to the board a few years ago to install a

nitrogen generation plant so they could manufacture the gas on site instead of having trucks bring it into the city.

Looking to expand on their land at B4, on a concrete slab that used to be the old nitrogen storage slab. Looking to expand the area that is currently a gas storage space next to the lab space. They are looking to expand this lab space and in doing so are going to displace the gas storage room. They are going to take this opportunity to build a new gas storage facility that is up to modern building and safety standards on the outside edge of this building on the east corner where the concrete slab is. In the same 16.5 x 37.5 footprint. The building district is listed as a business park with 40' front yard setbacks. This is a big building and on this parcel has 3 roads creating 3 front yards the lot line for this parcel cuts through this lot itself which makes the existing building non-conforming.

They need a special permit to alter and expand this non-conforming building and a variance due to the private way getting closer to this lot.

Building itself has been vetted by an architectural firm and by Code Red, a third party the building dept. uses. Code Red found that the state reg. for this type of room needs to be within 30' of a property line and the city pushed it to 40'. Will meet all codes

Interior of the building that will be holding gas tanks has segregated storage, gas detection system. Very significant. It can detect 2 parts per billion.

The gas storage room will not increase capacity or change the way gas is being stored on site it will just be in a safer newer space roughly 20' off the property line instead of the required 40'.

He is asking for a 15.14' variance but with the staircase it becomes an 18.4'. Staircase is not a structure, it's not enclosed, cement stairs with metal railing.

37.5' long, 16.5' deep 37' wide, single story 12' high.

No one spoke in favor

No one spoke in opposition

Ms. Harrison motioned to approved the application

Mr. Howard seconded

Vote of the board: Granted

Voting in favor: Ms. Harrison, Mr. Howard, Mr. Parisi, Mr. Gardner, Mr. Walcott

97 Wingersheek Rd. Ms. Harrison recused herself

The applicants are being represented by Attorney Deborah Elison, Jason Gove Architect is also in attendance. This is a recently purchased property with a preexisting structure that was gutted to the studs by the previous owners. They are asking for a special permit for alteration, demolition and new construction of a nonconforming structure on a non-conforming lot and a special permit for building height up to 35'. The existing house is approximately 9' from the left side yard boundary. The current zoning regulation is 20' all dimensional requirements will be met except for frontage which will remain unchanged and height which is required due to the homes location being in the flood zone. Due to new FEMA regulations, the Erickson's will be required to elevate the structure to make current home inhabitable. Erickson's have strong ties to Gloucester and would like to build a New England style 2 story family home that they would eventually live in full time.

Mr. Jason Gove, Architect, 4 Autumn Lane:

Discusses the challenges of the project.

No one spoke in Favor

Speaking in Opposition: Mary Brady, 93 Wingaersheek Rd.

Not completely in opposition, and appreciates that the Erickson's stayed within the setbacks. However, she is concerned that the Conservation Commission and Health Dept. permits are pending. If the Conservation Commission requests that the home be pulled further back from the beach towards her house than the height could become an impact on her home.

Joseph Russo, Trustee of 99 Wingaersheek Rd.

An immediate abutter who is concerned with the angle of the lot lines. He is worried that the shed belonging to the applicant may be on his property and is worried about losing land.

He is also concerned that they may be using the wrong setbacks to build the house and it may be closer to his property than currently measured.

Mr. Gardner: States that this is not something that the board can determine and suggests that he and the Erickson's hire a surveyor.

His next concern is with his backup well and presents pictures to the board.

He feels that in the zoning plan that is being proposed, the well is 75' from the proposed leaching field which does not conform to the new compliances that have changed over the years. Mr. Russo states that per the Board of Health should now be 150'.

Since the lot line between 97 Wingaersheek Rd. and 99 Wingaersheek Rd. is unclear, he feels it is hard to determine where the new building will be and if it will meet the setback requirements. This also makes it hard to determine how much of his view he will lose.

He would like them to find another place for the leaching field and stated that the Erickson's told them that they would try. He is also concerned that there is no indication of where the septic system will be.

Mr. Gardner asked to see the copy of the existing plot plan and suggest that he hire a surveyor.

Mr. Russo is also concerned that the applicants have not yet submitted plans to the Conservation Committee or the Board of Health as of 8.24.18 and requested that the Erickson's remove trees to accommodate the longer size of the house that they are building. He is also concerned that the size of this building is not in harmony of the homes in the abutting neighborhood as well as what the surface of the driveway will be. Mr. Russo would like to know about the Erickson's plan for runoff and parking and the number of pilings that will be used.

He goes on to discuss the cement slab he believes is buried in front of the existing home by the previous owners to protect the parcel. He is concerned with the vibrations that may occur from blasting and the damage they could cause to the abutter's homes.

Mr. Russo submitted copies of his concerns and multiple plot plans, topographical and aerial views of the property and a view from his home and other home in the neighborhood.

Rebuttal:

Attorney Elison addresses the issues raised and states that they have not been before the Conservation Board and Board of Health knowing that they would have to come back to Zoning Board if they are denied from one of the other boards anyway.

Mr. Gardner: Suggests abutters to attend the hearings for the other boards if they still have concerns.

Discussion:

Mr. Parisi discusses that this is an issue they see often in the Wingersheek area. Mr. Parisi is happy that the applicants are sticking with the setbacks and feels that they are improving the view by having a porch below a covered porch. Mr. Parisi discusses that everything that is being opposed or brought up is either ruled by other commissions or is a normal process of construction and that this board does not regulate on how a structure is built. Other issues such as the road, septic leaching and reserve belongs to the Conservation Commission or the Board of Health.

The special permit for building height is however determined by the Zoning Board of Appeals and due to the new FEMA regulations and that this home is located within the velocity zone, the applicants have no choice but to raise the structure for safety. This is what allows homes to still exist in these areas. This is a 3400 sq. ft. home which he feels is not a huge home and fits into the neighborhood nicely and is well designed. Mr. Parisi states that there is nothing to rule on with the shed at this time and is in favor of approving both special permits for the height and to alter and expand.

Mr. Gardner discusses that the proposed plans are not more detrimental to the neighborhood and agrees that the structure is well designed with respect to the height due to FEMA regulations. This is now a standard request and he doesn't see any issues with them going up another 4'. This is an impact but not a huge impact to the neighbors view and he also approves both special permits.

Mr. Gardner encourages the people with concerns to attend the Conservation Commission and Board of Health meetings to determine if the concerns discussed tonight are concerns of theirs as well.

Mr. Parisi motioned for approval of both special permits

Mr. Howard seconds

Mr. Gardner votes to approve both special permits and ads that this is under 2.4.5

Vote of the Board: Granted

Voting in favor: Mr. Gardner, Mr. Parisi, Mr. Walcott, Mr. Howard, Ms. Harrison

10 Old Bray St.

Gabriel Rossi III requesting a variance based on a hardship for doing any improvements on the house due to the size of the lot. It's a small lot R40 section with very small lots. He is requesting a variance for the front and the side setbacks. He is adding a deck that extends out 10' and runs the length of the house 31'.

Mrs. Scanlan sent in a nice letter to the board and is concerned that it is very close to the front door. He is hoping that the privacy lattice will help the matter as he is a quiet person. His other neighbor has given him the okay for the addition of the deck.

Ms. Harrison has some confusion with the site plan. The house has 2 fronts. Sumner St. and Old Bray St. She is concerned with the measurements and the challenge to build it. If he is not clear on the measurements and it's built there will be problems later on. Needs clear dimensions and site plan. There is no real site plan with the application.

She questions the height from ground to base of deck is not stated and Mr. Rossi does not know the exact measurements. Ms. Harrison also questions the slope of the yard and the height of the retaining wall. Mr. Rossi agrees that the height of the deck will be considerably high above the street, but he doesn't have any close neighbors.

Mr. Parisi: Is supportive but would like to see a plot plan, as a septic plan was used instead.

Mr. Howard: Is also supportive but would like to see a plot plan.

Mr. Gardner: Concerned with size. Would like to see a plot plan as well.

Mr. Gardner motions to continue to September 27, 2018 due to an inadequate site plan as applicant will not be in town for the next meeting date of 9.13.18, board requests that the plot plans be delivered to the Building Inspector's office before the September 27, 2018 meeting.

Mr. Howard seconds

In Favor of Continuance: Mr. Gardner, Mr. Parisi, Ms. Harrison, Mr. Walcott, Mr. Howard

Motion to adjourn was made at 9:48pm

Motion by: Mr. Gardner

Second by: Mr. Howard