

Zoning Board of Appeals  
Minutes  
July 9, 2018

A meeting of the Zoning Board of Appeals (ZBA) was held at the Stow Town Building, 380 Great Road, Stow, Massachusetts on July 9, 2018 at 7:30 pm.

Members Present: Edmund Tarnuzzer, Bill Byron, Mark Jones, Bruce Fletcher

Associate Members: Andrew DeMore

Absent: Ernie Dodd and Associate Members Ruth Kennedy Sudduth and Lee Heron

The Meeting was called to order at 7:30 pm.

**Public Hearing – 10 Dawes Road**

At 7:30 PM the public hearing to consider a Petition for Special Permit under Section 3.9 (Non-Conforming Uses and Structures) of the Zoning Bylaw for property located at 10 Dawes Road was called to order.

Attorney Alphen, representing the Applicant, explained that the lot is non-conforming as to size and frontage. Section 3.9.7.1 of the Zoning Bylaw indicates that if nonconforming single or two-family dwelling is intensified it is subject to a Special Permit. The Building Inspector feels this proposal is increasing the nonconformity because it is a larger structure and he agrees.

Attorney Alphen stated that the proposal does not create a new nonconformity as to height and property line setbacks. They have gone through the Board of Health and the Conservation Commission. The proposal includes an addition within the house but the primary addition is a garage.

ZBA Members questioned the size of the addition which appears to be greater than 198.2 sq. ft. as indicated in the Application. After reviewing the plan, it appears that the 198.2 number is actually an elevation and not floor area. Nicola Basty indicated that they are increasing the floor area from approximately 800 sq. ft. to approximately 1,950 sq. ft.. The existing building is currently a 1- story building and they are proposing a 2-story building. The structure is currently a small cottage and they are trying to make it a livable family home. They do not propose to raze the existing structure; they will build the second floor into existing structure. She noted the existing feel of the lot will remain.

Bruce Fletcher noted that it is hard to imagine the proposed addition will not impact view of lake from neighbor's house. Nicola Basty noted that the neighbor's house is closer to the road frontage than appears and most of the view is into the easement.

Don Hawkes stated that he owns # 9 and #8 Dawes Road and currently lives in # 8. Presently he can look to the lake from a bedroom window. Although this proposal will impact that view, he does not think it is a fatal flaw and won't raise objections. He understands they can do something on their lot. He also noted that he would lose the view even if it was a 1-story. In an ideal world, he would like to have a water front lot, but he does not. He would like to see less plantings that might obstruct his view. Nicola Basty said that is a reasonable request.

Nicola Basty explained that the proposal includes a bedroom above the garage. The second floor of the existing structure is just attic space. They will be building a second floor into the attic space

Bruce Fletcher said he wondered why they did not propose to build the addition in the back. Nicola Basty noted that they looked at all options and didn't have much option due to the septic location and wetlands.

Nicola Basty said the reason for the expansion is to provide for a bigger family. They love the location and area and want to improve the value of the land and neighborhood. They want their daughter to grow up here. She said they spent time with Conservation Commission, who recommended they may need a Special Permit. They are trying to be neighborly and hope they can answer all of the Board's questions.

The Board is in receipt of a memo from the Conservation Commission indicating that they issued an Order of Conditions for the project as proposed.

It was noted that the septic system needs to be moved because it would be too close to the foundation.

ZBA members said he would like to schedule a site walk.

Bruce Fletcher asked if they considered any other configurations. The Applicant explained that they can't move it to the opposite side because of the stream and the existing structure is already in the 35 foot wetland buffer. They would have liked to move closer to 8 Dawes Road but the well, septic and topography was a problem. What they propose is the only place to avoid the need for a variance without interfering with the septic. It was noted that almost every single property on the lake doesn't meet the setback requirements.

It was agreed to hold a site visit on Saturday, July 14 at 9:00 AM. Ed Tarnuzzer asked the owner to place stakes in the general location where the addition will be.

Bill Byron noted concern about the error in the square footage and the fact that the application says it is a ground floor addition and says nothing about a second story. There is nothing in the application that

tells him what they are really doing. Attorney Alphen said they can provide clarification so the Board will have the exact numbers before the site visit.

***Mark Jones moved to continue the Public Hearing to Monday, July 16 at 7:00 pm and to hold a site visit on Saturday, July 14 at 9:00 AM. The motion was seconded by Bruce Fletcher and carried by a vote of five members (Ed Tarnuzzer, Bruce Fletcher, Mark Jones, Bill Byron and Associate Member Andy DeMore).***

**Public Hearing - 34 Davis Road.**

At 7:55 PM the Public Hearing to consider Petitions for a Special Permit under Section 3.9 (Non-Conforming Uses and Structures) and a Variance under Section 4.4 (Table of Dimensional Requirements) of the Zoning Bylaw for property located at 34 Davis Road was called to order.

Present: Adele Kane St. Denis, Applicant, and Tom Dipersio of Thomas Dipersio, Jr. and Associates, Inc.

Tom DiPersio explained that the Applicant proposes to expand an existing 1 ½ story dwelling to 2 ½ stories and construct a screened porch on an existing deck. The proposed screened porch encroaches into the rear yard setback, requiring a variance.

The Applicant feels proposed expansion is in keeping with the bylaw and will not be detrimental to the neighborhood. The height of the structure will increase but will be well below maximum. There are really no residences where the view of the lake would be obstructed. The proposed expansion is not excessive and is in keeping with the neighborhood.

In response to questions raised by ZBA Members, Tom Dipersio stated the roof height is based on average grade to height of roof. The bay window, which extends just under 2 feet, is new.

ZBA Members asked if they have talked to the abutting property owner, Kathy Myles. Adele Kane St. Denis said they have not spoken to her but she has not voiced a concern. People, in general, are in favor of improving the property.

It was noted that the proposal is almost a full demo but will be on the existing foundation. They filed an application with the Conservation Commission who will hold a public hearing in August.

Adele Kane St. Denis noted the well pump is in basement and she believes they are increasing the gross floor area from 1,000 sq. ft. to 2,070 sq. feet. The current house was built in 1964.

Members noted receipt of a memo received from the Conservation Commission which indicates they anticipate the filing of a Notice of Intent for their August 7<sup>th</sup> meeting and that it is possible that the review of the project will result in changes to the plan as proposed.

It was suggested that this hearing be held open until it is determined if there will be a plan change as a result of the Conservation Commission Hearing. Tom DiPersio said they feel they have a good argument for the plan as proposed, as they are not increasing foundation or proposing any excavation. Therefore they would like to move forward on this application. He said they filed a Notice of Intent Application with the Conservation Commission and wanted to be sure the applications run in parallel.

Tom DiPersio noted they are not required to make changes to the septic system because they are not proposing an increase to the design flow. It was noted that it is an old system (cess pool).

Members noted receipt of a letter from Renee and James Haliday, 32 Davis Road, noting several concerns about potential impact to their house and property:

- How will their house hold up to the proposed demolition and hopes explosives will not be used?
  - Tom DiPersio noted that there will be no blasting as they will be building on the existing foundation.
- Damage to their stone wall at the front and side of their house, noting that the last time work was done at 34 Davis Road (Landscaping project) their stone wall was compromised.
  - The Applicant stated they have no plans to change the driveway entrance.
- Potential for changes in grade causing water to diver to their house.
  - The Applicant said no grading is required because they are building on the existing foundation.
- Asbestos disposal and potential for lead paint
  - The Applicant stated they started speaking to someone about asbestos disposal and noted there was glazing on the window. Both of those issues will be addressed as part of the demolition permit.

Jeffrey Hill, who also lives at 34 Davis Road, indicated that the proposed expansion is needed. It will not disturb anyone's view to the lake and there will be no change in the topography. They are very sensitive to Lake Issues.

The Chairman asked if Board Members are comfortable acting on the application tonight. Members noted that they would like to make a site visit.

***Bruce Fletcher moved to continue the Public Hearing to July 16<sup>th</sup> at 7:15 pm. The motion was seconded by Mark Jones and carried by a vote of five members (Ed Tarnuzzer, Bruce Fletcher, Mark Jones, Bill Byron and Associate Member Andy DeMore).***

It was agreed to hold a site visit on Saturday, July 14<sup>th</sup> at 9:30 am.

## **Election**

Members discussed annual election of Chair and Clerk.

Ed Tarnuzzer nominated Bruce Fletcher as Chair.

Bruce Fletcher nominated Ed Tarnuzzer as Chair noting that it appropriate for Ed to be chair in his last year. Ed Tarnuzzer said he is not sure that is the case, but if it is the will of the Board, he will remain as chair.

Ed Tarnuzzer nominated Bill Byron as Clerk. Bill Byron voiced no objection.

***Bruce Fletcher moved to appoint Ed Tarnuzzer as Chair. The motion was seconded by Mark Jones and carried by a vote of four in favor (Bruce Fletcher, Mark Jones, Bill Byron and Associate Member Andy DeMore) and one abstention (Ed Tarnuzzer).***

***Ed Tarnuzzer moved to nominate Bill Byron as clerk. The motion was seconded by Bruce Fletcher and carried by a vote of four in favor (Bruce Fletcher, Mark Jones, Ed Tarnuzzer and Associate Member Andy DeMore) and one abstention (Bill Byron).***

#### **Executive Session**

Members noted that there is no need to enter into Executive Session. Selectmen Brian Burke was present and noted he has an executive session topic concerning pending litigation to update the Board on.

***Bruce Fletcher moved to enter into executive session for purposes of discussion pending litigation. The motion was seconded by Bill Byron and carried by a unanimous roll call vote (Bruce Fletcher, Mark Jones, Bill Byron and Ed Tarnuzzer and Associate Member Andy DeMore).***

#### **Correspondence**

Members are in receipt of correspondence from Dirk Hart, 174 Barton Road to the Building Inspector with regard to 168 Barton Road. A bulkhead was constructed with in the 25 foot setback which was not included in the original plan. Karen Kelleher reported that the Building Inspector said he is requiring that they remove the bulkhead.

**Adjournment** - The meeting adjourned at 8:45 PM

Respectfully submitted,

Karen Kelleher  
Secretary