



TOWN OF EASTHAM

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EASTHAM ZONING BOARD OF APPEALS

MEETING MINUTES

Earle Mountain Room

January 7, 2016, 5:00 pm

ZBA members present: Edward Schneiderhan, George Reinhart, Joanne Verlinden, John Zazzaro, Stephen Wasby (Alternate)
ZBA members absent: Robert Sheldon
Staff present: Paul Lagg, Town Planner, Debbie Cohen, Administrative Assistant

ZBA vice chairman Edward Schneiderhan opened the meeting at 5:00 pm, explained meeting protocols and stated the meeting was being recorded.

Case No. ZBA2016-1– 640 Nauset Road Rear, Map 12, Parcel 5 (District F). Walter J. Popper and D. Fleet Hill, Owners, seek a variance pursuant to M.G.L. c. 40A s. 8 and 10 from Eastham Zoning By-law Section IX.A.5 (intensity regulations) to construct a single family residence on a non-compliant lot.

Seated on this case: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Attorney Ben Zehnder and Willow Shire, Applicant were present at the hearing. Attorney Zehnder described the proposal, explaining that Ms. Shire had a purchase and sale agreement on the property. He confirmed that the proposal would keep the existing driveway, was under the maximum size allowed by the National Seashore, and the proposed house would comply with setback requirements. Although the site had no frontage, access was included in the deed.

Mr. Wasby asked for clarification regarding who the appropriate applicant should be. He wondered if the hardship was really on the current owner rather than Ms. Shire. After discussion, Attorney Zehnder asked that the Board vote to include Walter Popper, Owner as a co-applicant.

A **MOTION** by Stephen Wasby to include Mr. Popper as a co-applicant in Case No. ZBA2016-1, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Mr. Wasby also read an email from the Building Commissioner regarding abandonment. There were no audience comments.

Ms. Verlinden read the **findings of fact**:

1. The property is located at 640 Nauset Road Rear (Map 12, Parcel 5) and is located in District F (Seashore).

2. Applicant has applied for a variance pursuant to M.G.L. c. 40A s. 8 and 10 from Eastham Zoning By-law Section IX.A.5 (intensity regulations) to construct a single family residence on a non-compliant lot.
3. In 1965 a portion of the lot containing all of the frontage on Nauset Road was deeded to the federal government leaving 3.557 acres with a single family residence and no frontage, rendering the lot non-compliant to the Eastham Zoning By-law.
4. In 2004, the home was destroyed in a fire. The Eastham Building Commissioner has determined that the property has not been abandoned due to ongoing maintenance to the landscaping and cultivation on the property.
5. Residential dwelling units are permitted within District F provided that any moving, alteration, enlargement, maintenance, or repairs will not increase the habitable space by more than fifty percent (50%) of the habitable space existing on September 1, 1959, nor the accessory space by more than 50% of the total habitable space.
6. The existing dwelling size in 1959 was 2,705 sf. The proposed dwelling size is 2,985 sf. This will result in a 10% increase.
7. Representatives from the National Seashore have been notified of the application for Variance as required under the Eastham Zoning By-law section V.F (Uses/Seashore District).
8. There are circumstances related to shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.
9. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner.
10. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
11. No abutters or parties of interest appeared in favor of or opposition to the proposal. No letters were received regarding the proposal.

A **MOTION** by Joanne Verlinden to approve the findings of fact as stated, **seconded** by Stephen Wasby.

In favor: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Mr. Wasby asked if any comment had been received from the National Seashore. Mr. Lagg answered that no comments had been received. Mr. Wasby suggested modifying #7. of the findings of fact to “Representatives from the National Seashore have been notified of the application for Variance as required under the Eastham Zoning By-law section V.F (Uses/Seashore District). There has been no comment from the National Seashore.”

A **MOTION** by Joanne Verlinden to modify the findings of fact to add to #7., **seconded** by Stephen Wasby.

In favor: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Ms. Verlinden read the **conditions**:

1. Any changes to the project plans stamped by the Town Clerk on 12/8/15, except those that are de minimis must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.

A **MOTION** by Joanne Verlinden to approve the conditions as stated, **seconded** by Stephen Wasby.

In favor: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

A **MOTION** by Stephen Wasby to **GRANT A VARIANCE** for ZBA2016-01 to construct a single family residence on a non-compliant lot, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Case No. ZBA2016-2 – 20 Salt Marsh Way, Map 20, Parcel 95A (District A). Christopher and Elisabeth Kelly, Owners, seek a Variance pursuant to M.G.L. c. 40A s. 10 from Eastham Zoning By-law Section IX.B.1 and IX.B.7 (setback requirements) to construct a garage less than fifty feet from the nearest boundary of a way.

Seated on this case: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Attorney Ben Zehnder and Christopher Kelly were present at the hearing. Attorney Zehnder reviewed the application noting all the criteria for variance.

Mr. Schneiderhan brought up a discrepancy in the Eastham Zoning By-law between sections IX.B.1, IX.B.6 and IX.B.7. After discussion, the Board decided that no zoning relief was required for the issuance of a building permit.

A **MOTION** by Stephen Wasby that no zoning relief is required for Case No. ZBA2016-02 pursuant to Eastham Zoning By-Law Section IX.B.6, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Case No. ZBA2016-3 – 2355 State Highway, Map 15, Parcel 87 (District E). 2355 State Highway LLC, Owner, seeks a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law Sections IX.B.2 (setback requirements) and VI.D (non-conforming uses) to alter a pre-existing, non-conforming structure by constructing a 900 sf addition.

Seated on this case: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Attorney Zehnder and Peter Doolittle, Owner, were present at the hearing. Attorney Zehnder described the proposal and indicated it would require Planning Board approval as well.

Mr. Wasby pointed out that an existing storage structure and fence were not included on the submitted site plan. Mr. Doolittle explained both structures were temporary and would be removed before the completion of the project.

Ms. Verlinden noted she had seen the addition listed as both 900 sf and 838 sf. Mr. Doolittle confirmed the project would be about 900 sf.

Mr. Wasby asked if traffic flow would be affected. Mr. Doolittle said he expected about two additional vehicles per day on site. Mr. Doolittle also indicated the business owners would remain the same after completion of the project.

There were no comments from the audience.

Ms. Verlinden read the **findings of fact**:

1. The property is located at 2355 State Highway (Map 15, Parcel 87) and is located in District E (Residential/Limited Commercial).
2. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A, s. 6 and Eastham Zoning By-law Sections IX.B.2 (setback requirements) and VI.D (non-conforming uses) to alter a pre-existing, non-conforming structure by constructing a 900 sf addition.
3. The lot size is 43,739 sf.
4. The street setback requirement is 100 feet. The proposed addition will be located 95 feet from State Highway and approximately 78 feet from Vandale Avenue.
5. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning By-law and zoning district.
6. The proposal will not have a negative impact on traffic flow and/or safety.
7. The proposal will not have a negative impact on the visual character of the neighborhood.
8. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage.
9. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.
10. The proposal does provide adequate provision for utilities and other necessary or desirable public services.
11. The proposal does provide adequate protection from degradation and alteration of the natural environment.
12. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled.
13. No abutters appeared in opposition to or in favor of the proposal. No letters were received regarding the project.

A **MOTION** by Joanne Verlinden to approve the findings of fact as stated, **seconded** by John Zazzaro.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Ms. Verlinden read the **conditions**:

1. Prior to granting of a Certificate of Occupancy, the accessory structure and temporary chain link fence currently behind the building shall be removed.
2. Planning Board approval of the application is required.
3. Any changes to the project stamped by the Town Clerk on 12/8/15, except those that are de minimis must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.

A **MOTION** by Stephen Wasby to approve the conditions as stated, **seconded** by John Zazzaro.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

A **MOTION** by Stephen Wasby to **GRANT A SPECIAL PERMIT** for ZBA2016-03 to alter a pre-existing, non-conforming structure by constructing a 900 sf addition, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Case No. ZBA2016-4 – 45 Bay Road, Map 7, Parcel 577 (District A). Susan Connor, Owner, seeks a Special Permit pursuant to M.G.L. c. 40A s. 6 and Eastham Zoning By-law Sections IX.A (lot size) and IX.B (setback requirements) to demolish an existing single family residence and construct a new single family residence.

Seated on this case: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

David Clark and Susan Connor were present at the hearing. Mr. Clark described the proposal and noted the proposed structure would be in the same footprint as the existing house.

Ms. Verlinden pointed out the project description indicated the rear setback would be non-conforming, but in actuality the side lot line was non-conforming. Mr. Clark agreed the description was incorrect.

Mr. Schneiderhan read four letters in support of the proposal from James and Teresa Lukowiak, 17 Gails Way, Barbara Reed, 16 Gails Way, Jacqueline and Peter Zima, 35 Bay Road, and Gregory Heitman, 55 Bay Road.

There were no audience comments.

Ms. Verlinden read the **findings of fact**:

1. The property is located at 45 Bay Road (Map 7, Parcel 577) and is located in District A (Residential).
2. The applicant has applied for a Special Permit pursuant to M.G.L. c. 40A, s. 6 and Eastham Zoning By-law Sections IX.A (lot size) and IX.B (setback requirements) to demolish an existing single family residence and construct a new single family residence.
3. The lot size is 10,890 sf.
4. The street setback requirement is 30 feet. The side and rear setback requirements are 25 feet. The proposed structure will be 33 feet from Bay Road, 32 feet from Gail's Way, 17 feet from side setback and 47 feet from rear setback.
5. After an evaluation of all the evidence presented, the proposed use will not be substantially more detrimental to the established or future character of the neighborhood or the Town and the structure involved will be in harmony with the general purpose and intent of the Zoning By-law and zoning district.
6. The proposal will not have a negative impact on traffic flow and/or safety.
7. The proposal will not have a negative impact on the visual character of the neighborhood.
8. The proposal does have adequate methods of sewage disposal, sources of potable water and site drainage.
9. The proposal does provide adequate protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies.
10. The proposal does provide adequate provision for utilities and other necessary or desirable public services.
11. The proposal does provide adequate protection from degradation and alteration of the natural environment.
12. Artificial light, noise, litter, odor or other sources of nuisance or inconvenience will be adequately controlled.
13. No abutters appeared in opposition to or in favor of the proposal. Four letters were received in support of the project.

A **MOTION** by Joanne Verlinden to approve the findings of fact as stated, **seconded** by Stephen Wasby.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Ms. Verlinden read the **conditions**:

1. Any changes to the project stamped by the Town Clerk on 12/8/15, except those that are de minimis must be reviewed by the Zoning Board of Appeals. If the Board finds a change to be substantial, re-notice is necessary for a new hearing.

A **MOTION** by Joanne Verlinden to approve the conditions as stated, **seconded** by Stephen Wasby.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

A **MOTION** by Stephen Wasby to **GRANT A SPECIAL PERMIT** for ZBA2016-04 to demolish an existing single family residence and construct a new single family residence, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

ZBA2015-12 foundation investigation discussion

Lucinda Quinn, Owner was present at the hearing. She explained that once construction began at 60 Bonaya Road, it became apparent that a new foundation would be required. Mr. Schneiderhan pointed out that the structure would now be slightly raised, but otherwise the house would visually match the previously approved plans.

A **MOTION** by Stephen Wasby to modify the Special Permit granted on 11/5/15 to include the plans submitted on 1/2/16, **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Discussion of ZBA regulations

Mr. Wasby noted a few minor changes to be incorporated into the revised regulations.

A **MOTION** by Joanne Verlinden to approve the revised ZBA Rules and Regulations as amended, effective 1/10/16, **seconded** by George Reinhart.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Discussion of 40B guidelines

Mr. Wasby presented the revised regulations, explaining that a standard template was used. He pointed out that approval of a 40B application required only a simple majority vote.

A **MOTION** by Joanne Verlinden to approve the Comprehensive Permit Rules and Regulations, effective 1/10/16, **seconded** by George Reinhart.

In favor: Schneiderhan, Reinhart, Verlinden, Zazzaro, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

Approval of Minutes

A **MOTION** by Stephen Wasby to approve the minutes of December 3, 2015 **seconded** by Joanne Verlinden.

In favor: Schneiderhan, Reinhart, Verlinden, Wasby

Opposed: None

Abstain: Zazzaro

The VOTE: 4-0-1

Other Business

Mr. Wasby commented that the Board of Selectmen would create a warrant article regarding the Mullin Rule for ATM 2016.

Adjournment

A **MOTION** by Joanne Verlinden to adjourn the meeting, **seconded** by Stephen Wasby.

In favor: Schneiderhan, Zazzaro, Reinhart, Verlinden, Wasby

Opposed: None

The VOTE: 5-0

Motion passed – Unanimous

The meeting adjourned at 6:30 pm.

Respectfully submitted as prepared by Debbie Cohen

Edward Schneiderhan, Vice Chairman
Zoning Board of Appeals