

MINUTES OF BOARD OF APPEALS MEETING OF June 3, 2014: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

The meeting was called to order by Chairman Peter DeTerra at 6:00 p.m.

Quorum/Attendance

Members Present – Chairman Peter DeTerra, Fran Cox, Jr., Peg Cook, Joseph Borelli, Daryl Manchester, Jaime DeSousa (Assoc.), and Rene Fleurent, Jr. (Assoc.)

The Chairman asked for a motion to approve the \$180 invoice for advertisement of the hearing. Mr. Cox, Jr. made the motion; Mr. Borelli seconded. The vote was unanimous. The invoice was signed.

Minutes: Chairman DeTerra asked for a motion to accept the minutes of May 6, 2014. Mr. Cox, Jr. motioned to accept the minutes. Mr. DeSousa seconded. The vote was unanimous.

II. PUBLIC HEARING:

1. Petitioner: Old South Wharf Realty, LLC, 24 Water Street, Plat 7, Lot 1, Book 9109 and Page 268; 198-22: Short 4' of the required 5' setback for an Accessory Structure.

A letter was received from the petitioner requesting a continuance to July 1, 2014. The letter was read and is part of this record. Mr. Fleurent, Jr. stated he would like to have the petitioners withdraw without prejudice instead of asking for a continuance. Mr. Fostin, Building Commissioner, stated there is a meeting scheduled for the next week between Town Counsel, Mr. Fostin and Fairhaven Shipyard representatives to discuss options.

Motion to continue the petition to July 1, 2014, was made by Mr. Cox, Jr.; seconded by Mr. DeTerra.

Members voting to continue the petition to July 1, 2014: Mr. Borelli, Mr. Cox, Jr., Mr. Manchester, Mr. DeTerra and Mr. DeSousa

Members voting not to continue the petition: None.

The petition request is CONTINUED to July 1, 2014, with a vote of five (5) in favor and none (0) opposed.

2. Sharon Bates, Trustee of the Ruth Street Realty Trust, 4 Ruth Street, Plat 43, Lot 140, 141, 142, Book 6846 and Page 56; 198-18: Short 4' of the required 30' front setback, short 10' of the required 30' rear setback and a Special Permit required for expansion of a non-conforming lot in a RR District.

The petition was read and there were 35 abutters notified. The petitioner was represented by Attorney Burke of New Bedford and architect Steven Kelleher of Fairhaven. Mr. Burke stated the petition request was remanded back to the Board in 2011 when the request was for a 90'x19' new dwelling and the neighbors were not in favor of the proposal. The proposal presently has been worked in concert with the neighbors, is scaled down to 52'x 24' with open deck configurations for a total of 68'6" by 27', is just slightly larger than the existing dwelling and will comply with FEMA requirements. Setback requests were due to moving the proposal closer to the rear property line to optimize positioning for the neighbors' ocean view and the front setback is due to a cantilevered front door overhang. The proposed structure is smaller than a recently Board approved petition at 24 Nelson Avenue which is on a smaller lot. Mr. Burke acknowledged a letter dated May 28, 2014, to the Board from Attorney Markey who represents a contingency of neighbors. The letter is part of this record. Mr. Burke stated his clients are in agreement with Mr. Markey's two conditions except, that should the need arise for pinning some or all of the foundation due to shallow ledge, the petitioners would like to be able to do so. The project proposal has been approved by the Conservation Commission with an issued Order of Conditions (OOC) of which Mr. Burke presented a copy to the Board and is part of this record. Mr. Burke stated of note in regards to the ledge issue is item #11 in the OOC with limitations to be approved by the Conservation Commission and Department of Environmental Protection prior to any work incorporating anything to do with the ledge on site. In conclusion Mr. Burke stated the petition is a fair and reasonable compromise with a smaller dwelling, in compliance with FEMA and the Building Code, and in concert with the neighbors. The need for both the Special Permit and Variance is due to the topography, street layout of Nelson Avenue and that the lot is long and narrow. The petitioners have done their best to preserve the ocean view for the neighbors.

Attorney Andrew Ruff of Attorney Markey's office spoke regarding the May 28, 2014, letter to the Board. He stated it is of concern to the abutters that the ledge not be disturbed as many of the homes on Wilbur's Point rest in part on the ledge believing that any work on the ledge will affect their own home foundations. He further stated that if both of the conditions expressed in the letter are met, then his clients will not appeal the Board's decision.

Mr. Kelleher gave a brief history of the petitioner's proposals and presented a copy of a letter dated April 19, 2013, which is part of this record, addressed to Attorney Markey regarding amenable changes to all parties for the proposal. A set of site and house plans was reviewed in detail. A copy of the plans is part of this record.

Board members had a number of questions regarding the placement of the foundation on the site that has ledge outcrops and in generally throughout the area. Mr. DeSousa questioned if the need for pinning the foundation to the ledge was certain. Mr. Kelleher said it is a 70% chance it will not be required because the septic leach field and septic tank placement did not encounter ledge. Mr. DeSousa asked the depth of the foundation. 4' in total was the response and so the need for pinning to the ledge may be minimal. The proposal is standard building practice and would occur in a minimally invasive manner to be in compliance with the OOC issued by the Conservation Commission as well as the wishes of the neighbors. Attorney Burke stated they do not intend to disturb the ledge but if necessary they would like to be able to attach. Mr. Fostin then gave a brief explanation of what occurs. Mr. Fleurent, Jr., Mr. DeSousa and Mr. Fostin concurred that the petition be conditioned so that only hand drilling may occur should pinning be required in construction. Mr. Fostin then added that by doing soundings prior to construction, the petitioners would know where ledge is before they begin. Mr. Kelleher stated they would prefer a backhoe as they would have to use it for construction. The Board consensus was the backhoe was too invasive. Mr. Borelli asked if the septic system requires upgrade. Mr. Kelleher stated it has been recently. Mr. Borelli also questioned the height of the structure and was informed it is less than 35', the maximum allowed.

Ms. Dean of 8 Palmer stated there is a natural stream beneath the ledge outcrop on this property and abutters fear any work on the ledge will affect their properties which all sit on some aspect of the ledge.

Motion to grant the Special Permit was made by Mr. DeTerra with conditions: 1) during construction the petitioners shall not disturb the ledge on the property by drilling, blasting, jack hammering and/or pinning, except that hand drilling only will be allowed for pinning of the foundation if necessary, and 2) the proposed decks shall always remain open and unchanged. Specifically the decks may never be enclosed at any time by the current owner or any subsequent owner; seconded by Mr. Cox, Jr.

Members voting to grant the Special Permit as conditioned: Mr. Cox, Jr., Mr. DeTerra, Mr. Manchester and Ms. Cook.

Members voting not to grant the Special Permit: Mr. Borelli

The Special Permit is GRANTED by a vote of four (4) in favor and one (1) opposed.

Motion to grant the Variance was made by Mr. Cox, Jr. with conditions: 1) during construction the petitioners shall not disturb the ledge on the property by drilling, blasting, jack hammering and/or pinning, except that hand drilling only will be allowed for pinning of the foundation if necessary, and 2) the proposed decks shall always remain open and unchanged. Specifically the decks may never be enclosed at any time by the current owner or any subsequent owner; seconded by Mr. DeTerra.

Members voting to grant the Variance as conditioned: Mr. Cox, Jr., Mr. DeTerra, Mr. Manchester and Ms. Cook.

Members voting not to grant the Variance: Mr. Borelli

The Variance is GRANTED by a vote of four (4) in favor and one (1) opposed.

3. Petitioner: David B. Gerber, 18 Cottage Street, Plat 3, Lot 46, Book 9629 and Page 334; 198-18: 9% over the maximum allowed building coverage of 30% in a RA District.

The petition was read and there were 23 abutters notified. The petitioner would like to place a 14'x10' shed on the property to store lawn and sports equipment.

Motion to grant the Variance was made by Mr. Cox, Jr.; seconded by Mr. DeSousa.

Members voting to Grant the Variance: Ms. Cook, Mr. Borelli, Mr. Cox, Jr., Mr. Manchester and Mr. DeSousa.
Members voting not to Grant the Variance: none.

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

4. Petitioner: Jason Ferro, 14 School Street, Plat 24, Lot 24, Certificate #19960
198-16: A Special Permit is required for raising livestock on less than 5 acres.

The petition was read and there were 15 abutters notified. The petitioner would like to keep 4 chickens for fresh eggs. There will be no roosters. He has spoken to his neighbors and none object

Motion to grant the Special Permit for the keeping of no more than 6 chickens and no roosters was made by Mr. Fleurent, Jr.; seconded by Mr. Cox, Jr..

Members voting to grant the Special Permit as conditioned: Ms. Cook, Mr. Borelli, Mr. Cox, Jr., Mr. Manchester and Mr. Fleurent, Jr.

Members voting not to grant the Special Permit: None.

The Special Permit for the keeping of no more than 6 chickens and no roosters is GRANTED by a vote of five (5) in favor and none (0) opposed.

5. Petitioner: Lynn Connor, 8 Vincent Street, Plat 6, Lot 26-29, Book 10358 and Page 117
198-16: Special Permit is required for raising livestock on less than 5 acres.

Mr. Fleurent, Jr. removed himself from the hearing. The petition was read and there were 65 abutters notified. The petitioner would like to keep chickens for fresh eggs. There will be no roosters. A letter from Roger and Tricia Caron, 6 Lawton Street in favor of the petition was read and is part of this record. The petitioner will be using a "chicken tractor" which is a portable self-contained coop so that the chickens can be sheltered, cared for and moved about the property safely.

Motion to grant the Special Permit for the keeping of no more than 6 chickens and no roosters was made by Mr. DeSousa; seconded by Mr. Cox, Jr.

Members voting to grant the Special Permit as conditioned: Mr. Manchester, Mr. Cox, Jr., Mr. DeSousa, Ms. Cook and Mr. Borelli.

Members voting not to grant the Special Permit: None

The Special Permit for the keeping of no more than 6 chickens and no roosters is GRANTED by a vote of five (5) in favor and none (0) opposed.

6. Petitioner: Tamzene Pedro-Fontanez, 41 Christian Street, Plat 25, Lot 18, Book 6127 and Page 348
198-18: Short 8' of the required 20' front setback in a RA District.

The petition was read and there were 49 abutters notified. The petitioner would like to construct a 22'x22' 2-story addition. The lot is odd shaped because historically there were two houses on one lot until it was subdivided. This is the reason for the variance request. Mr. Borelli asked the height and was informed it will be less than 35' and as tall as the existing house.

Motion to grant the Variance was made by Mr. Cox, Jr.; seconded by Mr. Fleurent, Jr.

Members voting to grant the Variance: Mr. Borelli, Ms. Cook, Mr. Manchester, Mr. Cox, Jr. and Mr Fleurent, Jr.

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

7. Petitioner: James and Elizabeth Hickox, 184 Dogwood Street, Plat 43B, Lot 190, 192, Certificate #22615
198-18: 11% over the maximum allowed building coverage of 15% in a RR District
198-22: Accessory Building is 964 sq ft over the maximum allowed 700 sq ft and the Accessory Building is 4'6" higher than the principle building on the lot.

The petition was read and there were 45 abutters notified. The petitioners were before the Board in October, 2013, and received approval for a 24'x36' unattached garage which they have not built due to the winter weather. Upon consideration they would now like to have a 2nd floor with no heat and no insulation that would be used for storage. They have approached their neighbors and no one is against the request. A letter in support of the petition was received from William and Andrea Sobieraj, 182 Dogwood was read and is part of this record.

Motion to grant the Variance was made by Mr. DeTerra; seconded by Mr. Cox, Jr.
Members voting to grant the Variance: Ms. Cook, Mr. Borelli, Mr. Manchester, Mr. DeTerra and Mr. Cox, Jr.

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

8. Petitioner: John C. Lewis & Susan E. Kenney, 23 Nelson Avenue, Plat 43, Lot 215, Book 10105 and Page 3 198-22: 452 sq ft over the maximum allowed 700 sq ft for an Accessory Building in a RR District.

Chairman Mr. DeTerra removed himself from the hearing. The petition was read and there were 34 abutters notified. The petitioners were represented by Carmelo Nicolosi of Charon Associates, Inc. of Rochester, Mass. The petitioners would like to construct a 24'x24' 2-story detached garage. The property fronts on both Nelson Avenue and Brownell Street. It is in a velocity zone thus the request for the 2nd story to use as storage above the flood zone elevation and to have a work shop. The first floor has breakaway walls. They have approval from the Conservation Commission.

Mr. DeSousa noted the total square feet is 1,152 and the Variance request should reflect this.
Mr. Fleurent, Jr. noted the structure was already started. Mr. Fostin, Building Commissioner stated the initial request was for a single story garage that has since changed to a 2 story garage and thus the need for a variance.

Discussion ensued questioning if the structure will be habitable. Mr. Nicolosi stated the petitioner had not indicated such.

Motion to grant the Variance was made by Mr. Borelli; seconded by Mr. DeSousa
Members voting to grant the Variance: Mr. Fleurent, Jr., Mr. Borelli, Ms Cook, Mr. Manchester and Mr. De Sousa
Members voting not to grant the Variance: None

The Variance is GRANTED by a vote of five (5) in favor and none (0) opposed.

III. OTHER BUSINESS:

Mr. Fleurent, Jr. asked when the Board re-organization meeting would occur. Mr. DeTerra stated at the next meeting.

ADJOURNMENT

Mr. Cox, Jr. moved to adjourn the meeting. Mr. DeSousa seconded. The vote was unanimous. The meeting was adjourned at 7:30 PM.

Respectfully Submitted,
Patricia Fowle, Secretary