

Great Barrington Zoning Board of Appeals

Minutes of August 6, 2013, meeting.

Attending were Chairman Ron Majdalany, Vice-Chairman Carolyn Ivory, Kathy Kotleski, Michael Wise, Madonna Meagher, John Katz and Don Hagberg. Town Planner Chris Rembold and Building Commissioner Ed May were in the audience. The meeting opened at 7:31 p.m. at Great Barrington Town Hall.

A hearing on the special permit application of **Martin B. Albert and Anne M. Johnston-Albert** (Case 812-13) to construct an addition on a pre-existing, non-conforming dwelling at 3 Berkshire Heights Road, Great Barrington, opened at 7:32 p.m. The chairman asked Mr. Katz and Mr. Hagberg to serve on the board in place of Mr. Wise and Ms. Meagher, who could not because their names appear on a list of abutters. Attorney C. Nicholas Arienti made a presentation. The applicants were in the audience. The board had made a site visit earlier in the evening. The meeting was properly posted at town hall and was advertised in *The Berkshire Record* June 21 and 28, 2013.

Mr. Arienti said the dwelling predates the 1932 zoning bylaw. It was built in 1895 and first shows on the assessors' records in 1904. The 300-square-foot expansion, work for which is underway, does not exceed the building's footprint, he said, and does not increase the non-conformity of the structure. The purpose is to expand the kitchen on the first floor and part of a bathroom on the second floor. Mr. Arienti said the applicants received a building permit, but when the building commissioner visited the site to view the foundation, realized the dimensional nonconformity issue and recommended application for a special permit. Prior to 1960, the zoning bylaw required a 25-foot front yard setback; the current requirement in an R-2 zone is 50 feet. In answer to a question from Mr. Katz, Mr. Arienti said the corner lot owners have always considered Berkshire Heights to be the front of the lot, though the property appears eligible to consider Taconic Avenue as front.

Mr. May read to the board a brief statement to explain he reviewed the building permit application too hastily, and only when he visited the site to look at the foundation work, he discovered the nonconformity. "I realized that I did a poor plan review, accepting an incomplete application and issued permit #13-00327 in haste," he said.

The board was in receipt of four letters from town boards and two letters from neighbors. The Selectmen, Planning Board, Conservation Commission and Board of Health recommended approval. Abutters Deborah Salem and Alyson Brandt supported the project. On a motion by Ms. Kotleski, seconded by Ms. Ivory, the board closed the hearing at 7:46 p.m. Board members found the proposal is not substantially more detrimental than the existing nonconforming structure to the neighborhood, as it is only filling in part of an L shape and does not protrude further into a setback. Board members found, under 10.4: (1) social, economic or community needs — no adverse effect on the neighborhood; (2) traffic flow and safety — no impact; (3) Adequacy of utilities and public services — no impact, dwelling is already on town water and sewer; (4) neighborhood character — close neighbors endorse the project, it fits the character of its surroundings, it will be in the style and coloring of the existing dwelling; (5) natural environment — no impact; and (6) potential fiscal impact — will not increase use of town services, will add to the tax roll. On a motion by Mr. Hagberg, seconded by Mr. Katz and voted unanimously, the board approved the special permit. Ms. Kotleski is to write the decision.

A special permit hearing on the application of **Aaron and Caroline Becker** (Case 813-13) for property at 27 ½ Rosseter St., Great Barrington, opened at 7:50 p.m. The hearing was posted at Town Hall and advertised in *The Berkshire Eagle* for July 22 and July 29, 2013. Mr. Becker said the plan is to convert a small dwelling into a hair salon and build a porch on the rear. It is nonconforming as it does not meet sideyard dimensional requirements. New construction would meet the 10-foot rear yard requirement. Sideyard would remain 6.4 feet. He said deeds from 1919 show the building was once on a lot with the next building north, on Rosseter Street. It was conveyed that year by Nannie Davis to Hattie Dixon (Book 239 Page 360). It was used as residence until two years ago. A rear porch apparently was enclosed without permission. Mr. Becker said there are only parking spaces for three vehicles, but there are several spaces nearby and on the other side of the granary building. He said he would put up minimal lighting, none of which would intrude on neighbors. He said he would take a site plan to the Planning Board. The

dwelling is surrounded by businesses on three sides. The business would have two employees and would be open approximately 9 a.m. to 8:30 p.m. The building is served by town water and sewer. On a motion by Mr. Wise, seconded by Ms. Meagher, the hearing closed at 7:58 p.m. The board was in receipt of letters from the Selectmen, Planning Board and Board of Health, all recommending approval. The building is in a B2 zone. The board had made a site visit earlier in the evening.

Board members found the proposal is not substantially more detrimental than the existing nonconforming structure to the neighborhood, as it is a very narrow lot and what is proposed does not protrude too far into a setback. Board members found, under 10.4: (1) social, economic or community needs — an old structure would be refurbished and a business use would be in keeping with neighbors; (2) traffic flow and safety — applicant has addressed this issue as best he can and it is a low-volume business; (3) adequacy of utilities and public services — no impact, structure is already on town water and sewer; (4) neighborhood character — close neighbors are businesses, it fits the character of its surroundings, as many of the neighbors are dwellings converted to business use; (5) natural environment — no impact; and (6) potential fiscal impact — will not increase use of town services, will add to the tax roll. On a motion by Ms. Ivory, seconded by Ms. Kotleski and voted unanimously, the board approved the special permit. Ms. Meagher is to write the decision.

The board at 8:05 p.m. opened a public hearing on the special permit application of **Matthew Dodds** (Case 814-13) for property at 65 Anderson St., Great Barrington. The board had made a site visit earlier in the evening. Mr. Dodds appeared with attorney Peter Vallianos. Mr. Vallianos said the property consists of a very small lot and a nonconforming dwelling and (now razed) nonconforming garage. The nonconformity was in setback dimensions. Mr. Vallianos said the dwelling was from the early 1900s. He said Mr. Dodd had been unable to determine when the 14x22-foot garage had been built but it was too close to side and rear lines. Mr. Dodds would like to rebuild, still next to the side line, but 3 feet further from the rear line, the new structure to measure 24x26 feet and contain space for lawnmower storage, small workbench and a vehicle. Mr. Vallianos said a 1946 deed (book 289 page 97) separated this parcel from the one to the west. The word "structures" is used in the deed. Town Planner Chris Rembold said a 1923 insurance map shows the dwelling existed. Thus, the garage appears to have been built some time between 1923 and 1946. The town adopted its first zoning code in 1932.

After some discussion prompted by a question from Mr. Wise, Mr. Vallianos said a Great Barrington assessors' card indicated the house was 620 square feet, the old garage 220 square feet. The lot is 4,200 square feet. The bylaw says buildings can occupy no more than 25 percent of a lot, or 1,050 square feet. The Selectmen, Planning Board and Board of Health sent letters endorsing the special permit. The board closed the hearing at 8:20 p.m. on a motion by Mr. Wise, seconded by Ms. Meagher and approved by all.

There ensued a long discussion of whether the garage had been legally built (Mr. Wise suggested its location very close to a rear lot line suggests it was put up before 1932 zoning) and whether the case of *Gale v. Gloucester* applied (Mr. Rembold said it specifies only dwelling units, Mr. Wise suggested it was therefore open to town boards to include accessory buildings if they desired, until new case law comes along, Mr. May said he treats accessory buildings as residential [as opposed to commercial] in his calculations.) The board rejected the possibility of issuing a variance, as the property does not meet the criteria. The board noted that to reject the special permit still allowed Mr. Dodds to rebuild on the same footprint, or explore other ways of putting up a new garage.

Mr. Wise moved to grant the special permit. Ms. Meagher seconded. Before acting on that motion, the chairman polled the members as to whether they believed the structure can legally (under *Gale v. Gloucester*) enlarged or altered as a legally pre-existing, nonconforming structure. Mr. Wise, Ms. Kotleski and Ms. Meagher said yes, Ms. Ivory and Dr. Majdalany said no. The board then went through findings: Under 5.3, it would not be more detrimental that the previous garage, as it would be further from the rear lot line and no closer to the side line. Under 10.4, social impact, would improve usefulness to tenant or owner; there would be no change to traffic or utilities, it would improve the property's appearance, it would be neutral on environmental matters and would make a slight improvement to the tax base. On a vote of the motion, Mr. Wise, Ms. Kotleski and Ms. Meagher were in favor, Ms. Ivory and Dr. Majdalany opposed. As at least four positive votes were needed for approval, the motion failed.

Other business: On a motion by Mr. Wise, seconded by Ms. Kotleski, the board voted to accept the minutes of the July 9, 2013, meeting. The board set a date of Sept. 10, 2013, at 7:30 p.m. on the special permit application of **James B. Ketchen**, 70 Castle Hill Ave. The board acknowledged an appeal filed by Danny Bell/Claudia Shapiro against the ZBA's special permit granted the month before to **Berkshire Aviation Enterprises** for a deck and handicap-accessible entry at the office building. Town counsel will respond to the appeal.

The meeting adjourned at 9:20 p.m.

Respectfully submitted

Bernard A. Drew
Secretary



