



**Zoning Board of Appeals
Meeting Minutes
January 26, 2010**

Members present: Richard Rand, Chairman; Mark Rutan, Clerk; Gerry Benson; Chan Byun; Sandra Landau, Alternate

Members excused: Richard Kane; Dan Ginsberg, Alternate

Others in attendance: Kathy Joubert, Town Planner; Elaine Rowe, Board Secretary; D. Brian Davies; Patricia O'Hearn

Chairman Rand called the meeting to order at 7:00PM.

Chairman Rand appointed Sandra Landau as a voting member for tonight's hearings.

Continued public hearing for consideration of the petition of Thomas H. Hays, II for a Variance/Special Permit to allow construction of a single-family home in Groundwater Protection Overlay District Area 2 that will exceed 50% of the gross floor area of the existing home on the property located at 117 Maple Lane

Chairman Rand explained that the board had received a letter from Attorney Leland requesting a continuance to the February meeting to allow them the opportunity to meet with the Groundwater Advisory Committee.

Members of the board voted unanimously to continue the hearing to February 23, 2010.

Public hearing to consider the petition of D. Brian Davies for a Variance/Special Permit to allow construction of a single-family home located less than the required distance from a side property line on a lot with less than the required lot width, and which will exceed by more than 50% the gross floor area of the existing home (to be demolished) on the property located at 244 Hudson Street

Mr. Davies discussed plans for the construction of a single family home on a pre-existing nonconforming parcel. He explained that he has already obtained an Order of Conditions from the Conservation Commission and has been working on details of the project with Mr. Farnsworth for some time.

Mr. Davies explained that there is an existing house on the parcel, located approximately two feet from the roadway's edge, that will be demolished for the construction of the new home. He noted that a copy of both the existing and proposed plot plans was submitted with the application packet.

Mr. Davies explained that he is seeking permission to build a new, single family home to be located 20 feet from the roadway, which will place it closer to the rear and easterly property lines. He also noted that the new home will be 53% larger than the existing structure.

Ms. Joubert explained that three special permits are required for the proposed construction, and they are as follows:

1. A special permit to reduce the minimum lot width from the required 100 feet to 60 feet.
2. A special permit to reduce the side setback from the required 50 feet to 3 feet. Mr. Davies explained that the existing home is 13.8 feet from the side property line and the proposed structure will be 3 feet.
3. A special permit to allow for an increase in the gross living area of greater than 50%.

Mr. Davies explained that he had obtained approval in 2006 for a similar project on this parcel but never moved forward with it because of market conditions. He noted that the 2006 decision has expired, so he is back before the board. He also noted that the 2006 decision contained approval to reduce the side setback to 4 feet, but he is now seeking to reduce it to 3 feet to accommodate the addition of a fireplace and chimney.

Ms. Joubert noted that there is a proposal for the 2010 Town Meeting to change the bylaw to allow for up to an 80% increase in gross living area.

Chairman Rand asked if it will be possible to get anything into the back yard and remain within the property, should the need ever arise. Mr. Davies confirmed that it will be, and noted that there is a driveway along one side and an easement along the other.

Mr. Byun asked if the current home is occupied. Mr. Davies explained that the existing house was gutted, but is too far gone and too close to the roadway to warrant trying to salvage it. Ms. Landau asked if the new home will have four bedrooms. Mr. Davies indicated that it is proposed to be a three bedroom home. Ms. Joubert requested that Mr. Davies be sure to inform any potential purchaser about the trail easement along the back of the property.

Mr. Davies stated that he intends to advertise the home as a "to be built", so the final structure could potentially differ from what is shown but will not be any larger.

Chairman Rand asked about the height of the cellar floor compared to the river. Mr. Davies was not sure, but noted that the elderly couple that previously lived in the home had indicated that they had never had water in their basement.

Ms. Joubert noted that the top of the bank elevation is at 308 feet, which is two feet lower than the basement, and the bank is approximately two to three feet above the water. Mr. Rutan noted that the 100-year flood line is below the 308, while the 500-year flood line is at 308.

Sandra Landau made a motion to close the hearing. Gerry Benson seconded, vote unanimous.

Public hearing to consider the petition of Patricia A. O'Hearn for a Variance/Special Permit to allow renovation of space above an existing garage on a nonconforming lot which will increase the gross floor area of the existing single-family home by more than 50% in Groundwater Protection Overlay District Area 2 on the property located at 27 Pleasant Street

Patricia O'Hearn discussed plans for the renovation of the space above the existing garage. She explained that she was unaware that approval from this board would be required when she applied for a permit to have this work done. She noted, before she purchased the house, that the upstairs was improved approximately a year and a half ago, which resulted in an increase in the gross living area beyond what is allowable so a variance/special permit is required for any further increase. She voiced her understanding that the work done in 2008 resulted in an increase of 1584 square feet and the work she is proposing will add another 231 square feet, which exceeds the 50% increase currently allowable but is within the 80% that is being proposed as a revision to the bylaw.

Ms. Joubert discussed a memo from Bill Farnsworth that was previously provided to the board members. She stated that there was a variance requested in 2005 that was denied, though she could not find any information as to the reason for denial. Mr. Rutan questioned whether the original applicant was seeking to expand beyond the footprint. Chairman Rand stated that Mr. Kane had indicated that the 2005 request was filed after the actual work had been done. Ms. Landau voiced her opinion that the board does not need to be bound by the previous denial.

Sandra Landau made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

DECISIONS:

244 Hudson Street – Mr. Benson commented that the project does not seem to be significantly different than the one approved in 2006. Ms. Landau noted that there were no abutters present to voice objection.

Mark Rutan made a motion to grant a special permit to reduce the minimum required lot width to 55 feet. Gerry Benson seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit to reduce the side setback on the easterly side to 3 feet. Sandra Landau seconded, vote unanimous.

Mark Rutan made a motion to grant a special permit to allow an increase in the gross living area of up to 60%. Sandra Landau seconded, vote unanimous.

27 Pleasant Street – Mark Rutan made a motion to approve a variance to allow an increase in the gross living area of up to 80% due to the shape of the lot. Gerry Benson seconded, vote unanimous.

Approval of Minutes – Approval of the minutes was continued to the next meeting to allow the board adequate time to review them for content.

Zoning Bylaw – Ms. Joubert explained that she and Bill Farnsworth reviewed the new zoning bylaw and found some transcribing errors where an incorrect section number was referenced. She noted that she is preparing a single article for Town Meeting to correct some of these errors, which are simply housekeeping issues and do not change the intent of the bylaw in any way. She asked the board members to notify her if they notice anything else in the bylaw that should be addressed.

Final Plan approval for The Shops 9@20 – Ms. Joubert asked the members if they approve of the revised version that she had previously emailed. Members of the board voiced approval of the letter as revised.

ZBA Rulings – Chairman Rand voiced concern about whether the board is complying with the law, which he understands requires decisions to be filed with the Town Clerk's office within 14 days of the board's ruling. Ms. Joubert commented that the courts have ruled that this is an advisory and not a hard and fast rule. Town counsel was asked for an opinion on this approximately 2 years ago and town counsel stated the 14 days is advisory and not mandatory. Ms. Joubert stated that, given the workload on the single administrative assistant in her office, it is not always possible to get the decisions done as quickly as the board would like, though every effort is made to do so. Chairman Rand asked if there is any case law on this issue. Ms. Joubert agreed to research the matter further, and will furnish the board with an opinion from Town Counsel.

Board Governing – Ms. Joubert stated that, by state statute, every Planning Board and Zoning Board of Appeals (ZBA) is required to have rules and regulations for how they govern themselves. She explained that the consultant that did the work on the bylaw revision is drafting rules and regulations for the Planning Board and will do the same for the ZBA.

Adjourned at 7:55PM.

Respectfully submitted,

Elaine Rowe
Board Secretary