

ZONING BOARD OF APPEALS
MEETING MINUTES - JULY 15, 2015

Meeting called to order at 7:08 PM

Members Present

Marc Kornitsky
Dan Doherty
Anthony Paprocki
Andy Rose
Doug Dubin

Others Present

Paula Pearce
Ms. Rotner
Attorney Paul Lynch
Scott Burke
James Burke
Building Inspector Rich Baldacci
Martin Grasso
Charles Patsios
Architect Walter Jacob
Ibrahim Damiano
Darlene Damiano
Michael Weiss
Stephanie Sullivan-McCaughey
Richard Smith

Petition 15-22 for 25 GALE ROAD of PAULA PEARCE

Petition is for dimensional special permit and special permit to construct a 40' x 19' garage attached to house to replace existing garage which will be demolished. Property: Map 35, Lot 3.

Petitioner told the Board the garage would be brought forward a little. Planning Board comments concern drainage going to drywells rather than driveway.

Abutter Ms. Rotner of 21 Gale Road spoke in favor now that she knows the garage won't be any closer to her house.

No one spoke in opposition. Motion to close public hearing unanimously approved by Board members.

Andy Rose moved to approve the petition, seconded by Doug Dubin, and unanimously approved. Andy Rose will write the decision.

Petition 15-21 for 80 SHEPARD AVENUE of SCOTT BURKE and JAMES BURKE

Petition is seeking to extend the decision of Petition 15-14 to apply to the reconstruction of the tennis courts for all the reasons set forth in that ZBA decision. Property: Map 32, Lot 11.

Chair Kornitsky stated he would not vote on this petition as Mr. Burke is a personal friend. Mr. Kornitsky called a ZBA member who had not yet arrived and learned he wouldn't be able to attend tonight's meeting. Chair Kornitsky told Mr. Burke it was up to Mr. Burke if he wanted to proceed with the hearing with four members. Mr. Burke had no objection with a Board of four rather than five members hearing the petition.

Attorney Paul Lynch told the Board that Building Inspector Richard Baldacci would be attending the evening's meeting. There was a prolonged discussion between Attorney Lynch and Mr. Burke about the tennis court lighting and tennis court resurfacing.

Vice Chair Doherty: It's important to put something on the record with respect to the height of the tennis courts. Scott Burke presented two issues – lighting of the tennis courts and height of the tennis court surface.

Attorney Lynch: Issue is whether Building Inspector was authorized to issue a permit to change the surface of the tennis court without a special permit. Did it go beyond the scope of lighting? Focus should be on whether or not there needs to a permit.

Attorney Lynch: Not here to rewrite history. Decision was final on July 2. That was due process. The building permit that Burke is appealing was issued in March. Reason Mr. Burke is trying to extend the appeal period. There was an appeal within the 20 days; that petitioner came to this Board. That was heard. You don't come back again; you voted, you heard the decision. Under Section 17 of Chapter 40A, you go to Land Court and file an appeal.

Mr. Burke: If they don't need a building permit, if they don't need it for the lights, the whole permit should be considered null and void. Why are we having this hearing if we don't need a permit for the tennis court? That is fine. Whatever the issue of the height of the tennis court is, building permit can be revoked because it is not...

Mr. Lynch: That is not what we're here for. The Building Inspector issued a permit including resurfacing the tennis court. That permit should stay in place except for the revocation of the lights. Not here to have Burke write the decision again.

Mr. Burke: I wrote to the Building Inspector that he should rescind the decision.

After May 27, Burke asked if it would just apply to lighting; language was not focused on lights per Board member Dan Doherty.

Mr. Burke: Filed why I believe this is wrong, that this is an attempt to rewrite a decision that had been made before. The increase of the tennis court from 4.5 to 6 inches – this is what the

Board is asked to vote on. Lynch wants to have it both ways. There are two issues dealing with lights and height of tennis courts. Conservation Commission Chair Mahoney's remand was that the Beach Club didn't have to come to the Conservation Commission. Only thing I have to add in terms of additional assistance is that on 5/21, Mahoney said everything he said at Conservation Commission was true. The minutes from the ConCom meeting are available.

Attorney Lynch: ConCom is a different board. ZBA doesn't care about other committees. Inspector Baldacci was misinformed; he was in England and did not hear all the discussion.

Burke: The reason the Board applied to 15-14 information is not consistent. ZBA has ability to reverse the Building Inspector's decision. The Inspector charged a fee for \$90,000 job.

Building Inspector Rich Baldacci was recognized to speak. Vice Chair Doherty to Inspector: "I take it you're familiar with the details."

Inspector Baldacci told the Board that as Building Inspector, he has the building code and zoning enforcement responsibilities. If we separate the permit which needed a building permit under Commonwealth of Mass, they did not need a permit for the resurfacing. You don't need a permit for the tennis court, but you need it for the lights. That won't require ConCom approval of anything outside wetlands buffer zone.

Board member Andy Rose: We are being asked to render a decision as to whether or not it was resurfaced; that is not up to the ZBA to decide, it is ConCom.

Building Inspector Baldacci: They said there was no intrusion on the wetlands.

Andy Rose: It's not digging in the wetlands; it is displacement of water you have to account for.

Attorney Lynch: They hired a subject matter expert to consult on the wetland aspect of this issue.

Burke: If there's a permit issued by the Building Inspector for two issues (resurfacing and lights), is it necessary to stay in place?

Board member Doug Dubin: Building Inspector has the right to give permit or not, they don't need a permit.

Burke: If permit is not necessary, it should not be used.

Martin Grasso: The project did not go into any protected area.

Inspector Baldacci: The entire permit application package covered resurfacing and lighting.

Attorney Lynch: You have 30 days to appeal the issuance of a building permit. Do not recommend piggy-backing on decision of petition 15-14. Leave it up to ConCom and let them decide.

Andy Rose: Why not continue this hearing which will let them go to ConCom?

Dan Doherty: I'm not comfortable revoking the Building Inspector's permit.

Dan Doherty moved to close the public hearing, seconded by Andy Rose and unanimously approved.

Doug Dubin: Building Department has right to issue permit.

Andy Rose: If we want to take another vote, we are not failing to revoke the permit without saying why.

Dan Doherty: Asking for whether or not to extend the prior decision.

Board members voted 4 to 0 to deny the petition. Vice Chair Dan Doherty will write the denial.

Petition 15-23 for 120 GALLOUPES POINT ROAD of CHARLES PATSIOS

Petition is for dimensional special permit and site plan special permit to demolish existing dwelling and construct a new single-family dwelling greater than 3,000 square feet on a 27,255 square foot lot. Property: Map 28, Lots 76 & 115.

Attorney Paul Lynch told the Board that this petition was presented to the Planning Board on July 13, 2015, and was favorably recommended to the ZBA. The new building will conform to all bylaws.

Architect Walter Jacob displayed the plot plan to the Board and pointed out areas designated for water containment. Attorney Lynch told the Board the landscaping plan would include semi-pervious driveway and rain gardens at the three low points to handle drainage. Architect Jacob said the caliper of each tree is included on the landscaping plan.

Chair Kornitsky to Abutter Damiano: Have you seen the trees?

Petitioner Patsios and Abutter Damiano will meet to discuss trees. Petitioner Patsios told the Board he is going to do additional screening along the 130 foot property line. Proposing not to put more than five arborvitaes together. Will plant mountain laurel which will make site go back to natural state much faster.

Abutter Ibrahim Damiano requested conditions in the decision: plantings would put tree line about 30 feet from property line. Architect Jacob: There is a 12 foot and 14 foot caliper tree in the middle of the lawn area.

Mr. Rose: There is a 10 foot wide setback.

Ibrahim Damiano: Any house will be at the highest point on that property above my home. Some of the maple trees are pretty high, maybe 40 or 50 feet, tall trees which are screening.

Mr. Patsios confirmed they want privacy as well. Mr. Damiano said he'd like all healthy trees within 30' of property line to be preserved.

Mr. Damiano asked about the proposed location of noise-generating equipment. Architect Jacob explained the equipment will be down in the lower area, below the garage. The ZBA can specify as condition in the decision. Petitioner Patsios agreed to put it in the best location.

Mr. Damiano (and wife Darlene) asked about moving the third level window which will be looking down on Damiano property to the other side.

Chair Kornitsky: The Board can't request making a change to the third floor (attic/storage) window. If it were a kitchen window, it would be a different matter. Other board members agreed. Architect Jacob will submit a supplemental plan.

Abutter Michael Weiss (119 Galloupes Point Rd) spoke in favor of the petition.

Andy Rose made a motion to close the public hearing, unanimously approved.

Chair Kornitsky moved to approve the petition which was approved unanimously with the condition that if Mr. Patsios plans to move any trees, he will need to get abutter's agreement in writing. Petition is for authority to remove the Norway maples and for mechanical equipment to be located somewhere on the property other than on the 130' property line and the use of semi-pervious pavers.

Petition 15-24 for 324 ESSEX STREET of STEPHANIE R. SULLIVAN-MCCAUGHEY

Petition is for use special permit, site plan special permit and dimensional variance to demolish existing one-story building and construct a 2.5 story building with four townhouse units and indoor parking. Property: Map 13, Lot 135.

Petitioner explained that they have made changes to the scope of the plans based on their review and feedback from the Planning Board.

Vice Chair Doherty doesn't think ZBA should hear the petition before petitioner goes back to the Planning Board given the extensive Planning Board comments.

Petition continued to Sept 16, 2015.

Meeting adjourned at 9:00 PM.

Hellen Kennedy
ZBA/Planning Board Secretary