

Zoning Board of Appeals Meeting Minutes

Minutes of October 15, 2014

Hearing on the petition of Jonathan Poulin of 299 Princeton Road, Sterling, Ma. for a Variance to build a new home within 20-feet from the water side, 17-feet and 29-feet respectively from the east- northeast property line and 34-feet from the nearest front property line and a Special Permit to extend a pre-existing nonconforming structure, on property located at 35 Burncoat Lane, Leicester, Ma.

Members present: David Orth, Chairman; Jim Buckley, Clerk; David Kirwan, Vaughn Hathaway

Alternate members present: Jim Reinke

Meeting called to order at 7:30PM

Instructions were given on hearing procedures.

Voting at tonight's meeting: David Orth, Jim Buckley, David Kirwan, Vaughn Hathaway and Jim Reinke

Mr. Buckley read the Notice, Application and a letter from the Building Inspector

Correspondence received: Site Consideration from the Building Inspector, a memo from Conservation Commission stating a Notice of Intent needs to be filed, copies of the wetland bylaw regarding the 100-foot buffer zone and the 25-foot "No Disturb Zone".

Mr. Orth read the correspondence into the record.

Submitted into evidence: Registered Plot Plan, the green and white return receipts from the Certified Mailing to abutters

Mr. Orth noted discussion on the Variance will be first, followed with the Special Permit.

At this point, Mr. Orth opened the hearing to the applicant to present his/her petition.

Mr. Jon Poulin, Poulin Construction made the presentation.

Mr. Poulin said the owner wants to take down what is there and put in a much nicer home in the area. They tried to stay within the closest footprint of the home that they could.

They've submitted the septic plan to the Board of Health and received approval.

Mr. Hathaway asked where the new well was being put, because the plan submitted didn't show where the new well was going.

Mr. Poulin said the new well will be put in front. The plan shows the existing well, which will be replaced with the new well.

Mr. Orth asked if the building was still standing.

Mr. Poulin said they had applied for a permit to demo the structure and it was removed last weekend.

Mr. Reinke asked what the original structure was. Mr. Poulin said a seasonal cottage.

Mr. Reinke said his concern was the structure that was razed, had the pre-existing non-conforming protection and now it doesn't exist.

Mr. Poulin said the Building Inspector told him that as long as the property was surveyed and the corners were fixed on the survey that they could demo the property and work off the survey.

Mr. Reinke said that was a pre-existing structure and now that status is lost because it's been demolished.

Mr. Poulin said the Building Inspector told them that they could remove the structure because eventually the building would have to come down anyway. They would not have been able to use the current building to build a new building because it was too far-gone and wasn't safe.

Mr. Reinke said he understood that, but there are a lot of things going on with the pre-existing nonconforming buildings.

Mr. Poulin said he was told they only had a certain amount of time after the building was demolished to start construction.

Mr. Orth asked if the property was recently purchased. Mr. Poulin said yes.

Mr. Orth asked if the property was purchased with the intent on building a house of this size.

Mr. Poulin said yes. Mr. Orth asked if they were told that a variance would be needed before they purchased the property.

Mr. Brian Lane said not before they purchased the property but before they started the process to build.

Mr. Orth asked if anyone mentioned a variance would be needed before building.

Mr. Lane said yes.

Mr. Orth said the property was purchased with the hopes of getting variance.

Mr. Lane said yes, he spoke with the Building Inspector before the property was purchased about similar projects in the area and the Building Inspector knew of no variance that was ever denied in that area, although he made no promises.

Mr. Orth asked if the Building Inspector said a variance would be needed before the property was purchased. Mr. Lane said yes.

Mr. Hathaway said he noticed on the plan a note that states "Do not use this plan to locate lot boundaries". He assumed it may be a plan the Board could use, but as a Board, we are specifically constrained to use what is before us. He would not want to make decision on something that did not have the correct lot boundaries.

Mr. Poulin showed a septic plan that showed the lot. Mr. Reinke noted it was not stamped by an engineer.

Mr. Hathaway noted the plan submitted shows an engineer's stamp.

Mr. Poulin explained the note was just a disclaimer. The surveyor went to the property and staked it and drew it off what could be found.

Mr. Hathaway said his concern was he had never seen a stamped plan with a note stating not to use the plan to locate lot boundaries.

Mr. Orth said it will be interesting since the house corner is 20-feet from the Pond and there's the 25-foot No Disturb Zone.

Mr. Reinke asked if they had met with Conservation yet. Mr. Poulin said no, they were told to come to zoning first.

Mr. Hathaway said even if the Board were to grant this, Conservation might have an issue with the 20-feet.

Mr. Poulin asked how he would go about cutting the grass if it were 25-feet from the water.

Mr. Orth explained that grass can be cut, the trees can't be removed and the area can't be disturbed, such as digging.

Mr. Poulin said if they stayed within the existing structure that was there, it would be within the 25-feet. If they kept it that size, how would they be able to put in a foundation without disturbing the 25-feet?

Mr. Reinke said that would be the Conservation Commission's question to answer.

Mr. Orth noted if they kept the same footprint, they wouldn't need a variance.

Mr. Reinke added as long as they left one wall.

Mr. Poulin said that they understood they will need to go through Conservation.

Mr. Hathaway said his point is if Conservation were to make any changes, this would have to come back before Zoning under a new application request.

Mr. Poulin felt that they had to start somewhere and stated, if they went to Conservation first, they would have been told they should have gone to Zoning first. They are following the path usually taken, which is Zoning first and then the other departments before getting the building permit.

Mr. Orth asked what the size of the original building was; because the plan did not show the size.

Mr. Poulin said the plan outlines the original building.

Mr. Orth asked how much bigger the new building was, it doesn't show that.

Mr. Lane said the new building is 16 x 21, so they are requesting to add 5-feet. They are going off of 21 x 35.5.

Mr. Hathaway noted on the submitted plan, it showed the new building to be 21.4-feet.

Mr. Poulin said its 21.4-feet wide. Originally, they wanted 21.4 x 35.6, but after they went through the design phase, with all of it laid out, they decided to with 21 x 35.5.

Mr. Orth asked if the larger plan showed the dimensions. Mr. Lane noted that was the septic plan for a 2-bedroom home, but didn't show dimensions of the home.

Mr. Lane said they had the lot surveyed to fix the corners of the house. Originally they were looking for a larger house, but after speaking with the architects, they went smaller.

Mr. Kirwan asked if the surveyor had a starting point other than one of the found iron rods.

Mr. Poulin said the surveyor found a benchmark down the street.

Mr. Lane said his understanding of the process was, they apply for the building permit, the permit gets denied and then they go to the Zoning Board of Appeals for a Variance. Once that process was done, they would go to the Conservation Commission.

The Building wasn't actually within the 25-foot No Disturb Zone, according to their survey. He asked if he should have gone to Conservation Commission first.

Mr. Hathaway said his point was more to do with the Board receiving correspondence from Conservation stating concern about the 25-foot No Disturb Zone. So, even if the Board were to grant to build within the 20-foot, Conservation could say no, draw up a new plan. Then that new plan will be different from what the Zoning Board first approved and they would again have to come back before the ZBA.

It's only an issue because Conservation has told the Board something that contradicts what is shown on the plan.

Mr. Lane asked if it was because this was between the buffer zone.

Mr. Reinke said yes, usually the plan would be before Conservation first, in this particular instance, because of how close this will be to the pond.

Mr. Hathaway said it would allow the applicant the ability to draw up the plan that meets the full requirements for building.

This ZBA is here to address whether or not to allow deviating from the setback lines required in zoning for that area. Conservation would be answering where they can legally put the house in accordance to the wetland regulations.

Mr. Lane stated there was no way a home could be built there in accordance to zoning in that area. Mr. Orth agreed.

Mr. Hathaway said his point was, in order to save the applicant some time; the Board needed to be presented with something that won't get rejected.

Mr. Lane felt it sounded like he would have to come back to ZBA anyway. Either he gets the variance and then go forward to Conservation for a yes or no.

Mr. Hathaway agreed and if Conservation says no, it would have to come back to ZBA.

Mr. Orth asked if it was possible for the applicant to continue this hearing, go before Conservation and then come back with a plan Conservation approved. Would that work?

Mr. Hathaway said no, because what was advertised for this hearing could be different from what Conservation approves.

Mr. Buckley asked what the size of the existing structure was. Mr. Poulin said 16 x 30.

Mr. Orth asked for any further comments from the Board; hearing none, opened discussion to the floor.

Mr. James Dalton, 43 Burncoat Lane said his concern was how everything was moving faster than it should. The house was taken down without any notification or any no erosion control taken

Mr. Robert Dirs, 45 Burncoat Lane said he has no problem with someone building a house on that lot, but he was very concerned when the house was removed and there were no barriers put in place. There were no erosion control measures taken to stop the silt or any drainage going into the pond. The residents have worked long and hard to get back the water quality and the lake to where it is today; a lot of money has been spent.

Mr. Dirsra asked why there were no barriers put in place. This may not be the forum to ask this, but he wanted to point out that protection wasn't put out and that was a very big concern to him as Chairman of that district.

Mr. Hathaway said he had the same concerns. There were no silt barriers in place to stop any siltation going into the water or in case oil drains from the excavator, which are things that are typical.

Mr. Orth noted concern with the cutting of trees close to the water as they did.

Mr. Poulin said they took the trees down to get to the house to raze it. He did not think they had gone close to the pond yet.

Mr. Hathaway asked if the demolition permit was issued when the house was there.

Mr. Poulin said yes

Mr. Reinke asked if the demo permit was issued without going to Conservation.

Mr. Poulin said yes and he explained that when he applied for the demo permit, he gave the Building Inspector the same plan and explained about needing to get the structure removed and needing to move forward with the ZBA process and the permit was approved.

Mr. Reinke asked if he had a copy of the permit. Mr. Poulin said no not with him.

Mr. Reinke asked if the Building Inspector signed the permit.

Mr. Poulin said yes and noted that he wasn't sure why the silt fence was not put in place when the structure was removed.

Mr. Dirsra said his concern was with a project this size, having trees taken down within 100-feet of the water and the affects with the runoff. This affects everyone along the water and also has a financial effect on everyone as well.

Mr. Michael Comeau, 69 Burncoat Lane asked if they were notified that Burncoat was a Watershed District. Being a Watershed District, the residents along Burncoat Pond get a tax bill in addition to the real estate bill. There is a Burncoat Pond Association, but they are a Watershed District and they pay an extra tax towards the protection of that pond.

Mr. Lane said the only thing they were notified on was the Burncoat Pond Association by the Realtor.

Mr. Comeau explained that any work that takes place, the residents need to be very diligent to make sure the beach and pond stay intact.

Mr. Lane explained that there were a lot of things they didn't know about. They were doing things in the way they were told the process went.

Mr. Dirsra said they weren't trying to discourage anyone; they just wanted to make sure everything was done properly.

Mr. Hathaway said if he were to vote tonight, he would be voting against it, because he doesn't have an actual plan to look at. He felt the applicant may want to continue, meet with Conservation and then come back with an actual plan.

Mr. Lane asked for confirmation on what he needed to bring back to the next meeting;
1) A registered plot plan showing the actual footprint and design of the house with the exact dimensions and 2) to show where the proposed new well and new septic system will be located.
Mr. Hathaway agreed.

Mr. Buckley pointed out that Section 6.4.03 of the Zoning Bylaws talks about the criteria that needs to be met in order for the ZBA to grant a variance. He advised them to review that section to make sure that they will meet those conditions for a variance.

At this point, the process of filing with Conservation with either an Notice of Intent (NOI) or a Request for Determination of Applicability (RDA) was explained.

Mr. Hathaway noted with continuing this hearing, the statutory time limit may need to be waived.

Mr. Lane agreed to waive the statutory time limit.

MOTION: Mr. Hathaway moved to approve the request made by the applicant to waive the 90-day statutory time limit for a variance.

SECONDED: Mr. Reinke – Discussion: None

VOTE: All in Favor

Discussion on date to continue

MOTION: Mr. Buckley moved to continue the hearing for Variance & Special Permit on 35 Burncoat Lane to Wednesday, January 7th at 7:30PM

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:45PM

Respectfully submitted:

Barbara Knox

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