



TOWN OF NORTHBRIDGE

ZONING BOARD OF APPEALS

Aldrich School Town Hall Annex
14 Hill Street
Whitinsville, MA 01588
(508) 234-0819
Fax# (508) 234-0821

Approved on November 8, 2012

ZONING BOARD OF APPEALS

MINUTES OF MEETING

OCTOBER 11, 2012

This meeting was called to order at 7:00 P.M. by Chairman Thomas Hansson. Other members present were:

Sharron Ampagoomian, Member
William Corkum, Member
Carol Snow, Member
Diane Woupio, Member
Brett Simas, Associate Member

Also present was Brenda Ouillette, Administrative Assistant.

Absent from this meeting was Harold Hartmann.

A motion was made by Sharron Ampagoomian to approve of the minutes of September 13, 2012. The motion was seconded by Brett Simas and the vote was 4-0 in favor. Diane Woupio and William Corkum abstained from voting as they were not present at the September 13th meeting.

PUBLIC HEARING: (15-V-2012) J & F MARINELLA, APPLICANT

This hearing was held to consider the petition of J & F Marinella, Franklin, MA for a Variance from the front setback requirement pursuant to Article VI, Section 173-19 of the Town of Northbridge By-laws, Table of Area Regulations, for a house under construction at Lot 3, Rebecca Road in the Camelot Subdivision.

The property, shown on Assessor's Map 16 as Parcel 211, is located at 109 Rebecca Road (Lot 3, Camelot Subdivision) Whitinsville, MA in a Residential-2 zoning district and is owned by John Puccio, Trustee Trimount Trust, 555 University Ave., Norwood, MA.

The public hearing was opened at 7:05 P.M. with the reading of the public hearing notice by the Clerk, Sharron Ampagoomian. The five members assigned to this hearing by the Chairman Thomas Hansson were Sharron Ampagoomian, Carol Snow, Diane Woupio, William Corkum, and Brett Simas.

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Presenting the petition for the applicant was Mark Anderson, Heritage Design Group. Also present was the applicant Joseph Marininella. Mr. Anderson stated that the existing foundation is within the front setback requirement of 40 feet. The certified stamped plot plan that he submitted, dated September 17, 2012, indicates 6 ft. into the setback. The foundation is also within the side setback requirement which Mr. Anderson stated would be corrected through an ANR Plan which will be submitted to the Planning Board for their approval. He explained that the foundation was laid out in error by Mr. Marinella's work crew due to a misreading of the subdivision plan. The main road, Rebecca Road, is a 50 ft. wide road because it is a thru connecting road. The other roads coming off of Rebecca Road are 40 feet wide. He also stated that the excavation was over dug by about 10 feet. When they set the foundation they didn't realize that there was a limited amount of room as to where the foundation could go.

Mr. Anderson stated that there are 5 other homes under construction and the as-builts have been completed on the foundations which show them to be in compliance. He stated that his company, Heritage Design Group, did not lay out this lot prior to the foundation being installed. He assured the Board that all lots going forward within this subdivision will be staked out by a registered land surveyor and a certified stamped as-built of the foundation will be submitted to the Building Inspector prior to any construction of the house.

Mr. Hansson asked if there was a change in the house plans which may have caused the error. Mr. Anderson replied that there was no change in plans; the error was made when they laid it out. Mr. Anderson added that this was one of the smaller models and there were no additions or add-ons to the plans for this house. He also asked him how the side lot line was going to be rectified. Mr. Anderson replied that they have the ability to take from the abutting parcel which has the potential to become a retreat lot. In doing so, they are willing to give that up the potential retreat lot by taking land from that lot to add to Lot 3 to correct the side lot line setback.

Mr. Corkum asked how far the construction was on the house. Mr. Anderson replied that it was framed and weather tight, with some plumbing work having been done. However, as soon as they determined that the house was not in compliance, all work was stopped on the house. Mr. Corkum responded by stating that typically there is a front pin and a back pin on the left side of the house and a front and back pin on the right side which determines where the house is to be built. Mr. Anderson replied that the lot lines were not delineated on this lot prior to the installation of the foundation. Mr. Corkum responded that with any contractor "measure twice, cut once" is very important and errors like this are inexcusable, especially a 6 ft. error.

Mr. Corkum asked Mr. Marinella what the inspection process was for the construction of these homes and who oversees that the job is being done correctly. Mr. Marinella replied that he does, but in this case the person who called Heritage Design for the setback requirements asked for the setbacks for Grace St. which is a 40 ft. wide roadway and not Rebecca Rd. which is a 50 ft. wide roadway so that person was going on the premise that it was a 40 ft. roadway.

Mr. Corkum asked what part of the house is in the setback. Mr. Marinella replied the garage but there is a room over the garage so there is no easy fix. The house is sided and the windows are in and the interior is roughed in.

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Mr. Corkum asked Mr. Anderson again if this is the only house that is not in compliance. Mr. Anderson replied that there was one other one, lot 1 which has the model home on it. That one is not in compliance as well for the same reason. They did not find that one in time to file an application in time for this meeting so they will file for relief at a later date.

Mr. Anderson presented the Board with 3 letters from abutters in support of the variance. One is from Christopher Murray who occupies the home on Lot 8, Jeffrey Bajema who will abut directly across from this lot and Brian Massey, who will abut diagonally across from this lot.

Al Richards, 516 Hill St. abutter to the property, stated he is not happy with the development but has no issues with Lot 3. Their issue will be with the Model Home that is on Lot 1, which is also in non-compliance.

No one spoke in opposition.

Sharron Ampagoomian made the motion to close the public hearing and take the matter under advisement. The motion was seconded by William Corkum and the vote was unanimous.

During the discussion Mr. Corkum stated that this was an error that should not have happened. This is a contractor that should have checked the work before the foundation was poured. In his opinion the garage portion that is in the setback should be removed. It should have been done right the first time and let it be a lesson for him and for other contractors in town. The Board needs to start setting an example and not grant variances for hardships that are created due to negligence. The footing for that house had to set for two weeks prior to the foundation being poured and no one took the time to check it.

Mr. Hansson stated that if there had been a change in the house plans, he could understand how it may have happened. However, Mr. Marinella's explanation of the 50 ft. roadway versus the 40 ft. did make some sense as to how it could have happened.

A motion was made by Carol Snow to grant the variance with the following conditions:

- That all future foundation as-builts be certified and stamped by a registered land surveyor and submitted to the Building Inspector for his approval prior to any further construction on the house.
- That the side lot line setback be brought into compliance by moving the side lot line through a form ANR Plan to be submitted to the Planning Board for approval. The adjacent lot, shown as Parcel A, Assessor's Parcel 212 on the subdivision plan, cannot be further developed as a retreat lot and shall be noted as unbuildable.
- All work shall continue to cease on the house until such time as the Variance decision is filed, the appeal period of twenty days has lapsed, and the decision has been recorded at the Worcester Registry of Deeds and submitted to the Building Inspector.

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The motion was seconded by Diane Woupio and the vote was 4 in favor, one opposed. William Corkum voted in opposition.

Thomas Hansson will write the decision.

CONTINUED PUBLIC HEARING: (13-V-2012) JOHN BERKOWITZ, APPLICANT

This hearing was continued from September 13, 2012 to consider the petition of John Berkowitz, 7 Walker Street, Whitinsville, MA for a Variance in order to support 3 residential building lots. The property, shown on Assessor's Map 23A as Parcels 144 & 147, is located on Hope Street in a Residential-3 zoning district and is owned by John Berkowitz. The applicant is seeking a third buildable lot by reducing the size of the two adjoining lots, both of which already have houses built on them.

The public hearing was opened on September 13, 2012 with the reading of the public hearing notice by Sharron Ampagoomian. Because there were only 4 members present a unanimous vote was required and the applicant chose to continue the hearing until this evening.

Assigned to this hearing this evening by the Chairman Thomas Hansson were Sharron Ampagoomian, William Corkum, Diane Woupio, Carol Snow, and himself.

Mr. Anderson stated that the applicant would like to create an additional lot between two existing lots that have homes on them. The issue is that Piedmont St. goes through the property. However, in his opinion Chapter 183 of the Massachusetts General Laws Section 58 applies to this property. Mr. Anderson stated that because the road was never developed, Mr. Berkowitz owns to the middle of the road from both sides as he owns both properties. The road was never claimed or developed and because he owns on both sides of that portion of the road, he feels he has rights to that portion of the road. No one has any other rights to it.

Mr. Anderson stated that they would like to create a lot in the middle of the other two and if there is any question to ownership there could be a condition that any use of that land be subject to a title examination and a certified title be submitted to the Building Inspector prior to any building on that lot. That would take the liability off of the Zoning Board of Appeals and that lot would then be buildable.

Mr. Corkum stated that the title search should have been done prior to this hearing. Mr. Anderson replied that if that is what the Board wants then he will do it.

Chairman Thomas Hansson stated that it appears he is looking for is to create a third non-conforming lot by reducing two already non-conforming lots. Also, because of the size of the proposed lot, they would have to come back before the Zoning Board for relief from setback requirements.

Board Member Brett Simas stated that Section 173-32 of the Zoning By-laws states that any nonconforming lot if already smaller than that required shall not be further reduced so as to be in great nonconformity. He stated it was his opinion that relief could be granted through a variance but there is no hardship because the hardship is being created. This is a very small rectangular piece of property that is being created not an existing irregular shaped piece of property.

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Mr. Hansson agreed that the hardship is being created.

Mr. Anderson asked for a continuance of the public hearing in order to allow him time to speak with his client before any further discussion.

A motion was made by Sharron Ampagoomian to grant the continuance to November 8, 2012, the motion was seconded by Carol Snow and the vote was unanimous.

CONTINUED PUBLIC HEARING :(10-APP-12 & 11-APP-2012) NORTHBRIDGE HOUSING AUTHORITY, APPLICANT

This public hearing was continued from August 9, 2012 and September 13, 2012. Attorney Jason R. Talerman in a memo dated September 11, 2012, requested a continuance of the public hearing to allow them additional time to make continued progress toward a compromise with E.A. Fish. Matthew Mittelstadt, Managing Director of for E.A. Fish Development, confirmed via email that they were agreeable to the continuance to October 11th and they too will use the time to continue to work with the Northbridge Housing Authority towards a compromise. The Board voted unanimously to grant the continuance on September 13, 2012.

Attorney Jay Talerman representing the Northbridge Housing Authority and Attorney Ed Doherty, representing E.A. Fish, were present this evening and they asked for more time to come to an agreement. Mr. Talerman requested that the Board grant them another continuance until November 8, 2012. Both parties will submit something in writing indicating that they both agree to the continuance.

Ms. Ampagoomian stated that they had two months to come to an agreement and she would like to bring this to a close. She hopes that this is the last request for a continuance and they come to an agreement prior to November 8th.

A motion was made by Sharron Ampagoomian to grant the continuance until November 8, 2012. The motion was seconded by Thomas Hansson and the vote was unanimous.

There being no further business the meeting was adjourned.

Attested by,

Brenda M. Ouillette
Administrative Asst.

THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE ZONING BOARD OF APPEALS (Approved on November 8, 2012)