



## TOWN OF NORTHBRIDGE

### ZONING BOARD OF APPEALS

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*Approved on April 12, 2012*

## ZONING BOARD OF APPEALS

### MINUTES OF MEETING

**MARCH 8, 2012**

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

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

Associate Member Harold Hartmann was not in attendance.

A motion was made by Carol Snow to approve of the minutes of February 9, 2012. The motion was seconded by Diane Woupio and the vote was 7-0 in favor.

#### **CONTINUED PUBLIC HEARING: 01-V-12 SCOTT & KATHLEEN MURPHY, APPLICANTS**

This hearing was continued from February 9, 2012 on the petition of Scott & Kathleen Murphy, 402 Benson Road, Northbridge, MA for a Variance from front and rear setback requirements pursuant to Article VI, Section 173-19 of the Town of Northbridge Zoning By-laws, Table of Area Regulations, in order to allow the construction of an addition to the existing house for a new garage, kitchen, and deck.

The property is located at 402 Benson Road, shown on Assessor's Map 16 as Parcel 65 consisting of 15,462 sq. ft. The property is located in a Residential-2 zoning district and is owned by Scott & Kathleen Murphy.

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Representing the applicants was Jay Melick, the designer of the proposed addition. Also present were the applicants Scott & Kathleen Murphy.

Since the last meeting the Board has received two letters, one received on February 27, 2012 and one received on March 8, 2012. Board member Sharron Ampagoomian read out loud the letter dated February 27, 2012 written by Debra Ferrucci, 334 Benson Road, Northbridge, MA in support of the petition. (Letter on file) Associate Member Daniel Batt read out loud the second letter dated March 8, 2012 written by James Federici and Ellen Sweeney Federici in opposition of the petition. (Letter on file)

Jay Melick spoke on behalf of his clients. He stated that since the last meeting he has tried to focus on the concerns that were expressed by the abutters last month. He felt that the major concern was the oversize house for the size of the lot. They put a lot of effort into trying to reconfigure the layout in such a way as to avoid the need for a variance but have determined that a variance is needed no matter how they reconfigure it. Pulling the garage forward would still require a variance from front setback requirements and pushing it more to the side would require a variance from side setback requirements. A variance from the rear setback appears to be the best solution. They decided not to change the design because time is of the essence especially with summer coming. In his opinion the variance from the rear setback requirement is the least offensive so they are going with the same design they presented last month.

He stated that he has been in contact with the Veterans Administration and has received a lot of input from them as to what is going to be required to meet minimum design standards. The addition is designed for additional space and not just standard space but accessible space to meet handicap regulations. The deck is another issue. They could possibly reduce it but the objective is to allow Mr. Murphy outside enjoyment with his family. Without the deck it will be difficult to get him out in the backyard.

Chairman Thomas Hansson asked Mr. Melick to explain why he was not moving the addition forward. He replied that the driveway is small, there is no off-street parking, and the house is located near a very bad corner. The existing driveway area is valuable and needed for visitor parking. They felt the present design was less offensive.

Mr. Hansson replied that the increase in the front variance would be the less offensive because the abutters to the rear have the issues. They won't see it in the front so he wondered how he arrived at the conclusion that it was less offensive leaving it as designed when there appeared to be no objections to them moving the addition forward. Mr. Melick replied that in his opinion it doesn't seem more offensive putting it more to the rear. Either way they wouldn't be able to meet the setback requirements. As it is presently designed they will be able to back out and then drive out easily. Shortening the driveway would be a problem for the turn around. He also stated that changing the plans and then re-applying would take time and they did not want to delay the issue with another application.

Mr. Hansson responded to that by stating that the public hearing was still open and he had an opportunity to come back with a revised plan this month without re-applying.

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Mr. Hansson then explained to the Board and the applicant that if this application is denied the applicant has 3 options:

- A. Appeal the decision
- B. Wait two years and re-apply
- C. Change is significantly enough from where it is denied to be able to re-apply.

Mr. Melick replied that he has discussed this with his clients and they understand the consequences.

Board Member Sharron Ampagoomian asked if the Board had received any new plans for this meeting as that was something the Board had asked for at the last meeting. The secretary replied that nothing has been submitted since the last meeting in February.

Board Member William Corkum agreed and stated that the floor plans submitted in February did not match the plot plan and that was something the Board had asked for. He also questioned what was there for an existing driveway and what was being added as it does not show on the plan. Mr. Melick replied that the proposed plot plan as submitted last month would be the finished product without the deck. The deck is not included on the plot plan. The driveway design would be as is shown.

Mr. Corkum stated that his biggest concern is the elevation of the proposed deck from the ground level and asked Mr. Melick how high the proposed deck would be. Mr. Melick replied 6 ft. due to the slope of the grade. Mr. Corkum then stated that the proposed addition would encroach 7 feet into the rear setback and the addition of a 12 ft. deck would encroach another 12 ft. into the setback for a total of 19 ft. Mr. Corkum stated that any deck over 4 ft. can only encroach 2 feet into the setback. Mr. Corkum then suggested moving the deck to the inside corner of the existing house. Mr. Melick replied that they did think of that and that is an option but it is not very accessible from the house. Moving the deck to the middle of the house would still require a variance and the best location is still off of the kitchen as proposed.

Board Member Daniel Batt stated that a new plan would have been very helpful. He personally is disappointed because at the last meeting they had asked for additional plans and clarification, as well as the deck to be shown on the plot plan.

Mr. Corkum stated to Mr. Melick that even though Mr. Melick stated he could shorten the deck, it would have been nice to see the proposed change on a revised plan. Not seeing it on a plot plan is difficult. The plan submitted indicates a 12 ft. deck and that's what the Board will be voting on. The Board has to base their decision on the fact that the proposed deck will encroach another 12 ft. into the setback. The proposed plot plan and the design plans are conflicting.

Ms. Ampagoomian added for the record that the Board is taking into consideration both the neighbors and the applicant. The Board continued the public hearing in order to give the applicant an opportunity to discuss the issue with the neighbors and come up with a possible revised plan. The Board followed a procedure that gave them an opportunity to discuss and possibly come up with a solution to appease themselves as well as the neighbors.

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Mr. Batt asked Mr. Melick if he had determined the turning radius to see if the garage could be moved forward. Mr. Melick replied that shortening the driveway would make turning around very difficult and it would be a further non-conforming front setback. Mr. Batt responded by stating that it was clear to him at the last meeting it was not a front setback issue that was the problem, but the rear setback. It could have been explored further and an alternate plan could have been submitted to show that it was possible because it appears to him that it could be done.

Board Member Brett Simas stated that a hardship is not relevant in this case as the property is pre-existing, non-conforming. Their decision on this petition should not be based on the hardship of the occupant but the hardship on the neighborhood. The issue before the Board is whether or not the proposed addition is substantially more non-conforming and detrimental to the neighborhood. The personal hardship of the applicants who are requesting the variance is not related to that criteria.

Mr. Hansson opened the discussion to the abutters.

**Ellen Sweeney Federici, 517 Highland St.,** expressed her opposition. They directly abut the property to the rear. She stated that nothing new has been presented so they are still in opposition. They are not difficult people and are willing to work with the applicant, however they are at a hearing again this month and nothing has been presented any different than last month. Even something in writing from the Veteran's Association would have been helpful to prevent any misinformation from being presented. As it stands they believe that Mr. Murphy's comfort needs can be met without the encroachment into the rear setback. They don't want to interfere with Mr. Murphy's comfort or medical needs but they feel the need to preserve their rights as well. All she is asking for is proof or something to show that it can't be met in the way she is suggesting. She added that it is an emotional situation as they like the Murphy's very much and don't want to deprive them but unfortunately their needs will impact them. It will be permanent and she doesn't know what the future may bring. She feels the Murphy's needs shouldn't be put above their rights when they feel their needs can be met another way. She added that if it can be shown that it absolutely cannot be done, they are reasonable people and they will sit down at a table and discuss it with them. She took photos and asked if she could present them to the Board, to be submitted as evidence for the file.

Mrs. Federici stated that her and her husband fully supported the first addition because they understood the situation and thought that was the end of it. They did what they could to maintain some privacy and planted some hemlock trees which are growing very slowly. However, the new addition and deck are going to be extremely close to their property line. They think it can be accomplished without the variance from the rear property line and until they are shown that it cannot be accomplished that way, that's their position. They have something huge at stake as their home is their biggest financial asset. She asked the Board respectfully deny the petition at this time.

Chairman Thomas Hansson asked Mrs. Federici to explain how she believes the Murphy's needs can be met without the need for the variance. He asked if she meant an alteration of the plan or an alteration of the existing house without the addition. Ms. Federici replied that she believes it can be accomplished with an oversized one car garage with a kitchen/dining area front to back

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They could probably still fit a deck off of the kitchen well within the setback. The existing plan calls for a two car garage and they believe that instead of putting the kitchen and dining room behind a two car garage, they can put their kitchen and dining room in the middle and a garage stall to the side of it. Their current kitchen and dining area can be extended to be an open floor plan. She does not know what the handicap requirements are but she would be willing to research it if provided that information. However, none of that information has been presented this evening. The side setback is not an issue even with the two car garage. Their issue is the fact that the addition is going back closer to their property. Again, they are not unreasonable but they haven't been presented with anything indicating that they have no other alternatives. Once again she stated that the proposal as it stands is detrimental to them and they object strongly. An increase in the variance from the front setback requirements would not be an issue and they would not object to it.

Mrs. Kathleen Murphy responded that the existing driveway right now is very difficult and she uses the neighbor's driveway many times because of the people going and coming all day. The police have told them that they cannot park on the street. She can't have any holiday gatherings at her house because there is no room for parking. She needs more space because of the support she will be needing in the future for the care of her husband. She stressed that she was only asking for 7 feet.

Mr. Corkum responded to that by stating that the variance is for 7 feet without the deck. The design plans indicate that there is going to be a deck. Mrs. Murphy responded by asking if the deck could be moved to another location and Mr. Corkum replied that was exactly what the Board expected to see this month. The Board hasn't seen anything new, not even a plan showing a shortened deck as Mr. Melick mentioned. No attempt was made to make any changes on the plan, not even a hand sketch.

Mrs. Federici stressed to the Board that they have no remedy after the structure is built. Should the property be sold at a later date, they have no control as to what new owners might do. They do get a say here before it is built and once again she will sit down and negotiate and talk, but as to the plan presented, they strongly object. It is definitely more detrimental to them.

Mr. Simas asked Mr. & Mrs Federici if the deck were to be built would it make a difference where the deck was built. She replied that where the deck is now is what they have been living with but putting the deck and addition closer to them is what they oppose.

James Federici replied that the plan itself is very difficult to understand and it is very unfortunate that they are here for the second time with a plan that no one understands. He had a difficult time reading the dimensions and the deck size. They can't agree with anything unless it is laid out on a plan.

Chairman Thomas Hansson stated that he agreed and the Board can either vote on the plan proposed or agree to a continuance. It appears that no one seems to know what they are voting on because the plot plan does not match the drawings.

Mr. Simas stated that it is his understanding that what the Board is voting on is what is proposed on the plot plan but with a condition that the deck won't go any further back closer to the rear

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property line than the addition so the only place they can put a deck is not any closer to the property line than the addition.

Chairman Thomas Hansson stated once again that it was very unclear as to what the Board would be voting on because the plot plan and the design plans are conflicting.

Ms. Ampagoomian made the motion to continue the public hearing until next month at which time a revised plan that does not conflict could be submitted.

Before there was a second on the motion, Mr. Melick asked if the Board could vote on the addition without the deck and Mr. Hansson replied that it would be possible. The motion for a continuance was not seconded so Ms. Ampagoomian withdrew her motion for a continuance. She then made a motion to close the public hearing and take the matter under advisement. The motion was seconded by William Corkum, the vote being 5-0 in favor.

Chairman Thomas Hansson explained to the Board that they are voting on the plan submitted without the deck. He added that they should be weighing heavily on whether or not the proposed addition is more detrimental to the neighborhood. No matter what they do, unless they can meet the setbacks, it will make it more non-conforming.

Ms. Ampagoomian stated that this process has not been easy for anyone and very emotional. In her opinion it is a non-conforming lot and the issue is only 7 feet into the rear setback requirement of 40 feet.

Mr. Corkum stated that looking at the pictures and actually sketching in the addition, it is going to be a large addition. He stated that it was definitely a detriment from the view that is shown on the photo.

Mr. Simas stated that the detriment to the neighborhood is the people who live in the neighborhood having a detriment on their life or their financial situation, so degrading the value of someone's property is a detriment to the neighborhood. What the Board has to decide is if there is enough of a significant detriment to deny the petition. In his opinion the construction of this addition will absolutely decrease the property value of the people who own the rear property. What's there now is not great but what is going to be there is even less desirable and if it is less desirable then he would pay less for it if he were looking for a house to purchase. Therefore, in his opinion, the proposed addition is definitely detrimental to the neighbors in the rear. But that's what the Board has to decide.

Ms. Woupio questioned in her mind whether it was a detriment to just one neighbor or the whole neighborhood.

Mr. Corkum stated that what was surprising to him was the floor plan. This is supposed to be a specific floor plan for a handicapped person and the plan does not indicate that with the island in the middle of the kitchen. Also about 60% the project is garage area and maybe the garage could be made smaller.

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A motion was made by Sharron Ampagoomian to grant the variance from the front and rear setback requirements as shown on the plot plan with the addition being no closer to the rear property line than 33 feet. The motion was seconded by Diane Woupio and the vote was 4 in favor, 1 opposed. Chairman Thomas Hansson voted in the opposition. Voting in favor were Sharron Ampagoomian, Carol Snow, Diane Woupio, William Corkum.

### **OLD/NEW BUSINESS**

#### **Request for Extension/Granite Hills Comprehensive Permit (13-CP-07)**

A written request was received from the Law Office of W. Robert Knapik to extend the time period for Granite Hills to commence construction as authorized by the Comprehensive Permit (13-CP-07) for a period of two years. The Comprehensive Permit was granted on July 13, 2009 with an expiration date of 3 years from the date that the decision would have become final which would have been August 4, 2012. The Comprehensive Permit is for a 124 unit residential condominium project on approximately 54 acres of vacant land located on Highland Street. The request for extension is due to the result of the deteriorating real estate market.

A motion was made by Sharron Ampagoomian to grant the extension for two years to expire on August 4, 2014. Motion seconded by Diane Woupio, the vote being 5-0 in favor.

#### **Correspondence:**

A copy of a memorandum to municipal clients dated January 19, 2012 prepared by Kopelman And Paige was distributed to the Board Members. The memorandum pertains to a decision that was rendered recently by the Massachusetts Appeals Court regarding the relief required to alter or extend a pre-existing, nonconforming single or two family dwelling. A finding through a Special Permit of no substantial detriment to the neighborhood is now sufficient to allow the expansion of a single or two family dwelling which introduces new violations of dimensional requirements. An applicant no longer is required to obtain a variance, even though the proposed project creates a new nonconformity.

There being no further business, the meeting was adjourned.

Attested by,

Brenda M. Ouillette  
Administrative Assistant

**THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE ZONING BOARD  
OF APPEALS (Approved on April 12, 2012)**