



TOWN OF NORTHBRIDGE

ZONING BOARD OF APPEALS

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NORTHBRIDGE TOWN CLERK
DOREEN A. GEORGE

Approved on May 7, 2015

ZONING BOARD OF APPEALS

MINUTES OF MEETING

MARCH 12, 2015

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

Diane Woupio

Sharron Ampagoomian

Randy Kibbe

William Corkum

Absent from this meeting was Carol Snow.

Also present was Brenda Ouillette, Administrative Assistant.

A motion was made by Sharron Ampagoomian to approve the minutes of February 12, 2015. The motion was seconded by Randy Kibbe and the vote was 5-0 in favor.

CONTINUED PUBLIC HEARING: TYRE PLACE, LLC APPLICANT **(14-SP-2014, 15-SP-2014, 16-V-2014, & 17-V-2014)**

This hearing was continued from January 8, 2015 and February 12, 2015 to consider the petition for a Variance and the application for a Special Permit of Tyre Place LLC, 18 Garrison Heights, Oxford, MA in order to create a retreat lot as shown as Parcel 2 on a plan submitted prepared by Guerriere & Halnon consisting of 22.38 acres. The applicant is also seeking a Variance and Special Permit to create a second retreat lot shown as Parcel 3 on the same plan consisting of 11.43 acres. The property is located at 2094 Quaker St., shown on Assessor's Map 27 as Parcels 39 & 44 and located in a Residential-2 zoning district.

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Voting members assigned to this hearing were Thomas Hansson, William Corkum, Sharron Ampagoomian, Diane Woupio and Randy Kibbe.

On January 8, 2015 the Board asked that a title search be done on the property and attested to by an attorney indicating the ownership of the property. Assessor's records indicate that the property is owned by the Upton State Forest and has been exempt from taxes for many years. Board members were not comfortable proceeding without this being done first. (Please refer to Minutes of January 8, 2015)

On February 12, 2015 the applicant requested a continuance of the public hearing in order to review additional documentation to be submitted to the Board by some of the abutters. (See minutes of February 12, 2015)

Attorney Robert Knapik was present this evening representing the applicant. Also present was Tom Barry owner and manager of Tyre Place. Mr. Knapik explained to the Board that the property has been in the family over 50 years and Mr. Barry recently acquired the parcel in the front allowing him access to the rear property. A survey was done by Guerriere & Halnon to confirm the boundaries of the property and they came up with the option of either a 9 lot subdivision or the plan before the Board this evening which is 3 lots to include the existing lot and two additional retreat lots.

Mr. Gamache stated that lot 1 with the existing house will conform to zoning. The proposed Parcel 2 consists of 22.38 acres of land with 50 ft. of frontage. The proposed Parcel 3 has 11.4 acres with 42 ft. of frontage. Because the property abuts a retreat lot on each side, a variance is required from that section of the retreat lot by-law.

Mr. Hansson asked if the issue of ownership with the Upton State Forest had been resolved. Mr. Gamache responded that he heard from them 3 times and they have no idea what they own at this point.

Mark Ovian, 24 Leland Rd. spoke on behalf of one of the abutters. He questioned the 33 acres when the deeds indicate it is only 17.69 acres. Mr. Gamache explained to the Board that the town took the property from Mr. Desmarais said to contain 17.69 acres. Mr. Ovian argued that the Desmarais land was taken by both Upton and Northbridge. The town then sold it to Mr. Leo Smith in 1947 who in turn sold it to the Barry family in 1976.

Mr. Knapik stated that when a deed references area, that is the least reliable measurement. That deed states Tyre Place as supposedly containing 17.69 acres of land. They will never know where that figure came from but that is what the town took for tax taking. It is a surveyor's job to read the deeds and evidence including plans to deeds of surrounding properties and even Assessor's abstracts. It is also the surveyor's job to determine where on the ground this parcel sits. This is the evidence before them this evening shown on a plan stamped by a certified land surveyor.

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Mr. Ovian stated that the records in the Assessor's office indicate that the property is owned by the Upton State Forest. He asked if ownership has been confirmed by the Upton State Forest. Mr. Gamache responded that they have no idea what they own. Mr. Ovian responded by stating he contacted them and the Upton State Forest deeds are archived in Boston. There are 51 boxes of deeds referencing property that they own. Mr. Gamache responded that he was comfortable with the information he has and Mr. Ovian argued that they should be looked at.

Mr. Knapik stated that Mr. Barry has hired experts to research the property. Upon making that determination, the plan before the Board was drafted. They have no problem with the abutters contesting the validity of the title and location of the property as they are entitled to do that. However it is not the responsibility of this Board to judge who owns what. It is the abutter's prerogative to prove otherwise but the Board has to weigh what is before them this evening.

Mr. Hansson asked Mr. Ovian what his issue was. He replied that he is questioning the ownership of the property that is shown on the plan. He argued that the legal documents have not been provided.

Mr. Knapik responded by reading from the 1947 deed as land of low value conveying the property to Leo Smith. It states at the top that title shall be absolute on the recording of this deed at the Registry of Deeds within 60 days of the date. The deed was recorded within the 60 days. The next deed is a deed conveying the property to Mr. Barry described the same way.

Mr. Ovian argued that every one of those deeds references 17.69 acres. Mr. Knapik responded with "supposedly 17.69 acres." Mr. Ovian stated that technology has not changed that much to make it that much different in size and Mr. Knapik responded that modern technology has in fact changed that much. He went on to explain that in 1947 this land was of such little value that it was taken for failure to pay approximately \$500 in property taxes. No one was going to pay a land surveyor to do a survey of property when they couldn't even pay the taxes on it. Mr. Ovian argued that the property has been in the Barry family for years and has only paid taxes on 17.69 acres. He asked if the back taxes would be paid on this property. Mr. Hansson replied that it was not this Board's responsibility to determine that.

Linda Dzicek, 2024 Quaker St., asked if the questions she submitted this evening were going to be looked at and answered. She stated that she has requested records from the Town regarding the taxes paid on this property. She also brought up the issue of a subdivision that was proposed a few years ago. She attended many of those meeting and the site distance was always an issue at that location.

William Corkum asked Mr. Gamache if this was the first survey done on this project to the best of his knowledge and Mr. Gamache responded yes. He has been licensed in Massachusetts for over 25 years and is now certified in Connecticut and Rhode Island. Mr. Corkum then stated that he feels comfortable that what he draws for lines they Board has to accept those lines.

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Mr. Masmanian asked if the Board is just going to take the work of Mr. Gamache that Upton State Forest has shown no interest in this parcel. He stated he would like to see a document stating that they are aware of the ownership issue. Mr. Masmanian also stated that he would like to see just two driveways, one for the existing house and one for the other lots. The height difference is quite significant at that location and five driveways within 300 feet are dangerous at that location.

Noreen Woodward agreed with Mr. Masmanian by stating that there will be 6 driveways on that slope resulting in a more dangerous situation.

Katelyn Woodward questioned the markers referenced in surveying the property. She would like to see visual markers like a photo of it etc. There are piles of rocks everywhere in the forest. She would like documentation that those piles of rocks even exist.

Board member Randy Kibbe stated that he has known Mr. Gamache for 20 years and he is a thorough and honest professional and if he says the piles of rocks are there, then he can accept that. She argued that she would still like verification that they exist.

Mr. Hansson stated that the plan is stamped by a Certified Land Surveyor and that is acceptable to him.

A motion was made by Sharron Ampagoomian to close the public hearing and take the matter under advisement. The motion was seconded by Diane Woupio and the vote was 5-0 in favor.

Ms. Dzicek argued that her hand was up before the motion was made to close the public hearing. Mr. Hansson stated that he had already given her 3 opportunities to speak and the public hearing was now closed.

After some discussion a motion was made by Sharron Ampagoomian to grant the variance from section (F) of the Retreat Lot By-law to allow a driveway for a proposed retreat lot (Parcel 2) to have contiguous frontage with the adjoining retreat lot. The motion was seconded by Diane Woupio, and the vote was 3-2 in favor. Having not obtained the necessary 4 votes for approval, the variance was not granted. Randy Kibbe and William Corkum voted in opposition.

A motion was made by Sharron Ampagoomian to grant the Special Permit for the proposed retreat lot shown as Parcel 2 on the plan submitted. The motion was seconded by Diane Woupio, and the vote was 3-2 in favor. Having not received the required 4 votes for approval, the Special Permit was not granted. William Corkum and Randy Kibbe voted in opposition.

A motion was made by Sharron Ampagoomian to grant the variance from section (F) of the Retreat Lot by-law to allow a driveway for a proposed retreat lot (Parcel 3) having contiguous frontage with an adjoining retreat lot. The motion was seconded by Diane Woupio and the vote was 3-2 in favor. Having not obtained the required 4 votes for approval, the variance was not granted.

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Randy Kibbe and William Corkum voted in opposition.

A motion was made by Sharron Ampagoomian to grant the Special Permit for the proposed retreat lot shown as Parcel 3 on the plan submitted. The motion was seconded by Diane Woupio and the vote was 3-2 in favor. Having not received the required 4 votes for approval, the Special Permit was not granted. William Corkum and Randy Kibbe voted in opposition.

Mr. Kibbe stated that he voted in the opposition due to the safety of the driveways and the increased runoff. If they decide to develop a 9 lot subdivision, then that issue can be addressed through stringent subdivision regulations by the Planning Board and Site Plan review. Subdivision regulations would address all those issues.

Mr. Corkum agreed that that was the reasoning behind his decision as well.

There being no further business, the meeting was adjourned.

Attested by,



Brenda M. Ouillet
Administrative Asst.

**THESE MINUTES ARE SUBJECT TO THE APPROVAL OF THE ZONING BOARD
OF APPEALS (Approved on May 7, 2015)**