



TOWN OF NORTHBRIDGE

ZONING BOARD OF APPEALS

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Approved on January 10, 2013

ZONING BOARD OF APPEALS

MINUTES OF MEETING

NOVEMBER 8, 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 William Corkum to approve of the minutes of October 11, 2012. The motion was seconded by Sharron Ampagoomian and the vote was 6-0 in favor.

PUBLIC HEARING: (16-SP-2012) SCOTT A. & KATHLEEN M. MURPHY

This hearing was held to consider the application of Scott and Kathleen Murphy 402, Benson Road, Northbridge, MA for a Special Permit pursuant to Article IX, Section 173-30 (A) of the Town of Northbridge By-laws, Extensions and Alterations, in order to allow an addition to an existing non-conforming single family home. The addition will consist of a new garage and kitchen.

The property is located at 402 Benson Road, Northbridge, MA 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.

Sharron Ampagoomian read the public hearing notice. Assigned to this hearing by the Chairman were William Corkum, Carol Snow, Diane Woupio, Sharron Ampagoomian, and himself.

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Present on behalf of the applicant were Attorney John Wickstrom, and Jay Melick, the architect who designed the plans. Mr. Wickstrom explained to the Board that the current suit brought by James Federici and Ellen Sweeney on the previous variance granted has the potential for lasting another three years at a continuing expense through trial and appeal. In order to avoid that they have redesigned the addition and moved it forward in order for the addition to be built within the rear setback requirement.

Recently the Massachusetts Appeals Court held that variance relief is not required when a project increases a non-conformity or creates a “new nonconformity” if the Zoning Board of Appeals determines that the project would not be substantially more detrimental to the neighborhood. In this case, the Board need only find that the extension of the nonconforming structure does not present any substantial detriment to the neighborhood. Therefore, they are now seeking a Special Permit because the lot and the existing structure are non-conforming due to lot area and front setback.

Mr. Wickstrom stated that if the Special Permit is granted this evening and the appeal period expires without an appeal being filed, he will work with Ms. Sweeney to terminate the lawsuit and will advise the Board whether or not that variance may be considered null and void. If the Special Permit is not granted, or if it is granted and an appeal taken, they will try the original case on December 3 or as soon thereafter as the Court orders. He stated that they do anticipate opposition on this new plan as a meeting took place on September 7, 2012 with Jay Melick, Mr. Federici and Ms. Sweeney, and himself. Mr. Federici and Ms. Sweeney stated at that time that they approved it but they had soil and drainage issues, an issue that was never brought up during the previous hearing for the variance.

Mr. Wickstrom stated that as part of their proposal for an understanding, they agreed to include specifications for site and soil conditions on the detailed working drawings satisfactory to the Building Inspector. The plan presented in the first filing had site and soil conditions that were never an issue at that time. The plan being presented now has the same seven provisions and include doing whatever is required by the Building Inspector. A copy of those specifications was submitted to the Board this evening.

Jay Melick added that in his opinion their concern is that the water may be draining from the construction site onto the abutting property. They will not be doing construction in the rear setback or side and each phase of the construction has to be inspected. With this type of construction gutters will not be used. Instead of gutters that direct water to a downspout, water will drain into a continuous gravel pit. Typically, a separate detailed drainage plan is not done for residential property.

Ellen Sweeney, 517 Highland St., abutter to the rear of the property, stated that they were agreeable to them moving the addition forward as it was less intrusive to their property. However, there was nothing on the plans that they looked at about drainage and they are concerned as the Murphy’s house sits above theirs. She was told by Mr. Melick at that meeting on September 7th that drainage was the Building Inspector’s responsibility. She called the Building Inspector and he stated that it falls with the architect and it is suppose to be on the plan. She added that she has not seen any plans with the drainage issues being addressed. They will object to it if they do not get the drainage plans because this addition will triple the size of that house. Her suggestion this evening was that

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the Board adjourn to another date and the drainage plans be given to them prior to the next meeting. A copy of the drainage specifications that the Board was given this evening was then given to her. After briefly reviewing it, it appeared that she might be satisfied.

Mr. Wickstrom replied that drainage is a specification that is listed on a plan. Separate drainage plans are not typically submitted for a residential addition. He asked that the Board not postpone making a decision this evening as time is of the essence for Mr. Murphy. He needs this addition as soon as possible.

Ms. Ampagoomian asked if it was a wet lot. Mr. Federici replied that they don't want more water running onto their property. They don't want a downspout facing their property. They want to see where the water coming off the roof is going to go, plain and simple.

Ms. Ampagoomian asked Ms. Sweeney if they have runoff on their property now. Ms. Sweeney said she didn't know as they have water on their lot now but they don't know where it originates from. The point is that the Murphy's are tripling the size of the house and they have not been given anything to show how the water will drain other than what was given to her this evening.

Ms. Sweeney then stated to the Board that if the Board grants the Special Permit, she would like to see something in the decision that states that the Building Inspector address the drainage issues as stipulated on the plans. She stated that they would not object if that were done.

Kathleen Murphy stated that the addition is now smaller and they lost a handicap bathroom at the front of the house which would have made it more convenient for her husband to get into with a wheelchair instead of going down the hall. They also lost garage space which has to accommodate a handicap van. They did make sacrifices because her husband's needs are becoming more extensive and they need this addition soon.

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

Board members agree that the revised plans for the addition were less intrusive on the rear abutter and not a detriment to the neighborhood. There were no other abutters who expressed opposition to the new plans. Board members felt that a separate detailed drainage plan was not necessary as site and soil conditions will be specified on the building plans that are submitted.

A motion was made by Carol Snow to grant the Special Permit with the condition that the Building Inspector enforce the site and soil conditions that have been submitted this evening to be included on the final building plans to be submitted to the Building Inspector. The motion was seconded by Diane Woupio, the vote being 5-0 in favor.

William Corkum will write the decision.

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

This hearing was continued from September 13, 2012 and October 11, 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 October 11, 2012.

On October 11, 2012 the Chairman assigned himself as well as Sharron Ampagoomian, William Corkum, Diane Woupio, Carol Snow to this hearing. Mark Anderson, Heritage Design Group, and John Berkowitz were present that evening and after a brief discussion Mr. Anderson requested that the hearing be continued until this evening to allow him more time. (Please refer to Minutes of October 11, 2012)

Today, via email, Mr. Anderson requested a continuance until the Board's next meeting for additional time for research. No one was present this evening to discuss the continuance.

Mr. Hansson explained to the Board that requests for continuances are not always granted. The reason for this continuance was for more time to do additional research. Because the Board in a previous meeting questioned the hardship for the variance, it appears that it really doesn't matter what the additional research brings forth. Even though the road may or may not be an issue which has yet to be determined, he is taking two nonconforming lots and making them smaller to create an additional lot. There is no hardship to do this. Mr. Hansson explained that even if they deny it, the two years for re-submittal would not apply if he came back with a significant change in the plans. In his opinion he has to change it significantly in order to get an approval and this would require another filing anyway. No matter how much research is being done on the road, it is not going to change the outcome.

A motion was made by William Corkum to deny the request for continuance, the motion was seconded by Diane Woupio and the vote was 4 in favor 1 opposed. Ms. Ampagoomian voted in the opposition.

Based on the evidence presented thus far, a motion was made by William Corkum to deny the variance to create a non-conforming lot by reducing two existing nonconforming lots. The motion was seconded by Diane Woupio, and the vote was 4 in favor, 1 opposed. Ms. Ampagoomian was opposed.

Carol Snow will write the decision.

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

This public hearing was continued from August 9, 2012, September 13, 2012, and October 11, 2012.

Assigned to his hearing on August 9, 2012 were: Thomas Hansson, Carol Snow, William Corkum, Sharron Ampagoomian, and Brett Simas.

Present this evening to discuss the issue were Matt Mittelstadt, Managing Director from E.A. Fish Development, Jason Talerman from Blatman, Bobrowski & Mead, Special Counsel for the Northbridge Housing Authority, and Kevin Joyce from Attorney Ed Doherty's Office, representing E.A. Fish Development. Mr. Talerman stated that they are not quite at a consensus but they will keep working at it. However he felt that they were ready for the Board to make a decision.

Mr. Hansson explained to Mr. Talerman that the Board will be making their decision not on whether or not they agree with him, but whether or not the Building Inspector was justified in his decision. Mr. Talerman responded by stating that their position is that the Building Inspector failed to apply the By-law and the condition of the Special Permit. Their appeal seeks the Board to overrule the Building Inspector and to direct the enforcement as requested. They feel that the Building Inspector did not apply 173-131E which requires the participation of the Housing Authority and that never happened and likewise they feel the same thing was required under the Special Permit and he refused to heed that as well. By denying their request for enforcement, he failed to apply the By-law in the Special Permit Condition #8.

Mr. Mattelstadt stated that they agreed with the Building Inspector without a doubt but progress has been made regarding the agreement.

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

Mr. Simas stated that in his opinion the Senior By-law does not apply as mentioned by Mr. Talerman. With regards to Condition #8, the Building Inspector in a letter dated June 21, 2012 to John Shannahan, Chairman of the Northbridge Housing Authority, stated that Condition #8 states that the applicant shall coordinate tenant selection and long term affordability monitoring plans with the Housing Authority and the Department of Housing and Community Development such that all parties agree with the assignment of roles and responsibilities. Should they feel that this arrangement is no longer satisfactory then it is his recommendation that they solicit input from the Planning Board to determine if the applicant is compliant with this condition of approval. The bottom line is that he was telling them to go back before the Planning Board because it is their condition that governs this approval, not the By-law. The condition of the Special Permit overrules the By-law. The recourse is with the Planning Board because they are responsible for the Special Permit.

Board members agreed that the Building Inspector did his job and his decision appears to be accurate. The Special Permit was issued over three years ago and if there was a problem with that

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condition in the beginning then it should have been appealed within the 20 day appeal period. If the condition was not adhered to, then they should have gone back to the Planning Board.

A motion was made by Brett Simas to uphold the decision of the Building Inspector as it relates to Article XVII, Senior Living By-law whereas the Building Inspector determined that the Senior Living By-law does not apply to the Linwood Mill Lofts Development. The motion was seconded by Sharron Ampagoomian, the vote being 5-0.

A motion was made by Brett Simas to uphold the decision of the Building Inspector as it relates to compliance with Article XIX, Historic Mill Adaptive Re-Use District Zoning By-law, Section 173-131E and the Linwood Mills Lofts Development. The motion was seconded by Sharron Ampagoomian and the vote was 5-0.

Tom Hansson will write the decision.

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 January 10, 2013)