



Board of Appeals

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Dracut, MA 01826

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DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of September 15, 2016 at 7:00 p.m. @ Dracut Town Hall Selectmen's Meeting Room, 62 Arlington Street, Dracut.

2016-13 & 14 @ 439 Parker Road – Special Permit 2.16.25 and Variance 2.12.50 for proposed 20'x26' garage addition with insufficient rear yard setback. Petitioner: Raymond Leczynski.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D.Aho, Professional Land Surveyor dated June 1, 2016.

Chairman Crowley passed out Mr. Leczynski's Narrative (copy attached).

Mr. Leczynski stated the home was built in 1954 with a one car garage by his parents. He would like to add a second one car garage. The house sits on the left side of the lot so he cannot put a standard two car garage as he would not have enough room to even go for a variance. The second garage would be attached to the house at the rear of the property. This causes the least effect with any setback issue. He passed out a picture of the property. His property is surrounded by farmland in the rear and on the sides. He has spoken with all his abutters and they all signed off saying they have no concerns or objections with what he wants to do. He passed out a drawing of the proposed garage. He was raised in the house and purchased it after his parents passed away.

Mr. Hamilton questioned the current setback of the existing building from the rear yard. It is about 34.8 feet! Mr. Hamilton questioned why he could not put the garage on the right side of the property then he would not need a variance at all. Mr. Leczynski explained there are bedrooms on that side of the house and if he was to attach to the house, he would have no way of entering without losing a bedroom and the house only has two bedrooms. In addition, all the utilities come in on that side. There is a fire hydrant, a telephone pole, water, sewer and gas lines. He does not want to be driving over them on a regular basis. There is no way to attach it to the house. The existing garage is on the front left side of the house.

Mr. Mallory asked where the driveway would be. Mr. Leczynski stated the driveway would be extended up the left side of the property where the 16.7 feet is. The driveway would be extended with crushed stone or gray stone, not pavement, in keeping with the surrounding farmland. The rear yard setback relief being sought is from 35 feet to 20.2 feet.

Abutters: Who came forward in favor or in opposition?

None.

Mr. Leczynski presented an abutters list (copy attached) dated August 12, 2016 signed by his neighbors all in favor.

A motion to close was made by Mr. Hamilton and seconded by Mr. Mallory. The Board voted unanimously to close.

A motion to approve the Special Permit was made by Mr. Scott Mallory and seconded by Ms. Heather Santiago-Hutchings. The Board finds that the petitioner meets the following three requirements of the Special Permit: that the change does not (1) substantially

impinge upon any public right of way that adjoins the lot on which the structure is to be constructed; (2) create a danger to public safety by reason of traffic access, flow and circulation; and (3) be out of character with the traditional settlement and construction patterns of the area in which it is to be reconstructed. Those voting in favor were Mr. John Crowley, Mr. Scott Mallory, Ms. Heather Santiago-Hutchings and Mr. Brian Lussier with Mr. Stephen Hamilton voting against. The motion passed on a four (4) to one (1) vote.

A motion to approve the Variance was made by Mr. Scott Mallory and seconded by Ms. Heather Santiago-Hutchings. Mr. Hamilton is opposed to the variance as there is sufficient room on the other side of the house to build a garage. He has not heard anything that shows any hardship based on the shape, soil conditions or topography that would allow the Board to grant this variance. Right now the house is set back right where it is supposed to be and there is no reason to be infringing on the rear yard setback because it might be an inconvenience for the petitioner to build a garage at another location which does not constitute a hardship. The Board finds the petitioner does not meet the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. Those voting in favor were Mr. Scott Mallory, Ms. Heather Santiago-Hutchings and Mr. Brian Lussier with Mr. John Crowley and Mr. Stephen Hamilton voting against. The motion failed on a three (3) to two (2) vote.

2016-15 @ 1905 Lakeview Avenue – Variance from rear yard lot line buffer from 30' to 18' and Variance from side yard buffering line at 24' driveway easement. Applicant seeks relief from Section 3.14.00 of the zoning by-laws. Applicants intend to erect and operate a Top Donut Shop serving coffee, donuts and related products. Petitioner: Robin and Wendy Ley.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Leo B. White, Professional Land Surveyor dated September 6, 2016.

Chairman Crowley passed out a packet of supporting documentation as follows:

- Proposed use Zoning Compliance Determination dated 8/30/2016 by Dan McLaughlin, Inspector of Buildings (copy attached)
- Letter from Chief David Brouillette, Dracut Fire Department dated September 7, 2016 (copy attached)
- By-law Section 3.14.40 Table of Minimum Standards for Buffering and Screening
- GIS drawing of property

Attorney Chambers will be presenting for the petitioners. Mr. & Mrs. Ley, proposed purchasers and Mr. Close, Registered Professional Engineer are also present.

Attorney Chambers is concerned that when he filed for the variance with the initial plan only two (2) variances were needed, one for the 18 foot buffering in the rear and the 24 foot driveway easement. Since that time Mr. Close has done a new plan in which four (4) variances are needed. The additional variances are for a 15 foot westerly and 15 foot easterly buffer line. He questioned whether they would need to request a continuance and re-advertise. Chairman Crowley feels the notice that was sent out and in the paper did cover the fact that the Board was meeting to discuss the variances. He suggested they proceed rather than table to another meeting. There was no objection from the Board.

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Attorney Chambers stated the property is in a B3 Zone and is properly zoned for a donut shop. The lot has 30,065 square feet with 150 feet of frontage. They are seeking variances from Section 3.14.00 of the Dracut Zoning By-Laws as follows:

- 18 feet rear buffer line
- 15 feet side buffer line for the 24 feet driveway easement
- 15 feet easterly buffer line
- 15 feet westerly buffer line

He passed out a drawing of the proposed donut shop. The neighbors were given an opportunity to review the drawing. The zoning calls for 33 parking space and they are proposing 34. As a result of the lack of density on the property they need to request the buffering variances. They decided to do the driveway easement so there would be one (1) curb cut instead of two (2) for public safety.

In reviewing the plan versus the Zoning Compliance Determination done by Mr. McLaughlin, Inspector of Buildings, Chairman Crowley noted the driveways do not have the required 150 feet distance apart from each other. Mr. Close stated they are approximately 110 feet apart. Chairman Crowley feels this is a public safety issue and was put in the by-laws for a reason. He asked why they did not take more of the land that was available on the second lot that was subdivided off to meet the required 150 feet. Mr. Close explained they were trying to stay out of the 100 foot buffer from the wetlands. There was a discussion about what was going to happen on the other lot. When something similar has come before the Board, there was always a plan for the second lot. Mr. Ley stated in the next year they may build a building on the second lot. Chairman Crowley asked if they were going to need variances on that lot also. Mr. Close stated the biggest issue right now would be conservation issues. He is not sure about any variances being needed until Mr. Ley decides what type of business and what size of building. Chairman Crowley also questioned why the whole driveway easement is on the other side of the property line. Mr. Close explained the easement encompasses approximately 10 to 15 feet of the proposed donut shop area, then breaks off at 79.64 feet and goes off into the back where it says iron pin found. In order to get the parking to align, he used the side line of the parking coming down and aligned with the property line before the break. Most of the easement is on the abutting Lot 222.1. Mr. Close was going to propose that after the driveway was developed he would give another 15 feet of buffering from the side line. Chairman Crowley questioned if this would only drive them further into the wetlands on the other property. Mr. Close answered yes. Mr. Ley is purchasing both lots. The lot was subdivided by Mr. Xinidakis.

A review of the variances being requested was conducted. Mr. Close gave a further explanation of where the donut shop property line was located. Mr. Close stated they are also looking for a 15 foot variance from the driveway easement side line on the Lot 222.1 because it will be a common driveway. Chairman Crowley noted the part that is not clear as it should be is the fact they are actually looking for a variance on Lot 222.1. Chairman Crowley passed around the ANR Subdivision Plan approved July 13, 2016 for review. The donut shop Lot 222 will be 1905 Lakeview Avenue and the second Lot 222.1 will be 1895 Lakeview Avenue.

Mr. Hamilton was confused about which lots are before the Board tonight as it reference is only Lot 222. If it is only Lot 222, how can the Board grant a variance on Lot 222.1? Chairman Crowley noted his understanding was that the Board was looking at this as a separate lot and the variances were for this lot. What Mr. Hamilton is saying is that it does appear the Board is also looking for variances right now on this other lot. The problem is we do not know what is going on over there and variances are already being asked for on a lot that we do not know how it is going to be developed. Chairman Crowley said the hearing will continue so all the questions can be brought up with an opportunity to answer them.

There was further discussion on the variances being requested. Chairman Crowley noted that the lot owned by Marc and Marolina Winter on the left side is zoned business so the buffer of 15 feet is all that is required and a variance is not needed, except for the short piece that abuts the Boule property which is zoned residential at the left rear which is where the 15 feet variance is needed. He also noted that the numbers should not be written in on the plan. Attorney Chambers explained why it happened and stated the plan will be updated.

Chairman Crowley read the letter from Chief Brouillette, Dracut Fire Department dated September 7, 2016 relative to the public safety with this site into the record. The traffic issues will be reviewed by the Board of Selectmen for the drive-thru and possibly the Planning Board. In order for them to grant a special permit, these variances have to be approved.

Mr. Lussier was questioning where the house is on the lot abutting where the 18 feet buffer in the rear is being requested. Chairman Crowley passed out the GIS drawing showing same.

Chairman Crowley reviewed the questions that need to be clarified and/or answered before a vote can be taken as follows:

- What is going to happen on the other property?
- If there will be a request for more variances.
- How is the 150 feet driveway separation going to be addressed?

Attorney Chamber stated that the petitioner does not know what they are going to do with that, but their main concern is putting a donut shop on this lot. They are going to wait a couple of years to determine whether they will or will not develop the other property. Chairman Crowley understands this, but the Board is being asked to grant variances when they do not know what is going to happen on the other property since they created the existing building and created this division. Mr. Close has some ideas on what he can do with the driveway separation. Chairman Crowley suggested they could make the make the plan clearer to read. Mr. Close will make the corrections.

Abutters: Who came forward in favor or in opposition?

Marc and Marolina Winter, 1911 Lakeview Avenue: They just want to make sure that their rights are protected, the project is being done according to the by-laws and that they follow the rules in the by-law for buffering. They have no problem with the petitioner doing the project as they are well aware it is business zoned, but want to make sure the buffering is sufficient abutting their property. Chairman Crowley suggested to the petitioner that they get together with the neighbor and review the plan.

It was agreed by all to continue to the next meeting. Chairman Crowley is willing to review the plans with any of the comments to make sure it is adequate prior to the next meeting if the

Board is okay with that. The Board agreed.

A motion to continue to the October 20, 2106 meeting was made by Mr. Hamilton seconded by Mr. Mallory. The Board voted unanimously to continue.

Acceptance of Minutes:

A motion to accept the July 21, 2016 minutes was made by Mr. Brian Lussier and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to accept the minutes.

Broadway Village Comprehensive Permit Update at 341 Broadway Road:

Mr. Noah Parekh, partner with First Dracut Development gave an overview of the project which contains 278 units in 4 buildings. They have done a tremendous amount of value engineering to get the project to the right economical level for financing. They have encountered a hurdle which is related to HUD. HUD is an organization backed by the FHA which is a program that probably about 90% of these large scaled housing projects are financed. As of May 2016 they put a restriction on 55+ units so they are no longer allowing any financing for new construction that have 55+ which was a huge surprise to them. They wanted this element for the project because they thought it was a good value. The option is to remove the 55+ comprised of 1 building with 68 units.

Mr. Parekh is before the Board to ask for the provision to be amended. He passed out copies of the HUD document indicating the restriction.

Chairman Crowley explained that when you have a Comprehensive Permit there are certain changes that automatically trigger the reopening of the public hearing such as; change in funding source or increase or decrease in the number of units. If you have any of these you are required to open another public hearing or make a presentation to the Board to see whether the Board feels the changes are substantial enough of a nature to require the public's input before the approval of the change. If the Board decides to go through with a public hearing, the discussion will be limited to the impact of over 55 or not over 55 would have on the project. The Board's discussion is the fact they want to lift this age restriction placed on the Comprehensive Permit because they cannot get the funding and whether or not we want to approve that as a matter of course for open up to a public hearing.

Mr. Hamilton questioned if the building dedicated to over 55 would still have the special considerations in the living quarters and bathrooms to accommodate elderly people. Mr. Parekh stated the building would remain the same and will comply with the ADA requirements. The underground parking will remain as they need to comply with the parking ratio.

Chairman Crowley explained that these are for rent and even though 27% has to be kept at low or moderate income with the rest at market rate, the town gets credit on their 40B compliance for the whole project.

Mr. Lussier noted there are programs other than HUD that qualify for 40B projects. Mr. Parekh stated this is a \$60,000,000 project which they have gone through all the conventional lending and it is not feasible. HUD is absolutely the only program that will allow them to build.

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There was a discussion about 55 and over projects. Mr. Hamilton noted that the Board did not require the 55 and over building, but the petitioner wanted it. The total project will be 278 rental units with 25% affordable. Mr. Hamilton questioned if the request was denied, what would happen to the project. Mr. Parekh said it would set them back a year. They would have to find some way to subdivide the land to separate the 55 and over building and take it out of the project to qualify for HUD financing.

Mr. Hamilton would like to vote on it tonight as he does not feel this needs a hearing.

A motion to accept the change to the Comprehensive Permit for the 55 and over removal as being di minimis, not impacting the overall project nor requiring a public hearing was made by Mr. Stephen Hamilton and seconded by Mr. Heather Santiago-Hutchings. Mr. Mallory feels this is taking away a restriction they put on themselves. Chairman Crowley mentioned they still have to come back to the Board with final plans for final peer review. The Board voted unanimously to approve.

New Business:

Chairman Crowley informed the Board that the Zoning By-Laws Committee has been reinstated. There is a need for the Committee and gives a nice sounding board for some of the by-law changes.

He mentioned that Heather and himself as Chairman, have been representing the ZBA on the Committee. There are two from Zoning, two from Planning, two from Conservation and one from Board of Health, with one Selectmen, Building Inspector and Town Planner as consultative roles, along with a Secretary.

Chairman Crowley intends to circulate the minutes to this Board for consideration and comments. Starting next month we will include Zoning By-Laws Committee Report on the agenda.

At the first of the year, Chairman Crowley encouraged members to think about who would like to be on the Committee so there can be some turn over.

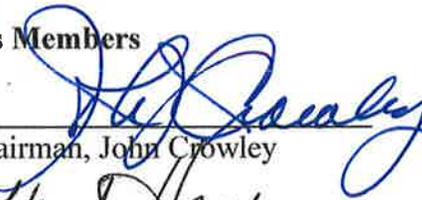
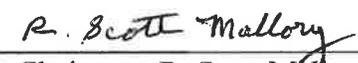
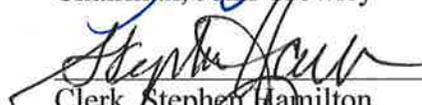
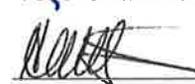
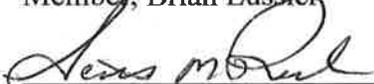
Next Meeting:

Thursday, October 20, 2016.

Adjournment:

A motion to adjourn was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to adjourn.

Board of Appeals Members

 Chairman, John Crowley	 Vice Chairman, R. Scott Mallory
 Clerk, Stephen Hamilton	 Member, Heather Santiago-Hutchings
 Member, Brian Lussier	 Alternate Member, Richard Ahern
 Alternate Member, Scott McKiel	