

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of January 15, 2015 at 7:00 p.m. @ Dracut Town Hall Selectmen's Meeting Room, 62 Arlington Street, Dracut.

Continued BOA 2014-24 & 25 @ 29 Wyman Road – Special Permit 2.16.25 and Variance 2.12.50 to remove existing 13.1'x10.2' deck for proposed 13.1'x10.2' three season porch with insufficient side yard setback. Petitioner: Nicholas Petropoulos. Chairman Crowley informed Mr. Petropoulos that he had asked the Building Department to research the files to see if there was anything indicating the deck was built with the original house or there was a permit for the deck. They could not find a permit for the deck separate from the building permit. A building permit issued on October 1, 1992 was located, but with no detailed drawing attached. Upon further research, a Proposed Grading Plan of Land dated March 30, 1992 was located showing the house on the lot which does not appear to have a deck on it. It also does not appear to be orientated as shown on the plan presented with this application. The Building Department was unable to find any evidence that there was a deck with the original home or there was a permit for the deck at some later date.

Chairman Crowley did have a conversation with the Building Inspector about why this was in front of the Board. He felt that as this was under a Comprehensive Permit that any increase in the footprint would require a variance. Chairman Crowley disagrees with him on this point. If a deck was present with the original house and there was proof of existence or one had been permitted, then this would not need to come before the Board for a variance because it would be as of right. He had also reviewed the Comprehensive Permit and did not find anything stating it did not allow any further extension of the existing footprint.

Mr. Petropoulos explained that almost all the houses have decks and some are very close to the lot lines. Chairman Crowley agreed that this may be true, but that does not mean they are all going to be able to put on a three season porch. Mr. Petropoulos produced a copy of a variance granted in 2000 in the same subdivision for a smaller deck to be increased and screened in that the Building Inspector had given him. Chairman Crowley remembers there were cases where the Board did do that, but they are few and far between.

Chairman Crowley explained that even if there was a deck, he would be disinclined to give a variance because if it was being built on the same size as the deck and the deck were legitimate to begin with, the Building Inspector has no business sending this to the Board. The footprint of the house and deck are what he has to abide by.

Mr. Mallory questioned the age of the existing deck. Mr. Petropoulos answered that it looked like the existing deck as it was very aged when he bought the house. The deck is now rotting and needs to be replaced.

There was further discussion about whether this should even be in front of the Board. Chairman Crowley noted he has not found any evidence that the deck was preexisting and permitted with the original building. Absent that information, as far as he is

concerned, that deck was not part of the original plan. He would be hard pressed to grant this type of variance. This is the Board's opinion not the Building Inspectors. Chairman Crowley does not agree with this logic.

Abutters: Who came forward in favor or in opposition? None.

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

A motion to approve the Special Permit was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board finds that the petitioner does not meet 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 to approve were Mr. Scott Mallory, Ms. Heather Santiago-Hutchings, Mr. Richard Ahern with Mr. John Crowley and Mr. Stephen Hamilton voting against. The motion failed for lack of majority on a three (3) to two (2) vote.

A motion to approve the Variance was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. Chairman Crowley noted that after looking it over and finding there does not appear to be any evidence that the deck was there initially, that this would be a requirement for a variance on a small lot under the Comprehensive Permit. Chairman Crowley noted that in order to grant a variance you have to prove a hardship, the variance would not be detrimental to the neighborhood and does not derogate from the Zoning By-Laws. He thinks it fails on two of those three. It fails on the hardship in that there is a house that was built on the lot with numerous waivers to the Zoning By-Laws with beneficial use of the property, would not be injurious to the neighborhood necessarily, however he does think it would derogate from the intent of the by-law which is to provide a certain amount of separation between the homes and the lot size has already been waived under the Comprehensive Permit. 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 to approve were Mr. Scott Mallory, Ms. Heather Santiago-Hutchings, Mr. Richard Ahern with Mr. John Crowley and Mr. Stephen Hamilton voting against. The motion failed for lack of majority on a three (3) to two (2) vote.

Election of Officers:

A motion to nominate Mr. John Crowley as Chairman was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to approve.

A motion to nominate Mr. Stephen Hamilton as Vice Chairman was made by Mr. Scott Mallory and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to approve.

A motion to nominate Mr. Scott Mallory as Clerk was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to approve.

Acceptance of Minutes:

A motion to accept the December 18, 2014 minutes was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to accept the minutes.

New Business:

Chairman Crowley will ask Attorney Hall to attend the February meeting to give the Board Members an opportunity to ask any questions they might have about the role and function of the Board, Chapter 40 review or any other area of the law.

Next Meeting:

Thursday, February 26, 2015

Adjournment:

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

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Clerk, R. Scott Mallory

Member, Heather Santiago-
Hutchings

Absent
Member, Michael Pagonis

Alternate Member, Brian Lussier

Alternate Member, Richard Ahern