

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of November 20 2014 at 7:00 p.m. @ Dracut Town Hall Selectmen's Meeting Room, 62 Arlington Street, Dracut.

Chairman Crowley introduced and welcomed Brian Lussier and Richard Ahern as the new Alternate Members on the Board.

2014-19 & 20 @ 21 Berkeley Drive – Special Permit 2.16.25 and Variance 2.12.50 for insufficient side yard setback for proposed 20'x24' garage and addition. Petitioner: Timothy Grimes.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Leo B. White, Professional Land Surveyor dated February 24, 2008.

Mr. Grimes stated that he wanted to add a 20'X24' addition with a two car garage under that does not meet the setbacks. His hardship is the topography of his land. The current driveway on the left side of his house has an elevation difference of 10 ft. at 45 degrees. He wants to move the driveway to other side of the house so he can alleviate some of the elevation. It will still be a 6 ft. elevation on the driveway and the garage will have a 12 ft. ceiling for room above. He presented a map showing the elevations.

Mr. Hamilton asked why not make the garage 18 ft. then a variance would not be needed. Mr. Grimes responded that the chimney already takes away 3 ft. which will cut the garage down to 15 ft. wide. He is trying to get at least 20 ft. for the garage door opening space.

Chairman Crowley noted that Mr. Grimes was granted a previous Special Permit and Variance for the same request in May of 2008. Mr. Grimes stated that due to financial restraints at the time it did not allow him to proceed and the variance expired.

The required side setback is 15 ft. and proposed setback will be at 12.99 ft.

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

A motion to close was made by Mr. Stephen Hamilton and seconded by Mr. Michael Pagonis. Mr. Hamilton stated he will be abstaining from voting. Mr. Lussier and Mr. Ahern will be voting. The Board voted unanimously to close.

A motion to approve the Special Permit was made by Mr. Michael Pagonis 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. The Board voted unanimously to approve.

A motion to approve the Variance was made by Mr. Michael Pagonis and seconded by Ms. Heather Santiago-Hutchings. Mr. Pagonis feels the variance requested meets the requirements. The Board finds the petitioner meets 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 to approver were Mr. Michael Pagonos, Ms. Heather Santiago-Hutchings, Mr. Brian Lussier and Mr. Richard Ahern with Mr. John Crowley voting opposed. The motion passed on a four (4) to one (1) vote of the Board.

2014-21 @ 180 Patricia Lane – Variance 2.11.50 relative to setbacks for a pre-existing above ground pool. Petitioner: Filipe B. Medina and Theresa S. Medina.

Chairman Crowley opened the meeting and signed in a set of prints drawn by David B. Desmarais, Professional Land Surveyor dated September 18, 2014 and revised October 2, 2014.

Attorney David Clermont is representing the petitioner's Mr. & Mrs. Medina. Mr. and Mrs. Blutt, the previous owners are also present. The Medina's purchased the property August 28, 2014 from John and Amy Blutt with a pre-existing above ground pool which does not meet the side yard setback.

When a plot plan was done for the mortgage they realized the pool was 13.2' from the side property line and 15' is needed. The attached deck at 21.6' from the property line meets the setback requirement.

The Blutts purchased the property in 1996 with the pool in the same location. They replaced the pool in 2000 and again in 2010 in the same spot with no building permits obtained. They did not think a permit was needed if the replacement pool was in the same location.

Attorney Clermont stated the Medina's are requesting the variance as they would like to leave the pool where it is. The hardship is the topography of the land as it slopes on the side and the pool is in the best location on the property.

Mr. Hamilton noted the existing shed is 6.2' from the side property line and does not meet the required 10' setback. Chairman Crowley asked Attorney Clermont if they would be willing to move it. Attorney Clermont indicated this could be discussed if needed.

Chairman Crowley asked when the deck was built. The deck was built by the Blutts around 2001 with a building permit.

Chairman Crowley felt that if the Board were to allow the pool to remain in its current location, a building and wiring permit would need to be obtained, the fees paid and the proper inspections for safety, especially the wiring inspection, being done. Also, since this is an above ground pool, the Board may want to condition the variance on the life of this particular pool with any new pool having to meet the current setback of 15'. Mr. Hamilton questioned whether the Board could put a condition of a variance. Chairman Crowley responded that in a previous discussion with Attorney Hall he indicated you could condition a variance on an accessory structure. After a brief discussion, Chairman Crowley suggested the Board tables this to the next meeting so he can consult with Town Counsel. The Board and Attorney Clermont agreed.

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

A motion to continue to the December 18, 2014 meeting was made by Mr. Hamilton and seconded by Mr. Lussier. The Board voted unanimously to continue.

Acceptance of Minutes:

A motion to accept the October 16, 2014 minutes was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to accept the minutes.

Mascuppic Village Comprehensive Permit Update @ 780 Nashua Road:

Mr. Lussier recused himself and stepped down. Attorney Smolak and Mr. Coravos were present. Attorney Smolak presented the Master Deed, Declaration of Trust and the Access and Utility Easement for approval by the Board. He noted they had been reviewed by Attorney Hall. Chairman Crowley had an issue with the language in the Master Deed on page 23 Section 16.1 Changes in unit configurations. His concern is that it would allow the Declarant the ability to extend the site, number, size and style of buildings without coming back to the Board. This seems to conflict with later section of the Deed which delineates the need to comply with the Comprehensive Permit. Attorney Smolak stated this was standard language, but could be changed if a problem. There was a discussion about the affordable units not having the same level of finished space as the market rate units. Attorney Smolak and Mr. Coravos stated this applies only to the living space over the garages that would be left unfinished. They insist this is allowed under the regulations and was approved. Chairman Crowley feels that all units should be fully finished on the interior. Chairman Crowley read a letter from Attorney Hall dated November 18, 2014 noting that he has received and reviewed a copy of a plan and the access and utility easement and find it acceptable as to form. He has not performed a title search on the property at 790 Nashua Road to determine if the title to this access easement is clean. He would be happy to do this or the Board could have Attorney Smolak write a letter to certify the title. Attorney Hall did not comment on the other two documents. Chairman Crowley noted the Board could vote on the easement document tonight. He will contact Attorney Hall regarding the Master Deed and Declaration of Trust. He also wants to clarify units being built in accordance with the Comprehensive Permit.

A motion was made to approve the Access and Utility Easement as submitted by Mr. Hamilton and seconded by Mr. Pagonos. The Board voted unanimously to approve. It was agreed to continue to the December 18, 2014 meeting.

Next Meeting:

Thursday, December 18, 2014

Adjournment:

A motion to adjourn was made by Mr. Michael Pagonos and seconded by Mr. Brian Lussier. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Absent
Clerk, R. Scott Mallory

Member, Heather Santiago-
Hutchings

Member, Michael Pagones

Alternate Member, Brian Lussier

Alternate Member, Richard Ahern