

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of March 21, 2013 at 7:00 p.m. @ Harmony Hall, 1660 Lakeview Avenue, Dracut.

Continued BOA 2005-13 @ 341 Broadway Road – Comprehensive Permit for 278 rental units with 4 buildings. Petitioner: First Dracut Development, LLC.

Chairman Crowley read a letter from Kenneth M. Lania dated March 21, 2013 on behalf of the applicant requesting a continuance to the May meeting. The applicant has secured an agreement for the Comcast property along Loon Hill Road and along with a prior agreement with the Vengren property this will allow them to complete the necessary plans for NHESP and finalize the engineering plans for peer review by the Boards engineering consultant. This should take about sixty (6) days.

A motion to continue to May 16, 2013 was made by Mr. Hamilton and seconded by Mr. Mallory. The Board voted unanimously to continue.

2013-1 & 2 @ 28 Swain Street – Special Permit 2.16.25 and Variance 2.12.50 for proposed 35.1' x 20.2' addition with insufficient front yard setback. Petitioner: Steve Desjardins.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated 12/26/12.

Mr. Oriole will be representing Mr. Desjardins at this hearing. He presented the Board a letter from Mr. Desjardins dated March 21, 2013 authorizing him to represent him.

Mr. Oriole stated the existing home is to be renovated and sold. They have already removed two (2) garages from the property that were within five (5) feet of the road. Pictures of the existing home showing the two (2) garages were passed out. The addition will be on the right side of the home. It will be a two (2) car garage with a bedroom over. Mr. Oriole stated that even though the addition encroaches upon the front yard setback, the proposed changes will be an improvement to the property.

Chairman Crowley noted that this a corner lot with two front yards. The proposed addition meets the front yard setback of 30' on Shafter Street and the front yard setback on Swain Street at 22.3' is further back than the existing house at 11.3'.

Mr. Mallory asked how many stories the addition would have. Mr. Oriole stated it will be two stories which are the same as the existing house. Chairman Crowley noted it is a single family home and will remain the same.

Mr. Mallory asked if there was any question about the abandonment of this house.

Chairman Crowley noted this went through the Building Department and it would be up to them to alert the Board if any issue. Mr. Oriole stated there had been confirmation by a neighbor that someone has been using the house within the last two (2) years.

Abutters: Who came forward in favor or in opposition?

Stephen and Arlene Rivers, 20 Swain Street – After reviewing the drawing, they were in favor of the petition.

A motion to approve the Special Permit was made by Mr. Stephen Hamilton and seconded by Ms. Ina Hakkila. Mr. Hamilton noted this is a corner lot with two (2) front yards and he always considered the reason for the front yard setback is for traffic visual site line for cars. This addition where it is attached to the existing structure is setback further than the existing front yard. In addition, it is also 49' away from Shafter Street on that corner leaving a corner of 49x40' for vision. He thinks it fits within the setback requirements the Board is looking for as a front yard setback. 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. Stephen Hamilton and seconded by Ms. Ina Hakkila. As stated above, Mr. Hamilton noted this is a corner lot with two (2) front yards and he always considered the reason for the front yard setback is for traffic visual site line for cars. This addition where it is attached to the existing structure is setback further than the existing front yard. In addition, it is also 49' away from Shafter Street on that corner leaving a corner of 49x40' for vision. He thinks it fits within the setback requirements the Board is looking for as a front yard setback. Chairman Crowley noted this is a single family home and will continue to be a single family home. 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. Chairman Crowley noted this is a single family home and will remain a single family home. 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. The Board voted unanimously to approve.

2013-3 @ 1400 Broadway Road – Petition for variances from certain dimensional requirements of the Dracut Zoning By-Laws in order to construct at the property a funeral home with residential unit above and site improvements. Petitioner: David L. and Nancy Cotnoir.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Brian J. Murphy, Professional Land Surveyor dated February 28, 2013 and revised March 18, 2013.

Attorney Anthony Leccese will be representing the applicant Mr. David Cotnoir. He also introduced the Engineer Mr. Nick Dufresne. Attorney Leccese noted that last revision of the prints was due to adding a handicap ramp at the front entrance. The only change to the Applicant's Statement (copy attached) is the number of parking spaces provided will be 29 spaces instead of 32 as 3 were taken up the handicap ramp which is still more than what is required.

The zoning relief the petitioner is seeking is as follows:

- Buffer area separating the property line from the parking spaces on either side of the property. The building complies with all the setbacks required.
- Setback of parking areas adjacent to a residential use.
- Parking stall dimensions. The 14 aisle parking spaces are 9'x18' instead of the required 10'x20'.

The current layout provides the balance of providing adequate parking and at the same time a reasonable buffer on either side. There will be fencing as well as shrubbery surrounding the property. There are also wetland areas around the property providing a natural buffer.

As stated in the Applicant's Statement, Attorney Leccese noted they satisfy the requirements of the variance due to the irregularity of the shape of the lot and the narrow topography with respect to the area in which a building can be built. It was noted the petitioner will be going to the Planning Board for a Special Permit due to the use as there is a residential unit above.

Chairman Crowley noted this property was changed at Town Meeting to a B-3. With this development in mind, Attorney Leccese stated the applicant had an agreement to purchase the property if the rezoning was approved. When it was approved, the property was purchased. They were aware that a funeral home was a permitted use a B-3 zone and what the parking requirements were. Chairman Crowley asked if they would be going to the state for the new curb cut. Yes!

Chairman Crowley is concerned about parking as Broadway is a very busy road. What is the plan for traffic if there is a large funeral, how will traffic be controlled and what is the alternate plan. Attorney Leccese said there have been discussions about this issue. His understanding is that there will only be one funeral at a time and if there is an expectation of a large crowd attending the wake or funeral, it would be held at another location.

Snow storage is shown on the plan on both sides of the property. Chairman Crowley noted the rip-rap on the left side of the property would not handle much as there is a very steep grade on that side of the property. Mr. Dufresne stated the snow will be piled up against a stockade fence they will be putting up and feels this will be adequate.

Chairman Crowley noted that on the side along the residential 20' of buffering is required. Mr. Dufresne stated the buffering for the residential side on the front left of the property is shown as 16.6' and widens up to 21.6' going towards the rear with 20' being required. The buffering for the industrial varies from 7.0' to 10.4' at the rear of the property with 20' being required. The buffering for the business side on the right of the property goes from 5.0' to 8.4' going towards the rear with 15' being required. Chairman Crowley noted they meet the buffering at the rear of the property due to the infiltration basin with a variance being needed for both sides of the property. Chairman Crowley asked what the change in grade was from the parking lot to the end of the rip-rap on the business side. Mr. Dufresne stated it goes from 95' down to 91'.

Chairman Crowley questioned if any arrangement have been made for any alternate parking down the street or at some other location. Attorney Leccese said they have not. His understanding is that this would be a concern of the Planning Board and that they would likely provide for periodic review after a certain period of time if they were to grant the Special Permit.

Chairman Crowley questioned if the intention was to relocate the handicap parking spaces shown in the rear to the front closer to the ramp. Attorney Leccese stated no, but noted the Engineer and the Building Inspector are in ongoing discussions about this issue. They feel the parking spaces in the rear are more compliant because the distance is shorter to travel as there is a rear entrance that is handicap accessible. The parallel and handicap spaces are compliant in size with the aisle parking spaces being smaller. Mr. Leccese stated they have already filed with Mass Highway for the curb cut, but has had no response yet.

There was further discussion about traffic, number of parking spaces and size. Chairman Crowley clarified that if this was the type of use that required a Special Permit from the Planning Board, they would certainly address those items and may ask for a traffic study, but that is not the case. The Special Permit they need is for the residential and business use. He encouraged the neighbors to attend that meeting as they may go into some of these areas. Ms. Hakkila feels that the normal wake hours are not usually during the busy traffic times. Mr. Cotnoir verified that visiting hours are usually in off hours of the day. Chairman Crowley read a letter from Kevin Richardson, Chief of Police dated August 8, 2012 recommending they maintain proposed line of site for both ingress and egress, adequate lighting throughout the property and adherence to all applicable by-laws, especially those relative to handicap parking. Attorney Leccese stated the Fire Department weighed in on the width of the driveway regarding the fire lane. The layout now complies with the driveway width required by the Fire Department.

Mr. Hamilton questioned if they were using some of the neighboring business for parking for overflow as mentioned previously, but wondered how the visitors would get to the funeral home as it is a dangerous road to be walking. Chairman Crowley feels they would have to be shuttled back and forth.

Chairman Crowley noted that what is being asked here is not something that would not be allowed in the underlying zoning. He will make sure that the Building Inspector pays very close attention to the total viewing area to verify that the parking calculation is correct. The building is over 3,000 square feet and only 894 square feet is being used as the viewing area. He strongly suggests it is kept at that figure if approved as he will make sure that it is measured up very closely when the building plans are submitted. He is still concerned about a family home being put on this property as he has been to numerous funerals that have not had enough parking. That being said, what the petitioner is trying to do to create more spaces by cutting down on the size he understands and is inclined to agree. It is a permitted use in this area. The Board could enforce the buffering and stop the project completely. Attorney Leccese restated that they tried to strike the balance of providing a buffer and adding parking spaces.

It was noted Conservation Commission has approved the project and they are in front of the Planning Board. The buffer will have a stockade fence with arborvitae all around the property.

Attorney Leccese believes they satisfied the standards for the variance and they tried to balance the need for parking with a desire to provide adequate buffering and hopefully the town will welcome this new business into the community.

It was noted Conservation Commission has approved the project and they are in front of the Planning Board. The buffer will have a stockade fence with arborvitae all around the property.

Abutters: Who came forward in favor or in opposition?

Gigi Hovanec, 22 Salem Road – She is an abutter to the property. She is very concerned about the traffic on Rte. 113 and Salem Road as it is very bad now. She is also concerned about the number of proposed parking spaces not being enough. At the Planning Board meeting they were told that they were going to ask the owners of the businesses nearby if they could park at their location. She spoke to everyone and no one has been asked. Chairman Crowley asked Attorney Lecesse if they were going to do any kind of a traffic survey. Planning Board did not ask for it as this is not a regular Special Permit for site plan. Attorney Lecesse noted that none of the lots on Salem Street are abutters to this property as there are two lots in between. In regards to traffic, Ms. Hovanec stated it was hard enough to get onto Salem Road right now at any given time of day without adding more traffic.

Mike Chouinard, 14 Lanseigne Avenue – He feels another funeral home would be an asset to the town. It would give the other side of town a funeral home and bring in business for the restaurants and the florists. He does not feel the traffic will be an issue.

Amanda Mann, 15 Salem Road – Her house is most affected by the proposed project. She is concerned her yard will turn into an overflow parking area for the funeral home. Mr. Cotnoir stated when they have calling hours there would be staff in the parking lot keeping track of traffic.

Mr. Patel, 1480 Broadway Road – He owns Convenience Plus on the property being mentioned for overflow parking and is concerned about this as the existing businesses do not have enough parking now.

A motion to close was made by Mr. Hamilton and seconded by Ms. Ina Hakkila. Mr. Mallory noted the square footage shows the assembly of 894, residential as 1,092 and yet the funeral home square footage is 3,664. Where does the balance come from? Mr. Dan Cotnoir is the other Funeral Director at the funeral home and will be the person living in the residence upstairs. The assembly area of 894 is the actual viewing parlor that the body will be shown in. The remaining space is not accessible to the public as it will be the embalming room and storage areas. The Board voted unanimously to close.

A motion to approve the Variances from dimensional requirements of the by-laws for parking space size and buffering screen as delineated on the plans and attachments received was made by Mr. Stephen Hamilton and seconded by Ms. Ina Hakkila.

Chairman Crowley is still having a little bit of trouble with the size of the lot and the way this lays out and in particular the parking. He is trying to balance that with the fact that they actually have more than the number of spaces required by the by-law, but does come back to the adequacy of the lot overall. There has only been one funeral home in the town. It has never been an issue before on this size lot. In order for them to accomplish this, they have had to cut down on the buffering. Normally he is pretty inflexible with regards to business to residential buffering, but in this case there is nobody on the lot adjacent, it is a wooded lot and wetlands. This is relatively a quiet use with the exception of when they have activity for a funeral, which is not every day. There was nobody directly abutting that had a concern, although there were abutters to the abutters who have expressed their concern and was noted for the record. Regarding the buffering, Mr.

Hamilton noted it looks like they have wetlands on the both sides of the property so that is not a huge issue. Parking is kind of problematic even though they do meet the zoning of 20 and have provided 29 which are more than the zoning requires. Even if they put them at the required dimensions it appears they would probably get in more than the zoning requires. By granting a variance for the parking the Board is actually doing more of a service to the town by putting in more parking spaces than the cost of a couple of doors dinged. 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. The Board voted unanimously to approve.

Acceptance of Minutes:

A motion to accept the February 21, 2013 minutes was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously with Ms. Ina Hakkila abstaining to accept the minutes.

Grassfields Development Comprehensive Permit Approval of Regulatory Agreement @ 474 Mammoth Road:

Chairman Crowley read an email from Attorney Smolak dated March 20, 2013 requesting this item be placed on the next regularly scheduled meeting as they have been unable to obtain final comments on the draft Regulatory Agreement from the DHCD. This item will be placed on the April 18, 2013 agenda.

Old Business:

Chairman Crowley noted that on the Rules and Regulations revision that the Board voted on at the last meeting he noticed a couple of housekeeping items that were inadvertently admitted. Under Article II – Applications to the Board, Section 3 – Fees he added that; “Each application shall be accompanied by a copy of the latest deed for the property in question showing current ownership.” Under Article III – Hearing, Section 1 – Notice he dressed up the language in the last sentence to include; “to the Planning Board of every abutting City or Town, to the Dracut Planning Board and to the Dracut Building Commissioner.”

A motion to accept the revised Rules and Regulations as amended above was made by Mr. Scott Mallory and seconded by Ms. Ina Hakkila. The Board voted unanimously to accept as amended.

Next Meetings:

Thursday, April 18, 2013.

Adjournment:

A motion to adjourn was made by Ms. Ina Hakkila 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, Ina Hakkila

Absent

Member, David Meli

Alt. Member, Heather Santiago-
Hutchings

Alt. Member, Michael Pagones