

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of June 19, 2014 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.

Mr. Bartels and Attorney Deschenes were present. Mr. Prentiss and Mr. Glenn, Peer Reviewers from Fay, Spofford and Thorndike were also present.

Mr. Prentiss reviewed the Supplemental Traffic Impact Peer Review report dated June 19, 2014. Of the eleven (11) issues noted in the May 9, 2014 report, about five (5) have been satisfied. The remaining issues will be reviewed by Mr. Prentiss and their traffic person. After all the issues are satisfied, the traffic study will be put into one completed document. It was noted that a letter from the school department regarding Memorandum #4 for a waiting area or a bus shelter will be provided to the Board. Mr. Prentiss noted that Memorandum #6 for the Broadway Road/site drive intersection should be clarified why a 90-degree type intersection is not proposed.

Mr. Prentiss reviewed the Sewer Review report dated May 16, 2014. A letter dated May 29, 2014 was received from Natasha N. Parekh Ramsingh, Esq. requesting the calculations and capacity of the sewer pump station design done by Camp Dresser McKee (CDM) for the town and a meeting with CDM to discuss the impact on the project. The letter was forward to Mr. Reynolds at Dracut Sewer Department on June 4, 2014. Attorney Deschenes reviewed how the design came to be and that they had worked very closely with CDM. He will facilitate getting CDM to meet with FST to review the design and capacity.

Mr. Glenn reviewed the Stormwater Management System report dated June 19, 2014 noting there were five (5) issues that need to be addressed by the applicant. The applicant's engineer will provide the additional information requested. Mr. Glenn noted they still need to go to Dracut Conservation and the National Heritage report has not been seen yet. Attorney Deschenes reviewed discussions they have had to date with Conservation and National Heritage. He stated they will not file a new Notice of Intent with Conservation until the stormwater issues have been reviewed.

Mr. Bartels inquired if the 90 degree intersection opposed to 65 degrees was a deal breaker. Mr. Prentiss responded no. The MassDOT will ultimately design how the intersection will be designed. Chairman Crowley will ask Mr. Edwards to inquire with the police and fire department for their review and comments on the intersection.

Attorney Deschenes noted they need to get from MassDot an answer as to why the intersection was originally approved at 65 degrees when the standard is 90 degrees. Chairman Crowley asked what the notification to the public is for MassDEP and the ENF process. Mr. Prentiss noted the hearing is posted in the Land Use Monitor, but not sure if in local newspaper.

Chairman Crowley informed those present that he is available to help set up any meetings that are needed prior to the next hearing. Prior to the next hearing, he asked all Board Members and Mr. Edwards to review the site plan layout, architectural plans and documents received to make sure all items have been covered. Before the final agreement is signed, the final plans need to be presented to the Board prior to final approval.

It was agreed by the Board that Attorney Deschenes could start developing the Comprehensive Permit for review with Attorney Hall.

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

A motion to continue to the July 17, 2014 meeting was made by Mr. Hamilton and seconded by Mr. Pagonos. The Board voted unanimously to continue.

Continued BOA 2014-5 & 6 @ 18 Libby Street – Special Permit pursuant to sections 2.16.25 and 2.16.23 of the Dracut Zoning Bylaw and a Variance to eliminate a boundary encroachment and to construct a single family home. Petitioner: Libby Street, LLC

Attorney Fadden will be representing the petitioner.

Chairman Crowley noted that the Small Lot Package dated May 7, 2014 submitted at the last hearing by Attorney Fadden had been forwarded and reviewed by Attorney Gregg Haladyna. He read a letter from Attorney Haladyna dated June 19, 2014 (copy attached) stating in his opinion the subject property at 18 Libby Street (Parcel A) is a legally protected non-conforming lot. Parcels C and B were initially one single lot in 1956 with a single family dwelling being constructed in or around 1960. They would be two (2) protected lots upon which single family homes are located and would not merge. In 1992 Parcels B and C were created. This conveyance created an illegal Parcel C, where the single family dwelling is located, and also created an infectiously invalid Parcel B. Chairman Crowley noted that at the last hearing Attorney Fadden had agreed that if this petition was granted, they would put a deed rider on the adjacent Parcel B that there would be no further construction on that lot and Parcels B & C as shown on the attached drawing would merge into one lot with a single family home. Attorney Fadden stated he has received permission from the parties involved for the deed rider.

It was verified that Libby Street would be a paved driveway suitable to the town's engineering requirements.

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

A motion to close was made by Mr. Hamilton and seconded by Mr. Pagonos. 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 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 Mr. Scott Mallory. Chairman Crowley noted it was agreed that if this variance is granted that the petitioner will provide the necessary deed restrictions on Parcels C and B as shown on the print provided to preclude any further development of that property. They will be building a single family home and only a single home. The paving on Libby Street will be with the approval of the Director of Public Works and the Engineering Department. 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.

2014-14 & 15 @ 39 Second Street – Special Permit 2.16.25 and Variance 2.12.50 for insufficient front yard setback for proposed addition with attached two-car garage.

Petitioner: Gregg Stanley.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Albert A. Romano, Professional Land Surveyor dated May 22, 2014.

Mr. Stanley explained that he filed with the Board in April for a Special Permit and Variance for the same request that was approved on April 17, 2014 based on a Certified ZBA Proposed Plot Plan of Land dated March 4, 2014 done by Finch Survey & Engineering Consulting stamped by Scott M. Cerrato. He found out the same time the town did on May 21, 2014 by the Division of Professional Licensure that the stamp used by Martin Finch was fraudulently created and had been doing this through out the state. When this came to the Board's attention, Chairman Crowley noted it was a unique situation where the Board had already approved a variance. But since the variance was approved on a set of plans that were fraudulently done and were not in accordance with the Board's Rules and Regulations nor the states with a stolen stamp, he had a discussion with Council about how the Board could address this. The petition was already in the Town Clerk's office going through the appeal period. It was agreed that we should talk to the petitioner to see if he would resubmit with a drawing. Mr. Stanley agreed. He hired another surveyor to verify the dimensions done on the previous plan which is the stamped plan in front of the Board now.

This variance if granted would be to supersede the Special Permit and Variance 2014-9 & 10 dated April 27, 2014 (copy attached) and it will be referenced in the decision that the current Special Permit and Variance shall take precedent over any previous variance relative to this property.

Chairman Crowley noted this variance is identical to what he submitted for the original. If it is okay with the Board, Chairman Crowley would like to put forth all the testimony from the previous hearing, with the exception of the previous drawing, into this hearing by reference as he answered all the questions the Board had at that time.

A copy of the WBZ I-Team article dated June 18, 2014 where Martin Finch was accused of passing himself off as a licensed land surveyor who stole the identifies of actual licensed surveyors was passed out. Wednesday he appeared in Woburn District Court facing serious charges of Larceny, Identity Fraud and Unlicensed Practice of Engineering of Land Surveying.

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

A motion to close was made by Mr. Stephen Hamilton and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to close.

A motion to approve the Special Permit based on the testimony received at the last hearing was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board will reference the findings from the previous hearing 2014-9 & 10 dated April 17, 2014. 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 based on the conditions of the previous hearing 2014-9 & 10 dated April 17, 2014 and this Variance supersedes any previous Special Permit and Variance was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board will incorporate the reference from the previous hearing with all the conditions as noted. It is a single family home and will remain a single family home, the proposed addition of the house itself is going to be at the same level as the existing roof line, not higher than the existing structure, the sheds will be razed and not left in place. The sheds will need to be razed prior to the issuance of an occupancy permit. 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 May 15, 2014 minutes was made by Mr. Michael Pagonos and seconded by Ms. Heather Santiago-Hutchings. The Board voted unanimously to accept the minutes.

Old Business:

Chairman Crowley updated the Board regarding the Zoning By-Law Committee.

Next Meeting:

Thursday, July 17, 2014

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, Stephen Hamilton

Clerk, R. Scott Mallory

Member, Heather Santiago-Hutchings

Member, Michael Pagonos

