

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of June 27, 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.

Mr. Lania informed the Board that the petitioner Mr. Parekh had passed away this past weekend. Chairman Crowley expressed the Board's condolences on his passing.

A discussion of how the ownership of the land was going to be handled followed. Mr. Noah Parekh, son and Ms. Tamara Parekh, daughter were introduced by Mr. Lania. They will assume ownership of the LLC along with Mr. Sandy Gangliano, Mr. Parekh's business partner, who was also present. They are planning to continue with the project. Chairman Crowley requested that prior to the next hearing they send something to James Hall, Town Counsel for his review regarding transfer of names, financing and status of the eligibility letter from Mass Housing. Chairman Crowley will follow up with Attorney Hall prior to the next hearing to verify he has had an opportunity to review all the documentation provided to him and make sure he has all the details needed for him to rule on the acceptability of the proceeding.

Mr. Lania noted they are still working on the land swap, completing the plans for final peer review and are currently before Conservation. Mr. Lania feels he needs a couple of months to complete the paperwork needed to continue.

A motion to continue to the September 19, 2013 meeting was made by Mr. Hamilton and seconded by Mr. Mallory. The Board voted unanimously to continue.

Continued 2013-4 @ 1112 Broadway Road - Application for a variance from the side yard buffering and screening minimum setback in order to install four (4) solar panels in the detention area as shown on plans. Variance for placement of the detention area within the buffer zone as shown on the plans. Petitioner: Alton Properties, LLC.

Attorney Cox presented the Board the following information:

- An amended set of plans with the Table of Dimensional Requirements as requested. Chairman Crowley signed in the amended plans.
- Letter from Mark Hamel, Town Engineer dated June 26, 2013 in response to the packet of information submitted by the petitioner at the last hearing.
- A Construction Plan drawing dated 10/30/02 signed and stamped by the Planning Board as part of the site plan approval showing the detention pond exactly where it is today.

Hopefully the concerns of the Board have been met with the information presented above.

Chairman Crowley questioned if the panels are being used to generate electricity that is going to be used on the site or being is it for resale. Attorney Cox stated the electricity being generated from these panels will be used to power the building only.

Chairman Crowley agreed that the current location of the detention pond was approved and that issue has been addressed. Chairman Crowley read the letter from the Town of Dracut Engineering Department as noted above into the record indicating he did not have any strong objections and feels that they could be handled by engineering control.

There was an opinion offered by the Building Inspector for the Town of Dracut that the detention pond fell under an accessory use and therefore should not be allowed as of right in the buffering zone. In a discussion with Town Counsel, Chairman Crowley would like to offer consideration to the Board Members that this was not initially brought up because Attorney Cox and he had never seen a need to vary a detention pond in the buffer zone as it is primarily considered a landscape feature. There is some question in his mind as to how that fell into an accessory use.

An accessory use would be something like a service garage, outbuilding of some type, pump or generator house as opposed to a necessary part of the landscape and infrastructure for retention of drainage that is required in almost all projects now of any size. While there is an issue with the variance for the solar panels, the question is whether or not it is necessary to vary the side yard for the detention pond.

Mr. Meli questioned if this project has gone to Conservation. There was some discussion as to whether or not that would be necessary. Mr. Meli asked if the vernal pool noted on the plan would fall under the Conservation Commission. Mr. Dow stated the vernal pool is shown on the plan and that is the reason that the detention pond was moved to where it is located now. Attorney Cox does not feel it will be necessary. After further discussion, Chairman Crowley noted the Board can condition the variance if granted that it would have to go to Conservation Commission if needed. Ms. Hakkila's understanding is the vernal pool is in no way affected by the detention pond and Attorney Cox agreed. She feels the vernal pool was addressed with the original Special Permit.

The buffer variance request from the R1 zone is 40 feet as 80 feet is required. The solar arrays protrude 40 feet into the buffer zone. Mr. Hamilton asked if there was a dwelling on the next lot over. Mr. Dow stated the Smith's home is to the right of the lot line and more towards the road than the solar arrays. The Smiths were present and stated they are in favor of the solar panels.

Mr. Mallory asked about having a bond for the project. Chairman Crowley noted that if this request was to be approved, the Board would make sure the Town Engineer has the ability to set a bond in whatever form or amount he feels is necessary to protect the town's interest.

Mr. Meli brought up the issue of solar glare reflection on the street from the solar panels. Mr. Dow stated in the winter you may be able to see the panels, but the reflection would be towards their building and not the road. Chairman Crowley noted the town is in the process of developing a comprehensive by-law for this issue.

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

A motion to close was made by Mr. Stephen Hamilton and seconded by Ms. Ina Hakkila. The Board voted unanimously to close.

A motion to approve the Variance for the buffering requirements on the side yard to allow for the placement of the existing detention pond as shown on the plan was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. Mr. Hamilton noted the variance will be for only those areas necessary to accommodate the existing detention pond. Ms. Hakkila feels the pond is there now and is not a problem. Chairman Crowley

feels the detention area in his opinion has always been more of a landscape than an accessory use. Mr. Meli has read the recording of the previous hearing and signed the Missed Single Hearing Session form (attached). Attorney Cox has no objection. The Board voted unanimously to approve.

A motion to approve the buffering Variance for the solar panels restricted to the area where the solar panels are shown on the plan was made by Mr. Stephen Hamilton and seconded by Mr. David Meli. Chairman Crowley noted the following conditions:

- Prior to a permit being issued the petitioner will submit to the Town Engineer plans in sufficient detail and type to document their requirements in accordance with their letter dated June 26, 2013 (attached).
- The petitioner provides a bond as may be indicated by the Town Engineer in an amount and type adequate to protect the interests of the Town of Dracut.
- The variance is being granted with the understanding that it is solely for the use of solar panels, no other use would be allowed and conditioned on the fact these solar panels are primarily being used to power the building and industry on the site.

This is a unique placement. One of the hardships and one of the reasons why the Board is looking at this as opposed to another area is the fact this area provides the only viable spot for a solar panel array given the topography and layout of the site and the necessary angle placement to the sun. Chairman Crowley also noted that prior to any issuance of a permit that the plan is reviewed by the Building Department and Conservation to make sure they comply with any and all requirements and a special note to be made of the vernal pool shown on the drawing. 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.

2013-5 @ 49 Salisbury Street – Variance 2.12.50 for proposed 16’x28’ addition to side of existing dwelling with insufficient front yard setback. Petitioner: John M. Dunbar. Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated 4/29/13.

Mr. Dunbar presented to the Board a packet of information for his Zoning Relief Request (copy attached). His property is a corner lot and does not meet the 30 feet front yard setback on Merrimack Terrace. Mr. Dunbar wants to build a 16’x28’ two story addition to the side of the house and needs a variance for 7.5 feet. The addition meets all other setbacks. The property line on the right side is set 20 feet towards the structure from the physical street asphalt as shown on page 10 in the packet. The addition edge is 16 feet from side of house and the property edge is 22.5 feet from the addition edge. The 30 feet setback measures 7.5 feet past the property boundary with the physical street pavement another 13 feet past the property line.

Mr. Mallory asked why such a distance from property line to actual street. Mr. Dunbar explained that when the street was built a lot map was used and they actually took a whole lot to build the street but did not center the street on the lot. The street was built to the right side of the lot. He thought there might be 10 feet of town land, but not 20 feet as he found out when his plot plan was done.

Mr. Mallory questioned the existence of a shed in the back yard and asked how far it was from the lot line. Mr. Dunbar stated the shed was existing when he purchased the house and sits pretty close to the chain link fence. Chairman Crowley noted the Board would not vary the shed as the Board has never varied sheds.

The addition will be two stories making the house a tri-level. The first floor will step down to a lower level and step up to third level. The driveway is on the left side of the house and will remain there.

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

A motion to close was made by Mr. Stephen Hamilton and seconded by Ms. Ina Hakkila. The Board voted unanimously to close.

A motion to approve the Variance was made by Mr. Stephen Hamilton and seconded by Ms. Ina Hakkila. Mr. Hamilton noted that the circumstances of this case with the very wide area of open space between his lot and the street, helps him to make his decision of this front yard variance. He does not think it will impact the neighborhood that badly with the impingement into the front yard. The house has two front yards and he is staying within the required setback for the Salisbury Street front yard. 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 to approve were Mr. Stephen Hamilton, Mr. Scott Mallory, Ms. Ina Hakkila and Mr. David Meli with Mr. John Crowley voting against. The motion passed on a four (4) to one (1) vote.

Acceptance of Minutes:

A motion to accept the May 16, 2013 minutes was made by Mr. Stephen Hamilton and seconded by Mr. Scott Mallory. The Board voted unanimously to accept the minutes.

New Business:

Chairman Crowley announced that this will be Ms. Ina Hakkila's last meeting with the Board of Appeals. She is resigning as a member in good standing.

Chairman Crowley expressed his appreciation of her service and hopes the town and everybody else appreciated what she has done. He has found her to be hardworking, honest, dedicated and sincere in what she is doing. He will miss having her on the Board. Ms. Hakkila thanked the Board Members. She has enjoyed her time on the Board and did not want to resign, but has some problems she needs to take care of. She does not see any future time of being able to come back. She had a great time learning new things and loved the friendship of all the Board Members.

Next Meetings:

Thursday, July 18, 2013 if needed

There is no meeting scheduled for August.

Thursday, September 19, 2013.

Adjournment:

A motion to adjourn was made by Ms. Ina Hakkila and seconded by Mr. David Meli. The Board voted unanimously to adjourn.

Board of Appeals Members

Chairman, John Crowley

Vice Chairman, Stephen Hamilton

Clerk, R. Scott Mallory

Member, Ina Hakkila

Member, David Meli

Alt. Member, Heather Santiago-
Hutchings

Alt. Member, Michael Pagones