

ZONING BOARD OF APPEALS

Public Hearing

MINUTES

Monday, November 25, 2002

Members Present: Peter Leavitt, Chairman; Michael Higgins; and Aurel Gagne.

Staff Present: Jack Cooper, Code Enforcement Officer and Amanda Simpson, Secretary

1. Call to order. Peter Leavitt called the meeting to order at 7:05 pm at the Town Office.
2. Approval of Minutes – October 28, 2002

MOTION: Michael Higgins motioned to approve the Minutes of October 28, 2002 as written.
Seconded by Aurel Gagne.

VOTE: Unanimous.

3. Hearings:

A. Map 16, Lot 52 – R

16 Dyer Road

Aimee L. Perry

Variance to construct a garage with an in-law apartment above.

Chairman Leavitt announced that this hearing was continued from the October 28, 2002 meeting for the purpose of having Town Counsel review the pertinent language in the Land Use Ordinance. M. Higgins stated that he had talked with Attorney Geoff Houle regarding the language about in-law apartments. M. Higgins relayed that G. Houle indicated that the language as written assumes that in-law apartments are extensions of existing structures. It would be easy to change this if the town desired. P. Leavitt stated that he thinks the Board should consider clarifying this section at town meeting next year. J. Cooper commented that this was on his list of proposed changes.

P. Leavitt asked if any representatives of the applicant would wish to comment. Larry Handy introduced himself. He continued with a description of the neighborhood. Everyone on Dyer Road is part of the same family and no one has any objections to the proposed apartment. All residents are very cooperative. L. Handy feels that the construction of the garage with an in-law apartment would increase values of the adjacent properties.

Scott Perry stated that everything on the site is to code and that he has been preparing the lot for the new garage as well as a new foundation (28' x 60') for the mobile home currently on the property. He does not see any way to attach the garage to the home. The leachfield is on one end, utility connections on the other and the driveway is in the front of the home.

M. Higgins indicated that he appreciated the comments but none of that was of issue to the Board. The Board is required to interpret the ordinance and if the language does not provide for detached in-law apartments then he could not vote for it.

MOTION: P. Leavitt called for a motion. A. Gagne moved to grant the detached in-law apartment. M. Higgins seconded the motion for purposes of discussion.

P. Leavitt indicated that he believed that the original intent of the provision was to allow for reasonably affordable housing opportunities for family members. The Board continued the discussion regarding principal and accessory structures. J. Cooper stated that if there was a primary residence on the site the garage would be considered an accessory building. If the lot were vacant the garage with second floor apartment would be permitted as a principal building. J. Cooper reminded the Board that they have the authority to place conditions on any approval. The practice has been for him to administer the attached in-laws and for the Board to review the detached. The concern has been that the detached in-laws are far more easily treated as a separate dwelling unit and the Board's approval is recorded in the registry restricting the use of the dwelling.

The Board agreed that there has been a continual problem with this language since it was written and it should be clarified. The Board discussed how the provision is enforced. It was noted that there are one or two dozen of these apartments and J. Cooper attempts to do inspections every six months.

The applicant, Aimee Perry, added several comments being that they were committed to using the apartment for family. The intent is strictly for relatives. P. Leavitt replied that he understood their intent but that things always change; a new owner may not have the same intent.

VOTE: P. Leavitt called the motion. Motion passed 2-1.

The Board discussed a proposed amendment to the in-law provisions of the ordinance. They agreed that detached apartments should be permitted and that the whole provision should be edited for clarity.

B. Map 72, Lot 8 – LRR2

40 Lombard Road
Kenneth R. Thompson
Administrative Appeal of Notice of Violation and Stop Work Order.

P. Leavitt announced that this is a continuation of the October 28 hearing.

S. Hayes, Attorney for Mr. Thompson, introduced himself and thanked the Board for holding the site visit last Sunday, despite the weather. He reviewed the testimony from last month. He believes that the construction meets the provisions of the ordinance under the 30% expansion rule and admitted that K. Thompson could have followed the process more carefully. K. Thompson noted that DEP had indicated that they would follow whatever the town decided.

M. Higgins stated that the applicant would have been made aware of the issues had he complied with the town requirements and filed for an amended building permit.

P. Leavitt read the October 21, 2002 letter to Jack Cooper from Michael O'Donnell, Assessor's Agent (attached to these minutes) In summary the letter indicated that the most recent inspection, 7-26-02, indicated that the boathouse was 20% complete. New dimensions were noted and the structure was erased and re-drawn. The 1988 assessment card shows the structure as 16' x 44' in the notes and drawn at 16' x 40'. In addition 1988 notes the structure as one story, where it was noted as two stories in 2002.

P. Leavitt indicated that what is troublesome is that if the Permit by Rule had been filed with the DEP, pre-construction photos would have been filed. Now we just have ancillary evidence, none of which is conclusive.

S. Hayes reminded the Board that two neighbors have signed affidavits regarding the boathouse. He indicated that no photos could be found. He further stated that the town records are in conflict with each other.

K. Thompson stated that the reason the boathouse is longer (46.5 v. 45) is that the foundation was not square. The discrepancy in the width is between one slip and two.

S. Hayes explained that the new foundation was built square, using the old wall where possible, but did extend outside of the old foundation in one corner. There is both old and new concrete along the foundation edges. J. Cooper stated that he did not observe a shed roof or any evidence of a roof during his site visit.

P. Leavitt indicated that he believes that the foundation was outside of the original, it should have been "squared off" within the old foundation. The Board discussed the inconsistencies between the assessing records and the fact that no information was specific with regard to the time period of two years which determines the extent of non-conformity. P. Leavitt continued that he finds it unbelievable that there are not photos.

S. Hayes stated that there is no requirement that photos be submitted. He agreed that a picture is worth a thousand words and that he has tried to submit the thousand words. J. Cooper indicated that he would be willing to reconsider his decision if there was hard evidence to support the increased size.

The Board discussed at length the lack of hard evidence. The applicant reiterated his initial intent to repair the structure and finding it impossible to repair moved ahead with the reconstruction.

Gagne mentioned that he had found the property on satellite imagery at www.terraserver.com.

M. Higgins summarized that we did not have hard evidence, but still needed to identify the options before the Board. If the Board upholds the Administrative Decision then the applicant has the option to remove the building, move inland outside of the 100 foot setback, reduce in size under the 30% expansion allowance, or reduce the

size to the original construction as of two years ago.

P. Leavitt indicated that they could try to come to some agreement regarding the allowable size to remain. If not, it would go to Superior Court if the applicant appeals.

Gagne suggested that they consider tabling the application for some months to allow the applicant time to produce new evidence. A. Simpson offered that perhaps there was an appraisal that would contain photos. After some discussion with the applicant P. Leavitt called for a motion.

MOTION: A. Gagne moved to continue the application to the March 31, 2003 meeting for the purpose of allowing the applicant time to discover new information. M. Higgins seconded the motion.

Discussion: S. Hayes indicated that his client wanted the matter resolved. They have gone looking for photos and cannot find any. They understand that the Board is looking for greater certainty but it is not possible. They have done the best they can and he feels they have satisfied the ordinance requirements. They do not want a continuation.

VOTE: Motion failed 3-0

MOTION: P. Leavitt moved to uphold the Administrative ruling that the structure exceeded the 30% expansion. With a second by M. Higgins, the motion passes unanimously.

3. Other business

P. Leavitt brought up the absence of Stephen Mairs, Alternate at all but one meeting of the Board this year.

MOTION: M. Higgins moved to recommend to the Selectmen that he be removed from the Board. With a second by A. Gagne, the motion passed unanimously.

At 8:55 p.m. P. Leavitt declared the meeting adjourned.

Submitted by

Amanda Simpson
Assessing/CEO Assistant