

Maynard Zoning Board of Appeals - Minutes: December 16, 2013

Attending: Paul Scheiner (PS), Chair; Christopher Etchechury (CE); Carlos Perez (CP); and, Leslie Bryant (LB), Alternate. Absent: Marilyn Messenger (MM). Also attending on behalf of the Town of Maynard: Eric R. Smith, AICP, Town Planner, Recording Secretary.

PS called the meeting to order at 7:00p.m.

Petition of, Maynard, Map 9-Parcel 244, for a Special Permit pursuant to Maynard Zoning Bylaw, Section 3.2.4, accessory uses – Hairdressing Home Occupation - for continued use of said premises for the Hairdressing Home Occupation accessory use:

PS opened up the Public Hearing by reading the Legal Notice into the record and then asked the Petitioner to present her proposal to the Board.

The Petitioner, Renee Guinta (RG), 13 Elm Court, approached the Zoning Board of Appeals to ask for an extension to her Hairdressing Home Occupation Accessory Use Special Permit and for said renewal to be longer than one year. She explained she has operated over the year during the hours of 9am-2pm Monday-Friday with no weekend hours.

PS asked how the off-street parking was working. RG noted it is working out perfectly. She has a U-shaped driveway and she does very few (haircuts) a day and there is the off-street parking space for clients.

LB asked if the current hours under the permit are 9am-5pm. RG concurred. PS asked if she would rather have 9am-2pm and would that be acceptable over the next year or two. RG indicated yes.

PS asked if there was anybody in attendance who wanted to speak in favor of the Petition.

Maria Clark, 5 Cindy Lane: I am in favor. I am a close friend and she is a single mom and I know she is trying to support her children and she works until she has to pick up her Children at School at 2pm.

There was no one in attendance in opposition of the Petition.

PS asked the Board members what they think about a timeframe. CE: I think two year is acceptable. CP: I think she should have two years.

LB made a Motion to close the Public Hearing. Seconded by CE. Vote 4 to 0 to close to the Public Hearing

LB made a Motion for the Zoning Board of Appeals to grant a Petition of Renee Guinta, 13 Elm Court, Maynard for a Special Permit, pursuant to Maynard Zoning Bylaws, Section 3.2.4, for continued use of said premises for the Hairdressing Home Occupation Accessory Use. The granting is for hours of operation to be 9am to 2pm Monday through Friday and that the Permit will run for two years. Seconded by CE.

PS notified the Petitioner that there are four people on the Board and an approval requires an unanimous vote by the Board. PS asked the Petitioner if she had any problems with that. RG indicated no.

Vote 4 to 0 in favor to approve the Special Permit.

Petition of John P. Ward, 92 Old Lancaster Road, Sudbury, MA for a Variance from the Dimensional Regulations within Section 4.1.1 of the Maynard Zoning Bylaw related to minimum frontage for the Petitioner's lot at 123 Summer Street, Maynard, Map 8-Parcel 164, which is located in the Town's Single Residence (S-1) District

PS opened up the Public Hearing by reading the Legal Notice into the record and then asked the Petitioner to present his proposal to the Board.

John P. Ward (JW) approached the Board and indicated he is looking for a Variance from road frontage for two lots. His proposal is to split this property into two equal lots. He indicated that on the Plan provided in the Application the lots are identified as Lots 2A and 2B. Each would be approximately 64 feet wide; the zoning requirement for frontage in the S-1 District is 100 feet wide.

JW provided his proposal to the ZBA by reviewing the four (4) aspects of his request: Proposed Use of Land and Structures, proposal to split lot would be following MGL Ch. 41 Sect. 81L Exemption. He directed the Board to review Attachment A of his Application. JW indicated his intention to convert the existing barn on Lot 2B into a single-family home. He also noted that there is a right-of-way on this property for the owner of Map 8 Parcel 185 to access the barn structure on said lot via the driveway on his property. Further discussion was held on the right-of-way status. The abutters' Attorney indicated he has the deed showing this right-of-way from 1937 and provided a copy to the Board accordingly.

CE asked how close the house to the front of that property (119 Summer Street) is to the property line.
JW: Approximately three feet.

JW provided the Board with photographs of the property at 123 Summer Street when he had purchased it comparing to conditions today. He then provided photos of the barn structure, both historical and today, along with photo examples related to his plans to convert the barn structure into a single-family home, which would return the look of the barn more to its historical form. PS noted this was the barn that had a fire a few years back. JW confirmed and indicated it was his knowledge that was back in the 1980's

JW provided the Board with his rationale for uniqueness and reasons for the Variance noting that the current property with a single-family home and large existing barn, both substantial structures, are on a full acre of land, which is twice the size of many of the surrounding properties. JW: The three existing properties to the west of mine have existing frontage of 65, 58 and 61.5 feet respectively. The two properties to the east have 60 feet and 60 feet, respectively. By splitting this parcel evenly will create lot sizes that are consistent with the neighborhood he noted.

JW then provided with the Board for his hardship justification noting the property does meet the 81L Exemption under Subdivision Control Law, but further noting the two lots would not be buildable under Maynard Zoning Bylaw.

JW provided his supporting facts that there would be no detriment to the public good or derogation of the intent of the Zoning Bylaws. JW: By approving these variances, the lot frontages of 2A and 2B would be similar to the surrounding properties and not change the fabric of the neighborhood. I'm not adding any new buildings to the neighborhood and would not impact the openness of the neighborhood. I believe restoring the barn back to its original 1910 appearance will enhance the neighborhood.

PS asked the Petitioner to describe the 81L exemption process for the Board. The Board and the Petitioner held further discussions related to this matter.

PS notified the Petitioner that there are four people on the Board and a Variance approval requires an unanimous vote by the Board. PS asked the Petitioner if he had any problems with that. JW indicated no.

PS asked if there was anybody in attendance who wanted to speak in favor of the Petition and there was no one in attendance who wanted to speak accordingly.

PS then asked if there was anybody in attendance who wanted to speak in opposition of the Petition.

Mark L. Scheier (MS): I'm Mark Scheier, Attorney with Scheier, Katin & Epstein, law firm in Acton and I represent William and Amy Shew of 115 Summer Street and Matthew Sisson of 119 Summer Street. Mr. Scheier: All of these plans presented by Mr. Ward are all very nice. But it is simply not legal. There have been a string of cases, Appeals Court and Supreme Court Decisions that state very clearly that a lack of frontage is, on its own, not a basis to grant a Variance. If you look at the Variance Criteria and start with *"owing to circumstances relating the soil conditions, shape or topography of such land or structure, or Structures and especially affecting the Land or Structure for which the Variance is sought which do not affect generally the Zoning District in which it is located."* MS indicated he did not see anything in Mr. Ward's application that even related to the first criteria that is required in order to grant a Variance. MS provided reference to the Warren Case and two other cases in which property owners were short of meeting the required frontage and the courts overturned granting of the Variance.

MS: Clearly, Mr. Ward has not made the argument of the first criteria related to soil, shape or topography. In the context of granting a variance, a variance cannot be granted in this situation. All of the Variance criteria have to be met, which includes hardship. On that basis, it is not even a close call for this Board to deny this Variance because simply the criteria are not close to being met in this situation.

Mr. Matthew Sisson, 119 Summer Street: As you can see from these pictures the barn is really close to our house (Mr. Sisson provided a set of two pictures to the ZBA). He noted that the required side-yard setback is 15 feet; the barn is 13 feet. He noted his concern about his daughter and other kids being outside and worrying about the occupants driving up and down that driveway right next to his property. Noted his opinion on differing impacts from use of property of barn versus a residence.

Mr. Bill Downey (BD), 116 Summer Street: I live across the street. I took the time to write a couple of notes along with some photographs (these were distributed to the ZBA members). BD: my biggest misgiving is that we already have a rental property there that affectively has a parking lot across from our house. Noted with approval of converting the barn to single-family house as proposed there would be three (3) driveways and not anxious to have an extra parking lot across the street. He noted his letter provides other points he gathered during his research of zoning: he didn't wish to encourage long, narrow lots; it would not be an owner-occupied building; the increase in parking; driveways; more congestion; concerned of the precedent.

Ms. Carmen Zafu, 116 Summer Street: Zoning was created for exactly this purpose to not to be too close to other properties. She believed the LEED designation on Mr. Ward's proposed house would led to him paying lower taxes. She was concerned with impact of the additional cars entering/exiting the property.

After some discussion about current use of the barn, Mr. Ward indicated he rents the second story to a local antiques dealer for a warehouse, who had been using that barn before he bought the property.

PS provided the opportunity for the Petitioner to respond to the comments made in opposition to his requested Petition. JW began with a rebuttal on the variance criteria analysis provided by the opposition and then noted his plan would be to only have two driveways not three. For the barn he did show two parking spaces in the front, but that would be for guests with the primary parking in the back. JW indicated he and his wife plan to live there, but not for about 3-4 years.

PS: In granting a Variance there are certain criteria we have to judge. Hardship being one of them. PS asked the Petitioner as to what he saw his hardship. JW: My hardship is the ability to develop and get as much from this property as I can. If I can split it, I could live on one (property) and have rental income from the other, especially for my retirement years. Right now I have a full acre and all my neighbors have a ¼ or ½ acre. If you look at the property values they are all the same.

The Zoning Board of Appeals members then reviewed the Petition further and also reviewed the Variance criteria under MGL.

Christopher Etchechury made a Motion to close the Public Hearing. Seconded by Carlos Perez. Vote 4 to 0 to close the Public Hearing.

The Zoning Board of Appeals reviewed the four criteria for granting a Variance which must be met: [1] the uniqueness related to the circumstances to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located; [2] substantial hardship, financial or otherwise, if we were to enforce the zoning rules; [3] that there would be no substantial detrimental to the public good, and [4] would not derogate from the intent of the zoning bylaws. PS asked the Board what the Findings would be in order to grant this Petition noting that all of them would have to be met.

PS noted that the Board is not finding anything related to the soil conditions, shape or topography of the land or structures, which is an issue for granting a Variance. PS indicated that for the substantial hardship, the property is useful now. For substantial detrimental to the public good, PS noted we are hearing from the neighbors related to parking, traffic and so-on. For substantial derogating from the intent of the bylaws, PS noted that Attorney Scheier identified case law in opposition to what the Petitioner is proposing.

PS summarized by stating the Board is not finding here what would be viable to begin providing the basis to grant a Variance. PS indicated that the Board could come up with a vote to say no or, at the Petitioner's request, the Petitioner could withdraw his Petition and see what other options he may have.

JW: I have chosen the option to withdraw. JW subsequently provided the Zoning Board of Appeals with his letter requesting to formally withdraw his application for the Variance Petition for 123 Summer Street. The letter was received by the ZBA and the Town Planner indicated he would take this stamped letter to the Town Clerk's Office tomorrow.

Scheduling of Upcoming Zoning Board of Appeals Meeting

The Town Planner noted that the Zoning Board of Appeals has received an application for an Appeal from the Decision of the Building Commissioner for property 113 Summer Street, Maynard. He noted that the regular meeting date has been the 3rd Monday of the month, but in January that is a Municipal

Holiday. The Zoning Board of Appeals scheduled public hearing for this request for Monday, January 27, 2014 at 7:00p.m.

LB made a Motion to Adjourn. Seconded by CE. Vote 5 to 0

List of Documents Entered into the Record

1. Legal Notice for 13 Elm Court
2. Legal Notice for 123 Summer Street
3. 1937 Quitclaim Deed with easement over 123 Summer Street, submitted by Mark Scheier
4. 123 Summer Street Application submitted to the ZBA by John P. Ward.
5. Memo from Atty. Mark L. S Scheier submitted to the ZBA on behalf of the abutters at 115 and 119 Summer Street
6. Pictures of 119 and 123 Summer Street submitted by Mr. Matthew Sisson
7. Review of Proposed Zoning Variance for Lot 164, 123 Summer Street, Maynard, MA 01754, submitted by Mr. William T. Downey & Ms. Carmen Zafu
8. Letter from John P. Ward requesting to withdrawal his Petition for Variance