



Town of Tyngsborough

Zoning Board of Appeals
Town Hall-25 Bryants Lane
Tyngsborough, MA 01879-1003
(978) 649-2300, Ext. 112

APPROVED

TYNGSBORO ZONING BOARD OF APPEALS MINUTES

Date: October 11, 2012

The meeting was called to order by Chairman Robb Kydd at 6:30p.m. at Tyngsboro Town Hall, Community Room, 25 Bryants Lane, Tyngsborough, MA per published meeting notice in the Lowell Sun newspaper on Thursday, September 27, 2012 and Thursday, October 4, 2012 to hear requests for variance and special permit.

Board Members Present (with check mark):

Robb Kydd, Chairman Chris Mechalides, Vice Chairman Cheryl Bradley
 Claire Cloutier Joseph Polin Scott Bordeleau

Public Hearing #1:

APPLEWOOD CONSTRUCTION CORP. – 81 KENDALL RD., Assessors Map 20, Lot 23; Request a SPECIAL PERMIT under Section 2.15.24 of the Zoning By-Law, and any other permit relief as may be required to allow for existing structure to be razed and new, fully conforming single family home to be constructed in Zone B-2, on the corner of Kendall Rd. & Bryants Ln.

Members Reviewing: Robb Kydd, Chris Mechalides, Cheryl Bradley, Claire Cloutier, Joseph Polin

Abutters List Present and Complete

Motion to waive the reading of the Abutters List: motion: Cheryl Bradley, 2nd: Joseph Polin, Voice Vote: Unanimous

Presentation by Applicant/Designee:

Walter Erickson presented a full set of plans for the raze of the existing dwelling and garage, with construction of a new dwelling structure and with placement and set-backs that meet zoning regulations. Currently the existing dwelling is located very close to Kendall Rd and Bryants Lane. Also shown was the 1,613 square foot land conveyance to the Town of Tyngsboro for improvements, and widening of Bryant Ln at the intersection of Kendall Rd.

Presentation by Abutters:

Opposed: None
Proponent: None

Close of public portion of meeting

Motion to close the public portion of the meeting: motion: Chris Mechalides, 2nd: Cheryl Bradley, Voice Vote: Unanimous

Open Discussion and Q&A to Applicant with Applicant responses

- Chris Mechalides stated the yard set-backs and placement would be in full compliance of current zoning regulations.

-Robb Kydd made note of a current picture of the dwelling indicating recent vehicular damage to the structure. The new structure will be better situated on the new plan. Also of note that the proposed widening of Bryant Ln at the intersection of Kendall Rd is an added benefit to the town.

Review Notes/Comments on Application from other Tyngsboro Departments

Highway: None

Planning: None

Building Comm: None

Board of Health: Septic Plan will be needed for this property

Conservation: A request for Filing of Determination will be required of applicant

Sewer: None

Board Motion was made by: Chris Mechalides, and seconded by Joseph Polin

Motion written as follows:

APPLEWOOD CONSTRUCTION CORP. – 81 KENDALL RD., Assessors Map 20, Lot 23. Tyngsboro Zoning Board of Appeals grants a Special Permit under Section 2.15.24 of the Zoning By-Law, to allow for existing structure to be razed and new, fully conforming single family home to be constructed in Zone B-2, on the corner of Kendall Rd. & Bryants Ln., according to proposed building plans submitted with and at time of application as signed by Zoning Board of Appeals on date 10-11-2012.

The motion was carried by unanimous voice vote.

Public Hearing #2:

GERALD SUPRENANT – 37 MASCUPPIC TRL.,

Assessors Map 26A, Lot 51; Request a VARIANCE from the requirements of Section 2.12.50 of the Zoning By-Law, to raze existing structure, and for construction of a two-level single family home in an R-2 Zone. ***Request to withdraw without prejudice***

Motion to accept the request to withdraw application without prejudice made by Chris Mechalides, 2nd: Cheryl Bradley, Voice Vote: Unanimous

Additional Meeting Agenda Items (as published)

OTHER BUSINESS:

1. • Sidewalks – Villages of Maple Ridge – *modification of the comprehensive permit* in accordance with 760 CMR 56

Members Reviewing: Robb Kydd, Chris Mechalides, Cheryl Bradley, Scott Bordeleau, Joseph Polin

Presentation by Applicant/Designee:

Walter Eriksen presented a request from the residents at the Villages of Maple Ridge to modify the Comprehensive Permit in accordance with 760 CMR 56.

- The residents originally approached Mr. Eriksen with a request to eliminate sidewalks
- Sidewalks aren't necessary and take away lawn space
- Derby Lane has 50-70 units without sidewalks
- A precedent has not been set in town to not install sidewalks
- 55/59 people want the sidewalks eliminated at their request
- Town is not taking the road over; this will remain a private road with the residents taking control and are responsible for maintenance and care

Open Discussion and Q&A to Applicant with Applicant responses

Robb Kydd issues:

- Access
- Does not want to set the board up for an issue down the road
- Some of the Board's research indicates it may be an issue down the road
- If there is a legal challenge it will be with the homeowners associating, not the Zoning Board of Appeals

Chris Mechalides recognizes that the homeowners have spoken and made their wishes public. It's almost like a dead end, with no thru traffic. Chris is comfortable keeping with the rural feel of the neighborhood

Walter says there is "no way" that road will ever be opened up

- Houses are on small lots close to street
- There is a separation from the property to the street existing
- Walter has agreed to put the extra money in the reserve account at the request of the association to compensate for not putting the sidewalks in
- Cape Cod berm on both sides, still have 10-12 lots to complete, will not have same problems as on the other side, and will put on the finish coat next spring
- Can put a disclaimer for the rest of the sales there will be no sidewalks

Scott Bordeleau:

- Safety is a concern with lack of sidewalks

Kevin Eriksen states that MA

Local regulations allow for waiver by Planning Board of the sidewalk requirement, however, this is a 40B, so it must go before Zoning Board of Appeals

- Tyngsborough requires sidewalks on one side of the street
- Under the 40B process, the Zoning Board of Appeals has the right to waive local requirements
- Only impacting a small area of the development
- 55/59 households are in favor

Joe Polin researched and found:

- Planning board in Tyngsboro changes or alterations to existing plans must be made with planning board, does this need to go back to planning; 40B process prevents this from going back to planning, requiring ZBA approval
- Sidewalks should be constructed unless otherwise specified by planning board
- Americans with disabilities act provides that reasonable accommodations be made by private entities against all persons with disabilities from the attempt to enjoy a public good or service that is generally available to the public. Kevin Eriksen clarifies that the ADA rules don't apply as this is not a public development, it's a private way. There is nothing that states that private residences must be handicap accessible
- 55/72 total dwellings are speaking tonight, and is concerned that if someone wants in and sue the Villages at Maple Ridge

Chris Mechalides:

Motions to address request of the Villages at Maple Ridge regarding the sidewalks as insubstantial request, 2nd Scott Bordeleau

- Joe Polin Nay
- Scott Bordeleau Aye
- Robb Kydd Aye
- Chris Mechalides Aye
- Cheryl Bradley Aye

40B's require a 3/2 vote, not 4/1 therefore motion carries

Robb Kydd motions for sidewalks (to approve) to be removed as requested by the residents at the 55+ Villages at Maple Ridge for all of Dickens Lane and all houses from #30 Steinbeck to #58 Steinbeck Street. 2nd by Chris Mechalides.

- Joe Polin Nay
- Scott Bordeleau Nay
- Robb Kydd Aye
- Chris Mechalides Aye
- Cheryl Bradley Aye

40B's require a 3/2 vote, not 4/1 therefore motion carries

Once deemed insubstantial, the comprehensive permit is deemed modified. No second vote was necessary.

2. • The Zoning Board of Appeals has received request from Deschenes & Farrel, P.C. for Tyngsboro Housing Authority for *modification of the comprehensive permit* in accordance with 760 CMR 56

Presentation by Applicant/Designee:

Melissa Robbins of Deschenes & Farrel, PC spoke on behalf on Tyngsborough Housing Authority (THA) in regards to the project known as Red Pines Terrace off of Frost Road in Tyngsborough. The THA is looking to add four units of family housing to the project that was granted a comprehensive permit under Massachusetts General Laws Chapter 40B on August 16, 1989. The addition will

be an 8% increase of overall units within the development. 760 CMR 56.07(4) suggests that the following are considered substantial:

- i. An increase of more than 10% in height of the building(s);
- ii. An increase in more than 10% in the number of housing units proposed;
- iii. A reduction in size of the site by more than 10% in excess of any decrease in the number of housing units proposed;
- iv. A change in building type (e.g. garden apartments, town houses, high rises); or
- v. A change from one form of housing tenure to another.

As stated above, since the change is only 8% this change request should be considered “insubstantial” or a “minor modification”.

Review Notes/Comments on Application from other Tyngsboro Departments

Assessor: None

Building Comm: None

Board of Health: Must meet state sanitary code 105 CMR 410

Board of Selectmen: No comment, per BOS meeting of 10/1/2012

Conservation: THA will have to file a Notice of Intent with the Conservation Commission for this project

Fire: OK, must comply with all current fire regulations and standards

Highway: None

Planning: Is the drainage infrastructure sized to accommodate the increase in impervious surface?

Police: None

Sewer: There is an outstanding balance of \$78,000 due to the Sewer Dept, for connection of the Housing Authorities Red Pine project from 2003-2004 which will be discussed at the next Sewer Meeting

Tax Collector: None

Selectman, Corey Lambert is present and supports the idea.

Robb Kydd motion that change to Tyngsboro Housing Authority, Red Pines Terrace, 186 Frost Road is deemed “insubstantial” Joe Polin 2nd.

Scott Borderleau	NAY
Joe Polin	NAY
Claire Cloutier	AYE
Cheryl Bradley	AYE
Robb Kydd	AYE

40B’s require a 3/2 vote, not 4/1 therefore motion carries

Once deemed insubstantial, the comprehensive permit is deemed modified. No second vote necessary.

3. Discussion – *“fill in the blanks”* for the May 2012 minutes

- Minutes were discussed and reconstructed and are on the agenda to be approved at the November 8, 2012 ZBA meeting
- 4. ZBA application update(s)
 - Modify instructions on the ZBA Instructions for Application to require the applicant to include proposed building plans of the proposed building or structure in future filings

ADMINISTRATIVE:

- Approve ZBA Meeting Minutes for 13 SEPTEMBER 2012
 - Motion to accept ZBA Meeting Minutes for 13 September 2012 made by Chris Mechalides, 2nd by Claire Cloutier. The motion carried unanimously by voice vote.
- Next Meeting: NOVEMBER 8, 2012

Motion to Adjourn, made by Scott Bordeleau at 8:23 pm, seconded by Joseph Polin. The motion carried unanimously by voice vote.