



Town of Tyngsborough
Zoning Board of Appeals
Town Hall-25 Bryants Lane
Tyngsborough, MA 01879-1003
(978) 649-2300, Ext. 115

TYNGSBOROUGH ZONING BOARD OF APPEALS MINUTES

March 13, 2014

APPROVED

(Amended and Approved August 14, 2014)

Attachments:

1. Meeting Agenda
2. 77 Frost Rd. Email – 3/5/2014
3. 19 Norris Rd. ZBA Application – 12/16/13
4. 19 Norris Rd. Tyngsborough Dept. Comments
5. 257 Middlesex Rd. ZBA Application – 12/16/13
6. 257 Middlesex Rd. Revised Proposed Site Plan – 12/10/13
7. 257 Middlesex Rd. Tyngsborough Dept. Comments
8. 41 Woodfern Ave. ZBA Application – 2/11/14
9. 400 Business Park Dr. ZBA Application – 2/18/14
10. 400 Business Park Dr. Tyngsborough Dept. Comments
11. 125-135 Middlesex Rd.(Tyngsboro Crossing) ZBA Application – 2/19/14
12. Deschenes & Farrell Letter regarding Tyngsboro Crossing Parking spaces – 2/25/14
13. PSC Peer Review for Tyngsboro Crossing – 3/12/14
14. Conservation Commission Comments regarding Tyngsboro Crossing – 3/13/14
15. Building Dept. Comments regarding Tyngsboro Crossing – 3/10/14
16. Sewer Commission Comments regarding Tyngsboro Crossing – 3/12/14
17. Planning Board/David E. Ross Associates Comments regarding Tyngsboro Crossing – 3/6/14
18. Board of Selectmen Comments regarding Tyngsboro Crossing – 3/12/14

Members Present: Claire Cloutier - Chairman
Robb Kydd – Vice Chairman
Cheryl Bradley
Scott Bordeleau
Pamela Berman, Administrative Assistant

Members Absent: Christine Mechalides
Joe Polin

6:30pm Meeting was called to order by Chairman C. Cloutier

77 Frost Rd. – Variance Amendment

Developer Peter Marlowe appeared before the Board to request an amendment to the Variance granted by the Board on January 9, 2014. Mr. Marlowe explained that while he was preparing to demolish the home, he realized that the electrical lines are going to be within two feet of the home, and that they encroach on the property by seven feet. He contacted National Grid to move them. However, he was told that it would take up to 18 months to remedy the situation. Therefore, he asked the Board if he could amend the Variance to accommodate the home being pushed back on the lot by another nine feet.

The Board discussed the request and felt that an amendment of this type would be a substantial change to the already approved variance. The Board subsequently took a vote on this request.

R. Kydd: Motion to deem the request for an amendment to the Variance approved at 77 Frost Rd. on January 9, 2014 a substantial change, and the applicant must re-file with the Board.

S. Bordeleau: 2nd the motion

In Favor: 4 Opposed: 0

Public Hearing #1

19 Norris Rd. (M18, P65, L0) – Request for a Variance from the requirements of Section 2.12.50 (frontage) and a Special Permit under Section 2.15.22, 2.15.23 & 2.15.24 of the Tyngsborough Zoning By-Laws to re-construct a single family dwelling that was damaged by fire in an R-1 Zone. *Advertised in the Lowell Sun Thursday December 26, 2013 and Thursday January 2, 2014. Continued from January 9, 2014.*

Abutters List Present and Complete

R. Kydd: Motion to waive the reading of the abutters list.

S. Bordeleau: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Application Presentation by Application/Designee

Atty. Peter Nicosia appeared before the Board for the applicant. Atty. Nicosia explained that the home had been destroyed by fire in 2011. The replacement foundation was constructed in 2012, however, too much time has elapsed since then to build the home. Therefore, they require a variance and special permit to build the new home. The home will be built on the existing footprint, and will not be detrimental to the existing neighborhood. In addition, the mere fact that the home was destroyed by fire would qualify it as a serious hardship for the homeowner. There were no abutters present to speak for or against this project.

R. Kydd: Motion to close the public portion of the hearing.

S. Bordeleau: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Open Discussion by the Board and Q&A to Applicant with Applicant responses

- Board members felt that this project was beneficial to the neighborhood and had no issues with the proposed plans.

Review Notes/Comments on Application from other Tyngsborough Departments

Building Commissioner: Foundation placed within existing footprint. Appears to meet spirit and intent of zoning.

Board of Health: Board needs copy of proposed plot plan with septic system shown.

Board will require Title 5 prior to building permit.

Planning Board: None

Assessor: None

Fire Dept.: None

Conservation Commission: Order of Conditions on file is current and valid

Sewer Dept.: Sewer is available to connect

Highway Dept.: None

BOS: None

Tax Collector: None

R. Kydd: Motion to grant a Variance under Section 2.12.50 of the Tyngsborough Zoning Bylaws for frontage for 19 Norris Road.

S. Bordeleau: 2nd the Motion

In Favor: 4 Opposed: 0

Passes: 4-0

R. Kydd: Motion to grant a Special Permit under Section 2.15.22, 2.15.23, and 2.15.24 of the Tyngsborough Zoning Bylaws to construct a new 26' x 36' 2-story dwelling at 19 Norris Road.

C. Bradley: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Motion written as follows:

TAVERN HILL GROUP, LLC– 19 NORRIS ROAD: Motion to **APPROVE**;

Assessors Map 18, Parcel 65, Lot 0 request for a **Variance** for requirements of Zoning By-Laws for frontage in an R-1 Zone, from required 200 ft. to 180ft. by Robb Kydd, seconded by Scott Bordeleau.

4-0, Motion to APPROVE – unanimous

Claire Cloutier	AYE
Robb Kydd	AYE
Cheryl Bradley	AYE
Scott Bordeleau	AYE

Motion to **APPROVE**; Assessors Map 18, Parcel 65, Lot 0 request for a **Special Permit** under Section 2.15.22, 2.15.23, and Section 2.15.24 to construct new 26' x 36' 2-story dwelling with approved setbacks as shown on plan view dated 3/14/12 by Robb Kydd, seconded by Cheryl Bradley.

4-0, Motion to APPROVE – unanimous

Claire Cloutier	AYE
Robb Kydd	AYE
Cheryl Bradley	AYE
Scott Bordeleau	AYE

Public Hearing #2

257 Middlesex Rd. (M20, P47, L0) – Request for a Variance from the requirements of Section 2.12.50 (Front & Side Yard Setbacks) and a Special Permit under Section 2.15.22 of the Tyngsborough Zoning By-Laws for the construction of a new gas pump island and canopy over the gas pump island in a B-3 Zone. *Advertised in the Lowell Sun Thursday December 26, 2013 and Thursday January 2, 2014. Continued from January 9, 2014.*

Abutters List Present and Complete

S. Bordeleau: Motion to waive the reading of the abutters list.

R. Kydd: 2nd the motion

In Favor: 4 **Opposed:** 0

Passes: 4-0

Application Presentation by Application/Designee

Atty. Peter Nicosia and engineer Jeff Hannaford appeared before the Board. Atty. Nicosia explained that the owner of Route 3A Gas wishes to put a new gas pump island in and install a canopy over the island. He went on to say that the new island would be shifted back from where it is now. He consulted Mass DOT regarding the proximity of State Route 3A, and they reported that since the proposed placement of the island and canopy was 12 feet off of the street, it meets the State's rules and regulations. Atty. Nicosia also noted that Mass DOT said that the canopy overhang does not fall under the jurisdiction of the State's regulations, and wouldn't be an issue. The site's planned rehabilitation would make the site more aesthetically pleasing and fits well into the Town's Master Plan for the Town Center.

The Board asked about the lighting and coloring on the canopy. All canopy lighting will be directed down onto the cars at the island, and the canopy colors would be white. There were no abutters present to speak for or against this project.

Open Discussion by the Board and Q&A to Applicant with Applicant responses

- Board members appreciated the efforts in making this project fit within the neighborhood and had no issues with the proposed plans.

Review Notes/Comments on Application from other Tyngsborough Departments

Building Commissioner: Appears would be too close to street line and power lines.

Board of Health: The leach field & septic tanks shall be fenced off with orange construction fencing during construction to prohibit heavy equipment. Excavation should not be within 15 ft. of septic system.

Planning Board: What are the design plans for the canopy, including signage, lighting and overall look. Does this design plan fit within the Master Plan?

Assessor: None

Fire Dept.: None

Conservation Commission: None

Sewer Dept.: Sewer not currently available

Highway Dept.: None

BOS: None

Tax Collector: None

S. Bordeleau: Motion to grant a Variance under Section 2.12.50 of the Tyngsborough Zoning Bylaws for front & side yard setbacks for 257 Middlesex Rd.

C. Bradley: 2nd the Motion

In Favor: 4 Opposed: 0

Passes: 4-0

S. Bordeleau: Motion to grant a Special Permit under Section 2.15.22 of the Tyngsborough Zoning Bylaws to install a new gas pump island and canopy at 257 Middlesex Rd.

C. Bradley: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Motion written as follows:

ROUTE 3A GAS, INC. AND TYNGSBOROUGH REALTY TRUST – 257 MIDDLESEX ROAD:

Motion to **APPROVE**; Assessors Map 20, Parcel 47, Lot 0 request for a **Variance** from the requirements of the Zoning By-Laws for Front Yard Setbacks in a B-3 Zone, from the required 75ft. to 3ft. for the canopy deck aerial overhang; 12ft. for the canopy support footings; and 12 ft. for the pump island; and a Variance for Side Yard Setbacks in a B-3 Zone from the required 30ft. to 4.5ft. for the canopy deck aerial overhang by Scott Bordeleau, seconded by Cheryl Bradley.

4-0, Motion to APPROVE – unanimous

Claire Cloutier	AYE
Robb Kydd	AYE
Cheryl Bradley	AYE
Scott Bordeleau	AYE

Motion to **APPROVE**; Assessors Map 20, Parcel 47, Lot 0 request for a **Special Permit** under Section 2.15.22 to install a new gas pump island and with a canopy over the pump island with approved setbacks as shown on plan view dated 10/15/13 by Scott Bordeleau, seconded by Cheryl Bradley.

4-0, Motion to APPROVE – unanimous

Claire Cloutier	AYE
Robb Kydd	AYE
Cheryl Bradley	AYE
Scott Bordeleau	AYE

Public Hearing #3

41 Woodfern Ave. (M32B, P30, L1) - Request for a Variance from the requirements of Section 2.12.50 (Rear Yard Setback), of the Tyngsborough Zoning By-Laws for the construction of an 11' x 22' addition in an R-2 Zone. *Advertised in the Lowell Sun Thursday February 27, 2014 and Thursday March 6, 2014.*

Abutters List Present and Complete

C. Bradley: Motion to waive the reading of the abutters list.

R. Kydd: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Application Presentation by Application/Designee

Homeowners Kevin and Ann Menezes appeared before the Board. They explained that the existing porch is unsafe and they fear that someone will injure themselves. They want to replace it and expand it to an 11' x 22' from the existing 11' x 16' which is pre-existing non-conforming and expand it so they can access their laundry area without having to go outside which is a hardship for them. They went on to explain that the new porch would be about one foot off the back lot line where the neighbor has a fence. The Board felt uncomfortable with the porch being so close to the lot line and asked if they could re-work the design to back it off and provide an updated plot plan since the one provided was a year old. The homeowners thought they might be able to gain a few feet and asked for a continuance so they could re-work the plan.

R. Kydd: Motion to continue this hearing until April 10, 2014 at 6:30pm

C. Bradley: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Public Hearing #4

400 Business Park Dr. (M12, P5, L2) – Request for a Variance from the requirements of Section 2.12.50 (Side Yard Setback), and Section 3.13.33 (Buffering and Screening in Industrial District I-1) of the Tyngsborough Zoning By-Laws for the construction of an 11,335 s.f. 1-story addition. *Advertised in the Lowell Sun Thursday February 27, 2014 and Thursday March 6, 2014.*

Abutters List Present and Complete

R. Kydd: Motion to waive the reading of the abutters list.

S. Bordeleau: 2nd the motion

In Favor: 4 **Opposed:** 0

Passes: 4-0

Application Presentation by Application/Designee

Engineer Dan Delaney of Fuss & O'Neill appeared before the Board. Mr. Delaney explained that this project is intended to be a 1-story addition to the existing building built in 2006. He went on to say that they will need a site plan special permit from the Planning Board and a Stormwater permit from Conservation. The configuration of the lot limits the area where they can meet the buffering and screening requirements. Mr. Delaney added that Jenike & Johanson had initially planned this expansion when they first built in 2006. Now they are ready to expand the business, and this addition will serve as much needed offices, storage, and meeting rooms. There were not abutters present to speak for or against this project.

Open Discussion by the Board and Q&A to Applicant with Applicant responses

- Board members felt that this project was good for Tyngsborough. They questioned the septic capacity and noted that any decision could be contingent on the Board of Health and Planning Board approvals.

Review Notes/Comments on Application from other Tyngsborough Departments

Building Commissioner: None

Board of Health: None

Planning Board: Applicant must file with Planning Board for a site improvement special permit. Hearing is scheduled for March 20, 2014.

Assessor: None

Fire Dept.: Must comply with all State and Local codes Ch. 148, 527 CMR. Must submit fire alarm shop drawings and sprinkler shop drawing (stamped) for review.

Conservation Commission: The proposal will require a filing with the Conservation Commission under local stormwater by-law. Note: the by-law applies regardless of wetland protection jurisdiction.

Sewer Dept.: None

Highway Dept.: None

BOS: None

Tax Collector: None

R. Kydd: Motion to grant a Variance under Section 2.12.50 of the Tyngsborough Zoning Bylaws for side yard setback for 400 Business Park Dr.

C. Bradley: 2nd the Motion

In Favor: 4 Opposed: 0

Passes: 4-0

R. Kydd: Motion to grant a Variance under Section 3.13.33 of the Tyngsborough Zoning Bylaws for buffering and screening requirements for 400 Business Park Dr.

S. Bordeleau: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Motion written as follows:

JENIKE & JOHANSON, INC. – 400 BUSINESS PARK DR.:

Motion to **APPROVE**; Assessors Map 12, Parcel 5, Lot 2 request for a **Variance** from the requirements Section 2.12.50 of the Zoning By-Laws for Side Yard Setbacks in an I-1 Zone from the required 40ft. to 14ft. contingent on Board of Health and Planning Board approvals by Robb Kydd, seconded by Cheryl Bradley.

4-0, Motion to APPROVE – unanimous

Claire Cloutier	AYE
Robb Kydd	AYE
Cheryl Bradley	AYE
Scott Bordeleau	AYE

Motion to **APPROVE**; Assessors Map 12, Parcel 5, Lot 2 request for a **Variance** from the requirements of Section 3.13.33 of the Zoning By-Laws for Buffering & Screening in an I-1 Zone Contingent on Board of Health and Planning Board approvals by Robb Kydd, seconded by Scott Bordeleau.

4-0, Motion to APPROVE – unanimous

Claire Cloutier	AYE
Robb Kydd	AYE
Cheryl Bradley	AYE
Scott Bordeleau	AYE

Public Hearing #5

125-135 Middlesex Rd. (M21, P14, L0 & L1) – Request for a Comprehensive Permit pursuant to Chapter 40B of the Massachusetts General Law, and the Tyngsborough Zoning By-Laws Section 1.13.23 for the development of a residential housing community that will contain 66 units of residential housing on an 8.3 acre site to be named “Tyngsboro Crossing”. *Advertised in the Lowell Sun Thursday February 27, 2014 and Thursday March 6, 2014.*

Abutters List Present and Complete

R. Kydd: Motion to waive the reading of the abutters list.

S. Bordeleau: 2nd the motion

In Favor: 4 **Opposed:** 0

Passes: 4-0

Present for the ZBA: Atty. Adam Costa, PSC Engineer David Sanderson

Application Presentation by Application/Designee

Atty. Melissa Robbins, Engineer Doug Lees, Principle Partner of Tyngsboro Commons, LLC David Trahan.

Atty. Robbins presented an application for a Comprehensive Permit under Massachusetts General Law, Chapter 40B. The proposal calls for a residential community for low to moderate income families and will contain 66 units of residential housing in 33 buildings on an approximately 8.3 acre site located on Middlesex Rd. and be called “Tyngsboro Crossing”. 17 units of the 66 will be designated affordable for families whose income is at or below 80% of the median family income.

The parcels are currently vacant land that is open field, and is currently split zoned B-3 and I-1. It is parallel to the Boston & Main Railroad tracks which buffers the site from the 1% annual 100-year flood zone. There is 15,225 s.f. of a wetland resource area within 100 feet of the project that will require a Notice of Intent filing with the Conservation Commission.

The project will be serviced by public water and two on-site subsurface sewage disposal systems. In addition, natural gas is available, and overhead electric, telephone and cable services are available to the project from Middlesex Rd.

The applicant noted a traffic impact study from 2002 as part of the Merrimac Landing development that addresses the traffic in the area. In addition, a 2003 CHAPA study indicates that there are 0.03 children per unit for the multi-family housing. Accordingly, the applicant believes that this development could generate anywhere between 1.98 and 9.7 children, minimizing the impact to Tyngsborough’s schools.

The Board acknowledged that this is only the first hearing and there remains to be much to be discussed and ironed out before any decision can be rendered. In addition, several comments have come in from town departments that need to be addressed by the applicant. To that, Chairman C. Cloutier asked the applicant to establish an engineering 53G account, to which the applicant agreed to sign a Memorandum of Agreement to provide escrow funds to cover legal and professional expenses during the public review process. In addition, a copy of the application will be available for residents to review at the Tyngsborough Public Library. Comment letters have been provided to the applicant and they will work to address them for the next meeting.

R. Kydd: Motion to have the applicant establish a 53G escrow account in the amount of \$15,000, ~~and to maintain a minimum balance of \$5,000~~ **and to bring the balance back up to \$15,000 if that balance falls to at or below \$5,000.**

C. Bradley: 2nd the motion

In Favor: ~~4~~ **3** **Opposed:** 1

Passes: ~~4-0~~ **3-1**

Residents were invited to speak at this time. A resident from 134 Middlesex Rd. asked questions regarding traffic flow, noise and flooding. A resident from 150 Sherburne Ave. expressed his dislike for the whole project as he feels that the town is already bursting at the seams with development. Selectmen Rick Reault commented that the applicant should do everything they can to work on hooking up to sewer instead of going with septic systems, and added that the Board of Selectmen feel that fee waivers would not be entertained.

More discussion is needed and more department comments are expected. Therefore, the applicant requested to continue the hearing.

C. Cloutier: Motion to continue this hearing until April 10, 2014 at 6:30pm

R. Kydd: 2nd the motion

In Favor: 4 **Opposed:** 0

Passes: 4-0

ADMINISTRATIVE

1. Minutes

R. Kydd: Motion to approve the minutes as written for January 9, 2014.

S. Bordeleau: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

2. New Business:

- Next meeting is scheduled for April 10, 2014

9:20pm

S. Bordeleau: Motion to adjourn

R. Kydd: 2nd the motion

In Favor: 4 Opposed: 0

Passes: 4-0

Minutes respectfully submitted by