



**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**  
**September 11, 2014**  
**APPROVED**

Attachments:

1. Meeting Agenda
2. 212 Massapoag Rd. ZBA Application – 8/13/14
3. 53 Willowdale Rd. Revised Plot Plan – 8/18/14
4. 53 Willowdale Rd. Revised Building Plans – 8/21/14
5. Department Comments for 53 Willowdale Rd.
6. 7-23 Middlesex Rd. ZBA Application – 8/15/14
7. Department Comments for 7-23 Middlesex Rd.
8. 125-135 Middlesex Rd. Traffic Impact & Access Study prepared by TEPP, LLC – 9/10/14
9. PSC Peer Review Report– 9/10/14

Members Present: Claire Cloutier - Chairman  
Robb Kydd – Vice Chairman  
Christine Mechalides  
Joe Polin  
Scott Bordeleau  
Pamela Berman, Administrative Assistant

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

**Public Hearing #1**

**212 Massapoag Rd. (M2, P30, L0)** – Jim Craven applicant, request for a special permit under Section 2.15.24 of the Tyngsborough Zoning By-Laws to re-build a new 21' x 33' single family dwelling on the existing foundation. *Advertised in the Lowell Sun Thursday August 28, 2014 and Thursday September 4, 2014.*

**Abutters List Present and Complete**

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

**C. Mechalides:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Application Presentation by Applicant/Designee

Applicant Jim Craven appeared before the Board. Mr. Craven explained that he obtained a Variance and Special Permit in 1998 to raze and re-build a single family dwelling. He was able to demolish the home and then place the foundation, however, he was unable to continue the work due to illness. Since the Special Permit has expired, Mr. Craven is simply renewing the Special Permit in order to re-build the home. An abutter from 214 Massapoag Rd. spoke in favor of the project. There were no other abutters present to speak for or against this project.

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

**C. Mechalides:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

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

- The Board felt that this project was in harmony with the neighborhood and had no issues with the proposal.

Review Notes/Comments on Application from other Tyngsborough Departments

Board of Health: BOH will require water tests and as-built plan for septic system, and a Title 5 report.

Building Inspector: See previous ZBA Decision / Septic design? Must meet all codes in effect at the time of construction.

Conservation: May need further Conservation approval

Assessor: No adverse comments

Sewer: No Comment

Planning Board: No issues

Fire Dept.: OK

Tax Collector: OK

**J. Polin:** Motion to issue a Special Permit for 212 Massapoag Rd. under Section 2.15.24 to construct a 21' x 33' single family dwelling on the existing foundation per plot plan dated 7/16/14.

**S. Bordeleau:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**Public Hearing #2**

**53 Willowdale Rd. (M33, P8, L0)** – Andrea Leaver applicant, request for a variance from the requirements of Section 2.12.50 (lot size & side yard setbacks), and a special permit under Section 2.15.22 & 2.15.24 of the Tyngsborough Zoning By-Laws to raze an existing home and build a new 3,000 s. f. dwelling. *Advertised in the Lowell Sun Thursday July 31, 2014 and Thursday August 7, 2014. Continued from August 14, 2014.*

Atty. Peter Nicosia representing the applicant Andrea Leaver appeared before the Board and submitted a revised plot plan dated 8/18/14 that adjusted the front setback to 56', the back setback to 59.0', the right side setback to 30.2', and the left side setback to 27.1'. In addition, a copy of the demolition permit dated 5/8/13 was submitted to prove that the proper permit was obtained prior to any demolition. Finally, revised house plans dated 8/21/14 were submitted which reflect a reduction in the home's square footage from 3,000 s.f., to 2,120 s.f. Atty. Nicosia indicated that the original home had been built in 1935 and that Ms. Leaver's intent from the beginning was to re-build a new home that is more conforming than the original home. 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

- The Board felt that the proposed new dwelling is substantially larger than the original home. Atty. Nicosia indicated that although the home is larger, it is not detrimental to the neighborhood as there are many abutting homes and others in the vicinity of the property that are similar in design. He went on to say that there is precedent as the Board has allowed several homes to be built that are larger than the original dwelling.

Review Notes/Comments on Application from other Tyngsborough Departments

Board of Health: BOH does not have any issue at this time.

Building Inspector: No comments. Appears to meet spirit and intent of Zoning By-Laws

Conservation: Wetlands within 100 ft. of proposed work (rear of property). Requires wetland demarcation and filing. Note: Atty. Nicosia reported that the applicant received a Determination from the Conservation Commission at an August 26, 2014 public hearing.

Assessor: No adverse comments

Sewer: Sewer is available

Planning Board: Sheet: O shows an additional rendering for a proposed in-law apartment; however the plot plan and floor plans do not include any specifics. If there is a proposed in-law apartment, it must be permitted through the Planning Board per Section 4.15.00 of the Zoning By-Laws. Note: Ms. Leaver indicated that the in-law design was eliminated from the plans as they are not pursuing that design.

Fire Dept.: OK

Tax Collector: OK

**J. Polin:** Motion to approve a Variance for 53 Willowdale Rd. for square footage in an R-1 Zone, from the required 65,000 sq. ft. to 18,819 sq. ft. (46,181 sq. ft. of relief); Frontage from the required 200 ft. to 100.07 ft. (99.93' of relief); and Side Yard Setback from 30 ft. to 27.1 ft. (2.9' of relief).

**R. Kydd:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**J. Polin:** Motion to approve a Special Permit for 53 Willowdale Rd. under Section 2.15.22 and Section 2.15.24 to raze existing structures, clear lot, haul out buildings and construct new 2,120 2-story dwelling with approved setbacks as shown on plan view dated 8/18/14.

**R. Kydd:** 2<sup>nd</sup> the motion  
**In Favor: 5 Opposed: 0**  
**Passes: 5-0**

### **Hearing #3**

**45 Mascuppic Trail (M32B, P66, L0)** – Richard & Suzanne Brouillette applicants, request for a variance under Section 2.12.50 (front & side yard setbacks), and a special permit under Section 2.15.22 of the Tyngsborough Zoning By-Laws to build a 24' x 24' 2-car garage with loft. *Advertised in the Lowell Sun Thursday August 28, 2014 and Thursday September 4, 2014.*

#### **Abutters List Present and Complete**

**R. Kydd:** Motion to waive the reading of the abutters list.  
**C. Mechalides:** 2<sup>nd</sup> the motion  
**In Favor: 5 Opposed: 0**  
**Passes: 5-0**

Atty. Nicosia appeared before the Board for the applicants. Atty. Nicosia reported that his clients are contemplating altering the building plans that were submitted with their application. Therefore, they are requesting a continuance to the next meeting. The Board will not be meeting in October due to the lack of available members.

**R. Kydd:** Motion to continue this hearing until November 13, 2014 at 6:30pm.  
**J. Polin:** 2<sup>nd</sup> the motion  
**In Favor: 5 Opposed: 0**  
**Passes: 5-0**

### **Public Hearing #4**

**7-23 Middlesex Rd. (M28, P111, L0)** – 7-23 Middlesex Rd., LLC applicant, request for a variance under Sections 3.11.44, 3.11.30 & 3.11.34 of the Tyngsborough Zoning By-Laws to install multiple dealer vendor signs at existing business. *Advertised in the Lowell Sun Thursday August 28, 2014 and Thursday September 4, 2014.*

#### **Abutters List Present and Complete**

**R. Kydd:** Motion to waive the reading of the abutters list.  
**S. Bordeleau:** 2<sup>nd</sup> the motion  
**In Favor: 5 Opposed: 0**  
**Passes: 5-0**

Atty. Peter Nicosia and applicant Steve Caggiano appeared before the Board. Atty. Nicosia explained that Mr. Caggiano owns the Indian Motorcycle dealership recently permitted by the Planning Board and zoned B-3. Mr. Caggiano is in the process of relocating his current dealership from Chelmsford (Route 3A Motors) to the Tyngsborough location. With the added vendor lines being sold, the current signage is insufficient to notify the public of what is being sold on the premises. Mr. Caggiano is proposing to add two additional signs to the building (Victory & Slingshot). They will be flat panel signs like the Indian Motorcycle sign that is on the building now. They will be self-illuminating and stationary just as the current sign is with no active messaging. Atty. Nicosia went on to say that the hardship is that advertising vendor lines is the key to knowing what is sold at the dealership, and the lack of the “Victory” and “Slingshot” vendor signs would be a detriment to Mr. Caggiano’s business.

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

- The Board felt that the hardship is viable, and since the proposed signs are flat panel signs located on the face of the building they will not block any lines of sight regarding traffic and not be detrimental to the neighborhood, especially since the surrounding businesses have similar flat panel building signs.

Review Notes/Comments on Application from other Tyngsborough Departments

Board of Health: BOH has no issues at this time.

Building Inspector: The building department has no comments at this time.

Conservation: No action by Conservation needed.

Assessor: No adverse comments

Planning Board: No comments at this time.

Fire Dept.: OK

Tax Collector: No delinquent taxes

Sewer: No comment

Board of Selectmen: Given that no rendering was submitted by the applicant, the Board of Selectmen were unsure if a Light-Emitting Diode (LED) was proposed. If so, the Board voted to show opposition to any variance from the Zoning Sign By-Law regarding LED signs. Note: The ZBA noted that as a condition of any variance there would be an added condition that no LED lights be used.

**J. Polin:** Motion to approve a **Variance** for 7-23 Middlesex Rd. from the requirements of Section 3.11.44 (Business 3 (B-3) District – General Shopping Business) of the Tyngsborough Zoning By-Laws to allow two signs to be attached to the building with the following dimensions:

1. Sign Title: VICTORY  
Dimensions: 36’ long, with a 59” Victory logo with 30” letters
2. Sign Title: SLINGSHOT  
Dimensions: 46’-11” long, with a 7’ Slingshot logo with 30” letters

**S. Bordeleau:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**J. Polin:** Motion to approve a **Variance** for 7-23 Middlesex Rd. from the requirements of Section 3.11.30 (General Provisions) of the Tyngsborough Zoning By-Laws to allow the Building Commissioner to allow one sign that reads “VICTORY” and one sign that reads “SLINGSHOT” to be added to the building

**S. Bordeleau:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**J. Polin:** Motion to approve a **Variance** for 7-23 Middlesex Rd. from the requirements of Section 3.11.34 (Prohibitions, Items 1 through 8) of the Tyngsborough Zoning By-Laws to allow one sign that reads “VICTORY” and one sign that reads “SLINGSHOT” to be added on the building with the following exceptions:

1. No sign shall be lighted, except by a steady, stationary light, shielded and directed solely at or internal to the sign. Use of neon or other gaseous elements is prohibited except as allowed under specific district regulations.
2. No illumination shall be permitted which casts glare onto any residential premises or onto any portion of a way so as to create a traffic hazard. All determinations on traffic hazards shall be made by the chief of Police.
4. No sign having red or green lights shall be erected within sight of a traffic signal unless approved as non-hazardous by the Chief of Police.
5. No animated, revolving, or flashing sign shall be permitted.

With the added condition that no LED lights be used, and that the sign should remain steady and stationary

**S. Bordeleau:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

### **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. Continued from August 14, 2014*

Atty. Melissa Robbins appeared before the Board for the applicants Dennis Page and Dave Trahan, along with traffic engineer Ken Azavardian. The applicants submitted a Traffic Impact and Access Study, dated 9/10/14 per request of the Board. Mr. Azavardian summarized the report for the Board, which included existing and future conditions, and a capacity analysis. Mr. Azavardian summarized that the project would have no significant overall impact with low to moderate delays at the intersections of Middlesex Rd./Old Tyng Rd. and Middlesex Rd./proposed project driveway entrance.

Board Atty. Mark Bobrowski recommended that the Board consider hiring their own traffic engineer to perform a peer review of the applicant's study. The Board noted that the results of the traffic study seemed in line with their expectations for the area although they are concerned with the traffic at the Old Tyng Rd. intersection.

Board engineer David Sanderson summarized his project report and noted that most of his initial concerns have been addressed with the following exceptions:

- A Stormwater Management permit must be obtained from the Conservation Commission. Note: The applicant has filed with the Conservation Commission and a public hearing is scheduled for 9/23/14.
- Fire flow test data should be submitted for the existing watermain in Middlesex Rd. Note: The applicant indicated that fire flow tests will be performed as the project progresses.
- Architectural drawings show that an optional loft space could be built in the home. This space could be construed as a third bedroom, and should be addressed. Note: Atty. Bobrowski indicated that the Board could condition any approval with a stipulation that the loft space cannot be used as a bedroom.
- The applicant should verify with the Water District and Fire Dept. that water pressure and volume, along with alarms and other fire protection matters are adequately addressed and documented. Note: These entities will be consulted.
- Suggest that temporary fencing be utilized during construction.
- Bituminous berm curbing is an inferior substitute for granite or precast concrete edging due to its durability and visibility. Note: Atty. Robbins indicated that the entire project will be privately maintained so any repairs will be addressed. Applicant, Dave Trahan added that they could use granite in the heavy traffic areas throughout the complex.
- A Tree Protection Plan should be provided. Note: this will be added to the Landscape Plan.
- A turf management plan and riverfront protection should be addressed. Note: This will be addressed with the Conservation Commission.
- Construction activities including noise should be addressed. Note: Atty. Robbins indicated that the entire roadway will be built in the first phase before any of the homes are built and/or occupied. They will also have pre-construction meetings in order to iron out those details.
- Sewer connection should be addressed
- A list of requested waivers should be developed.

In addition to the above items, the Board asked for an update on the following:

- Gas and electric capacity. Note: The gas and electric companies have been contacted about the project.
- There will be no garages built on the units.
- Parking spaces will be designated for the homeowners
- There will be 17'-18' of separation between units.

- There will be a large open space area to the left on the entrance for passive recreation.
- The market rate for the units is estimated at \$239,000, with the affordable unit price between \$150,000 and \$160,000.
- There will be 15 affordable units.
- A street bond will be posted.
- Atty. Bobrowski said that a Pro-Forma analysis should be considered. Note: Atty. Robbins requested that the analysis be tabled for the interim, the Board agreed.
- The Board requested that a landscape architect be consulted to draw up an alternative plan that may improve the aesthetics of the complex. Note: Atty. Robbins indicated that they would have that ready for the next meeting.
- The Board's engineering firm will do peer review of the applicant's traffic study and have that report ready for the next meeting.

**C. Mechalides:** Motion to continue this hearing until November 13, 2014 at 6:30pm

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

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## **ADMINISTRATIVE**

### 1. Minutes

**S. Bordeleau:** Motion to approve the minutes for July 10, 2014.

**R. Kydd:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**J. Polin:** Motion to approve the minutes for August 14, 2014.

**S. Bordeleua:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

2. New Business:

- The Maple Ridge 53G account is below the threshold and should be replenished to \$2,500.
- Consult the Building Commissioner on the status of some of the additional 53G account noted on the report.
- Next meeting is scheduled for November 13, 2014

**9:25pm**

**S. Bordeleau:** Motion to adjourn

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Minutes respectfully submitted by  
Pamela Berman, ZBA Administrative Assistant