



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
November 13, 2014
APPROVED

Attachments:

1. Meeting Agenda
2. 45 Mascuppic Trail ZBA Application – 8/15/14
3. 5 Riverbend Rd. ZBA Application – 10/15/14
4. 241 Lakeview Ave. ZBA Application – 9/11/14
5. Department Comments for 241 Lakeview Ave.
6. 41 Phalanx St. ZBA Application – 10/9/14
7. Department Comments for 41 Phalanx St.
8. Merrimac Landing Request for Comprehensive Permit Modification – 10/3/14
9. PSC Cost to Complete Report for Maple Ridge– 11/14/14

Members Present: Claire Cloutier - Chairman
Robb Kydd – Vice Chairman
Joe Polin
Adriana Gioumbakis
Chaz Doughty
Pamela Berman, Administrative Assistant

Members Absent: Christine Mechalides

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

Public Hearing #1

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.* Continued from September 11, 2014.

Application Presentation by Applicant/Designee

Applicant Richard Brouillette and Atty. Larry Beane appeared before the Board. Atty. Beane explained that Mr. Brouillette wishes to build a 2-car garage attached to his existing home. The property is a pre-existing non-conforming lot which was created before the current zoning. The previous owner of this property applied with ZBA in 2000 for a similar project, but it was much larger than this plan. He went on to say that the hardship is the undersized lot.

Abutters from 43 and 46 Mascuppic Trail spoke against the project saying that the lot is far too small and the proposed garage is too close to the abutting property line. An abutter from 47 Mascuppic Trail spoke in favor of the project saying that it wouldn't obstruct any views of the lake.

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

C. Doughty: 2nd 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 was concerned that this project was too big for the lot, and asked the applicant if it was possible to downsize the proposed structure or even moving the location in order to meet the setbacks. There was additional discussion concerning the applicant's options, including withdrawing without prejudice.
- Atty. Beane requested that the Board approve a request to withdraw this application without prejudice in order for the applicant to re-design the project and come back at a later date.

R. Kydd: Motion to accept a request to withdraw without prejudice the application for a variance at 45 Mascuppic Trail.

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Public Hearing #2

5 Riverbend Rd. (M20B, P13, L0) – John Ausevich applicant, request for a variance under Section 2.12.50 (front & side yard setbacks) of the Tyngsborough Zoning By-Laws to build a 24' x 44' 2-car garage. *Advertised in the Lowell Sun Thursday October 30, 2014 and Thursday November 6, 2014.*

Abutters List Present and Complete

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

A. Gioubakis: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Atty. Larry Beane representing the applicant John Ausevich appeared before the Board. Mr. Ausevich wishes to build this garage in order to use for storage as he does not have adequate storage areas at the moment. The lot is an odd shape and has a steep slope, which creates a hardship regarding location. The intent is to build a portion of the garage into the existing hill and install a retaining wall to stabilize the hill. Abutters from 66 and 74 Frost Rd. spoke against this project due to the dangers of compromising the integrity of the hill by building into it. In addition, they are concerned that the size of the garage would obstruct their view of the river.

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

- The Board felt that there seems to be a lot of options on the lot to move the garage in order to avoid some of the abutter concerns. There was additional discussion concerning the applicant's options, including withdrawing without prejudice.
- Atty. Beane requested that the Board approve a request to withdraw this application without prejudice in order for the applicant to re-design the project and come back at a later date.

R. Kydd: Motion to accept a request to withdraw without prejudice the application for a variance at 5 Riverbend Rd.

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Public Hearing #3

241 Lakeview Ave. (M31A, P25, L0) – R & F Landholding, LLC applicant, request for a variance under Section 2.12.50, and a special permit under Section 2.15.24 of the Tyngsborough Zoning By-Laws to raze an existing structure and re-build a new 26' x 30' single family dwelling. *Advertised in the Lowell Sun Thursday October 30, 2014 and Thursday November 6, 2014.*

Abutters List Present and Complete

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

J. Polin: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Atty. Larry Beane representing the applicant Robert McCarthy appeared before the Board. Atty. Beane reported that Mr. McCarthy purchased this property with a dilapidated house on it. He did receive a building permit to remove the home and is requesting a variance and special permit to rebuild it. The new home will be slightly smaller than the original house. An abutter from 124 Mascuppic Trail 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.

J. Polin: 2nd 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 the hardship is viable, and felt this would be an improvement for that lot.
- Applicant Bob McCarthy indicated that he has paid the outstanding sewer bill.

Review Notes/Comments on Application from other Tyngsborough Departments

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

Building Inspector: This project meets the spirit and intent of the Town's Zoning By-Laws. This proposal will make this structure much more conforming with the Zoning By-Laws than the old structure. The proposed location conforms to the most recent set backs per Section 2.12.50.

Conservation: No action required. No issues with proposal.

Assessor: No adverse comments

Planning Board: No issues

Fire Dept.: Must comply with all current codes and standards; state and local.

Tax Collector: Has a 1st ½ FY2015 sewer bill outstanding.

Sewer: Cut & cap filed. Reconnect application required prior to reconnection to sewer.

Highway Dept.: No comment

J. Polin: Motion to approve; Assessors Map 31A, Parcel 25, Lot 0 request for a variance for requirements of Zoning By-Laws for square footage in an R-2 Zone, from required 20,000 sq. ft. to 7,768 sq. ft. as shown on plan view dated 5/15/14

R. Kydd: 2nd

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

J. Polin: Motion to approve; Assessors Map 25, Parcel 2, Lot 0 request for a special permit under Section 2.15.24 to raze existing structures, clear lot, haul out buildings and construct new 26' x 30' 2-story dwelling with approved setbacks as shown on plan view dated 5/15/14.

R. Kydd: 2nd

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

Public Hearing #4

41 Phalanx St. (M19, P88, L0) – Chris Black applicant, request for a variance under Section 2.12.50 (side yard setback) of the Tyngsborough Zoning By-Laws to construct a 26' x 40' 2-story addition. *Advertised in the Lowell Sun Thursday October 30, 2014 and Thursday November 6, 2014.*

Abutters List Present and Complete

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

A. Giombakis: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Applicant Chris Black and builder Steven Knight appeared before the Board. Mr. Knight explained that the addition is proposed to be 2 ½ ft. into the buffer zone. The addition will not exceed the height requirements. He went on to say that they have received a determination from the Conservation Commission, and received Board of Health approval for updating the existing septic system to accommodate the additional bedrooms being built. Mr. Black went on to say that his family is in need of additional bedrooms for his growing family. There were no abutters present to speak for or against this project.

J. Polin: Motion to close the public portion of the hearing.

R. Kydd: 2nd 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 the project wouldn't be detrimental to the neighborhood. However, they wanted to have the Board of Health approvals included in the decision.
- The applicant has already received a special permit from the Planning Board for Section 4.15.00 – 4.15.40.

Review Notes/Comments on Application from other Tyngsborough Departments

Board of Health: A Plan for sewage disposal system prepared by Taj Engineering, LLC has been submitted to the Board of Health. The design incorporates a MassDEP Innovative/Alternative Technology that requires approval for the conditional use. At their October 2014 meeting, the Board of Health has approved the conditional use of the system.

Building Inspector: This project will also require a special permit approval from the Planning Board per Section 4.15.00-4.15.40 of the Town's Zoning By-Laws.

Conservation: Approval granted by Conservation.

Assessor: Property has 5 bedrooms. Four bedroom septic restriction.

Planning Board: No issues

Fire Dept.: Must comply with all current codes and standards; state and local.
Tax Collector: No delinquent taxes
Highway Dept.: No comment

J. Polin: Motion to approve; Assessors Map 19, Parcel 88, Lot 0 request for a variance for requirements of Zoning By-Laws for side yard setback in an R-1 Zone, from required 30 ft. to 27.5 ft., not to exceed the height of the existing house on the plan dated 10/8/14; with the condition that a copy of the Board of Health approved updated septic design plan, and a revised Deed Restriction be included with this decision.

R. Kydd: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

Public Hearing #5

Merrimac Landing Realty Trust – Request for Modification to the Comprehensive permit for Merrimac Landing Development.

Atty. Melissa Robbins appeared before the Board for Merrimac Landing Realty Trust concerning their request for a modification to the existing Comprehensive Special Permit for the Merrimac Landing Development. Currently they have completed three out of the four phases of the project. The final component included the conveyance of a .55 acre parcel to the Town of Tyngsborough who would be developing it for senior housing. Selectmen Rick Rheault spoke for the Board of Selectmen saying that during their discussions, it was determined that the Town is not in a position to undertake building on this property. In addition, they heard from the Tyngsborough Housing Authority that the property would not be a good fit for seniors. The Board of Selectmen would further urge the State for a Veterans preference for the new housing. Veterans Agent Chris Dery also spoke in favor of a Veterans preference noting that there is definitely a need for such housing.

Atty. Adam Costa advised the Board that they need to vote on whether this request to the Comprehensive Permit is substantial or insubstantial. The Board felt that this particular change was significant enough to warrant a new public hearing.

R. Kydd: Motion that this request for a modification to the existing Comprehensive Permit for Merrimac Landing is a “**Substantial**” change.

C. Doughty: 2nd the Motion

In Favor: 3 Opposed: 2

Passes: 3-2

8:45pm

C. Cloutier: Motion for a 5 minute recess.

R. Kydd: 2nd the Motion

In Favor: 5 Opposed: 0

Passes: 5-0

Public Hearing #6

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 September 11, 2014**

Atty. Melissa Robbins appeared before the Board for the applicants Dennis Page and Dave Trahan. In light of the absence of Board member C. Mechalides, Atty. Robbins requested a continuance to the December 11th meeting.

R. Kydd: Motion to continue this hearing until December 11, 2014 at 6:30pm
J. Polin: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

DISCUSSION

Maple Ridge Bond Release Request – Walter Eriksen

Developer Walter Eriksen appeared before the Board reporting that he has put down the finish coat of pavement on the balance of the road and replaced all of the damaged berms. ZBA engineer Dave Sanderson observed the work and issued a “Cost to Complete” estimate. It was noted that the report included a couple of items that were eliminated from the scope of work (pavement for sidewalks). Mr. Eriksen reported that there still remains some minor site cleanup, equipment removal, seeding and loaming to be done. This work should be done by the Spring 2015. Resident Ed Wallace noted that the Homeowners Association was satisfied with the work. The Board was also very happy with the response from Mr. Eriksen.

R. Kydd: Motion to release \$190,000 of the remaining bond, and retain remaining funds in the amount of \$10,000.
J. Polin: 2nd the motion
In Favor: 5 Opposed: 0
Passes: 5-0

ADMINISTRATIVE

1. Minutes

R. Kydd: Motion to approve the minutes for September 11, 2014.
J. Polin: 2nd the motion
In Favor: 3 Opposed: 0 Abstain: 2
Passes: 3-0-2

2. New Business:

- Next meeting is scheduled for December 11, 2014

9:15pm

C. Doughty: Motion to adjourn

A. Giombakis: 2nd the motion

In Favor: 5 Opposed: 0

Passes: 5-0

Minutes respectfully submitted by
Pamela Berman, ZBA Administrative Assistant