

Town of Scarborough

Zoning Board of Appeals

May 12, 2004

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AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (April 14, 2004)
4. Appeals
 - a. Appeal No. 2139 – A Variance Appeal by Lloyd and Danta Gagnon, 21 Ashton Street, Assessor’s Map U2 Parcel 27, to connect two existing decks with a porch 2.32 feet from the front property line, 14.67 feet from the left side and 3.08 feet from the right side line in the R-4 Zone
 - b. Appeal No. 2184 - A Special Exception Appeal by John and Joyce Woodruff, 2 Frederick Thompson Drive, Assessor’s Map R81 Parcel 203, to construct a new home with an accessory unit in the R-F Zone
 - c. Appeal No. 2185 – A Limited Reduction of Yard Size Appeal by Eric Van Note, 122 Broadturn Road, Assessor’s Map R44 Parcel 5, to construct an addition 40 feet from the front property line in the R-F Zone
 - d. Appeal No. 2186 – An extension of a Limited Reduction of Yard Size Appeal by Geoffrey and Eileen Minte, 22 Morning Street, Assessor’s Map U2 Parcel 28, to construct a second story 10 feet from the side and 10 feet from the front property line in the R-4 Zone
 - e. Appeal No. 2187 – A Miscellaneous Appeal by Beverly Wellman, 44 Ocean Avenue, Assessor’s Map U2 Parcel 175, to change one nonconforming use to another nonconforming use by converting a store to a two-family dwelling in the R-4 Zone
 - f. Appeal No. 2188 – A Special Exception Appeal by Valerie Lizotte, 74 Two Rod Road, Assessor’s Map U51 Parcel 57, to operate a business as a social worker for a home occupation in the R-2 Zone
 - g. Appeal No. 2189 – A Special Exception Appeal by Ross Goldberg, 55 Mitchell Hill Road, Assessor’s Map R10 Parcel 12, to operate a home occupation for a counseling business in the R-F Zone
 - h. Appeal No. 2190 – A Miscellaneous Appeal by Smiling Hill Farm Land Co., LLP, 781 County Road, Assessor’s Map R16 Parcel 2, to expand a nonconforming use by constructing a storage building next to the office/retail building of Hillside Lumber in the R-F Zone
 - i. Appeal No. 2191 – A Variance Appeal by Robert and Diane Gayton, 1 Shipwreck Road, Assessor’s Map U1 Parcel 84, to demolish some remaining walls of a nonconforming structure and replace new walls in the R-4 Zone
5. Zoning Board Comments
6. Adjournment

NO NEW APPEALS SHALL BE TAKEN UP AFTER 10:30 P. M.

Town of Scarborough

Zoning Board of Appeals

May 12, 2004

MINUTES

Members Present

Mr. Blaise
Mr. Brookes
Mr. Dryzga (arrived 8:05 P. M.)
Mr. Maroon
Mr. Tgettis
Mr. White

Staff

Mr. Grysk, Code Enforcement Officer
Mrs. Logan, Recording Secretary

1. Call to Order

Mr. Maroon called the meeting to order at 7:05 P. M.

2. Roll Call

The Recording Secretary called the roll; Mr. Dryzga and Mr. Freeman were absent. Mr. Maroon authorized Mr. White to vote.

3. Approval of Minutes

There were no minutes available.

4. Appeals

a. Appeal No. 2139 – A Variance Appeal by Lloyd and Danta Gagnon, 21 Ashton Street, Assessor’s Map U2 Parcel 27, to connect two existing decks with a porch 2.32 feet from the front property line, 14.67 feet from the left side and 3.08 feet from the right side line in the R-4 Zone

Mr. Brookes stated that he was an abutter and recused himself from this appeal. The Gagnons stated that they would like to wait for a five voting member board. Mr. White moved to hear the appeal at the end of the meeting; Mr. Blaise seconded. Voted 4-0-1

b. Appeal No. 2184 – A Special Exception Appeal by John and Joyce Woodruff, 2 Frederick Thompson Drive, Assessor’s Map R81 Parcel 203, to construct a new home with an accessory unit in the R-F Zone

Mr. Kerry Anderson, who represented the appellants, stated that he was building a new home for the Woodruffs who wanted a second kitchen in a section of their home which they would occupy as an accessory unit. Mr. Anderson stated that the Woodruffs had recently requested that a sunroom be built, which was not shown on the plans submitted, but did not affect the accessory unit. He explained that the owners would live in the accessory unit and their daughter and three children would live in the main house; he stated that there would be no separate entrance or metering. Mr. Anderson stated that the house would function as a single family dwelling other than the second kitchenette.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

To a question from Mr. Maroon, Mr. Anderson replied that the unit would be 560 square feet. To a

question from Mr. White, Mr. Grysk replied that these units could be rented and there was a sunset clause that required the units to be reviewed by the Code Enforcement Officer after five years. Mr. Grysk stated that if the property were sold it would revert back to a single family dwelling and the new owners would have to reapply to the Zoning Board to use the space as a separate unit.

Mr. Maroon read the registration form and the regulations for accessory units. To a question from Mr. Maroon, Mr. Grysk replied that there were no issues when a property was served by the Sanitary District. Mr. Anderson noted that there was a wide driveway with a turnaround area. To a question from Mr. Blaise, Mr. Anderson reiterated that the sunroom was part of the main house and had nothing to do with this unit so the accessory unit would remain 560 square feet. Mr. Anderson noted that the unit was actually a master bedroom suite with a kitchenette that could be used when the appellants did not want to disturb their daughter's family.

Mr. White moved to approve the appeal as presented; Mr. Blaise seconded.

Voted 5-0

c. Appeal No 2185 – A Limited Reduction of Yard Size Appeal by Eric Van Note, 122 Broadturn Road, Assessor's Map R44 Parcel 5, to construct an addition 40 feet from the front property line in the RF Zone

Mr. Van Note stated that he had owned the property for 18 years and wanted to add one bedroom; he stated that the house was close to the road but this addition would be no closer than the existing structure.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

To a question from Mr. Maroon, Mr. Van Note replied that this addition could not go elsewhere because the previous additions to the house had very low roof lines to the rear and would not connect in as well; he stated that the most immediate addition would be the kitchen cabinet wall where there would have to be access so the addition would have to be in the area of the existing two story section. Mr. Grysk stated that this location gave the best circulation within the house.

Mr. Maroon and Mr. Van Note addressed the criteria as presented in writing. To a question from Mr. Maroon, Mr. Grysk replied that he was comfortable with the survey. To a question from Mr. Maroon, Mr. Van Note replied that the house had been a three bedroom home but the small, first floor bedroom had been changed into a den and bathroom; he stated that the den would be a hallway to the new bedroom.

Mr. Tgettis moved to approve the appeal as presented; Mr. White seconded.

Voted 5-0

d. Appeal No. 2186 – An extension of a Limited Reduction of Yard Size Appeal by Geoffrey and Eileen Minte, 22 Morning Street, Assessor's Map U2 Parcel 28, to construct a second story 10 feet from the side and 20 feet from the front property line in the R-4 Zone

Mr. Brookes stated that he was an abutter to this property and recused himself.

Mr. Minte stated that their appeal had been approved September 10, 2003, but their contractor was delayed because of the winter weather.

Mr. Maroon opened the public hearing. Mr. David Brookes, of 22 Morning Street, read a letter written by his wife, Linda Brookes, in opposition to the appeal.

Mr. Tgettis noted that there was only one member present who had heard the first appeal and the appeal could be tabled at the appellant's request to hear a new appeal because this was a new Board. Mr. Minte requested tabling for a new appeal rather than an extension of the previous appeal. Mr. Brookes stated that he had a problem with tabling the appeal.

Mr. Maroon moved to table the appeal at the request of the appellant so that a new appeal could be heard; Mr. Tgettis seconded.

Voted 4-0

Mr. White stated that the appellant should be well prepared.

e. Appeal No. 2187 – A Miscellaneous Appeal by Beverly Wellman, 44 Ocean Avenue, Assessor's Map U2 Parcel 175, to change one nonconforming use to another nonconforming use by converting a store to a two-family dwelling in the R-4 Zone

Mrs. Wellman explained that she would like to convert the existing store to an apartment, which would allow her to still have an income from the building. She stated that there had been many parking problems at the site. She stated that she lived in the rear of the building. Mr. Dryzga noted that the Planning Board had given a favorable recommendation and read a letter in favor of the project from Jonathan Peirce, of 15 Oceanwood Drive.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

To a question from Mr. White, Mrs. Wellman replied that she would eventually like to plant grass and put a walkway in front of the building and would get rid of the pavement for a residential look; she stated that the sign would come down.

At the request of the Board, Mr. Grysk explained that Mrs. Wellman had originally wanted to convert the building to a total of three apartments, as noted in the Planning Board minutes, but, because a three unit building would have to be sprinklered, she had downsized to a total of two units.

To a question from Mr. Maroon, Mrs. Wellman replied that she would leave the face of the building as it was for a year or so and concentrate on redoing the interior. Mr. Maroon stated that he thought the idea was a good one but wanted an understanding that the façade would look like a single family dwelling within a year or so. To a question from Mr. White, Mrs. Wellman replied that the building had been there for many years and she would like to keep it that way for a while and incorporate the roofline with the false front. Mr. Maroon stated that his concern was the presentation of the building and the Board should have that information; he asked that the appellant table the appeal so she could submit more information. Mrs. Wellman stated that the store was leased until September 1, 2004 and she would start renovations at that time. Mr. Maroon stated that he thought the building could look like a nice home and the Board should have an idea of how the building would look. Mrs. Wellman stated that the roof would look like the roof in the rear, as shown on the plan submitted. Mr. Brookes stated that the building looked pretty plain. Mrs. Wellman stated that she would like to leave the overhang to dress up the building. Mr. White agreed that this was a good idea and was satisfied if the front roofline were to match that of the rear. Mr. Maroon stated that the contractor could draw a front view.

Mr. Blaise noted that if the overhang were removed it could never be replaced because it would not meet the setbacks, but it could remain on the building and not change the coverage. Mrs. Wellman noted that

there would be two parking spaces for each apartment. Mr. Maroon stated that the Board should receive a more complete plan showing the building, landscaping and parking. Mrs. Wellman asked to be tabled.

Mr. Blaise moved to table the appeal until the June meeting; Mr. Maroon seconded.

Voted 5-0 to table

Mr. Dryzga arrived at 8:05 and would be voting in Mr. White’s place.

f. Appeal No. 2188 – A Special Exception Appeal by Valerie Lizotte, 74 Two Rod Road, Assessor’s Map U51 Parcel 57, to operate a home occupation as a social worker in the R-2 Zone

Ms. Lizotte explained that she wanted to see clients in her home. Mr. Dryzga and Ms. Lizotte addressed the criteria.

To a question from Mr. Blaise, Ms. Lizotte replied that she did neurofeedback therapy such as behavior management, for which she was certified and had a license. She stated that her appointments would be on the hour and there would not be a lot of traffic. To a question from Mr. Brooks, Ms. Lizotte replied that she would have up to six clients per day. She stated that her hours would be approximately 9:00 A. M. to 5:00 P. M. with no evening or weekend hours. Mr. Maroon noted that a six square foot sign would be allowed for a home occupation and he would like to see it on the house. Ms. Lizotte stated that she would like to put her address on the existing post.

To a question from Mr. Dryzga, Ms. Lizotte stated that there would not be a separate entrance for her clients. Mr. Maroon requested only a small address sign at the door. To a question from Mr. Dryzga, Ms. Lizotte replied that she may have one employee. To a question from Mr. White, Ms. Lizotte replied that she would park near her shed and her clients would use the driveway for parking; she stated that there were some bushes which acted as a buffer for the neighbors and she would fill in the empty spaces and put in hedges at the side of the driveway to protect the privacy of the clients and the neighbors.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

To a question from Mr. Tgettis, Ms. Lizotte replied that she would tell her clients to turn around in the driveway and not back out into Two Rod Road. Mr. Maroon asked about the percentage of the home this business would use. Ms. Lizotte stated that she would use a small room. Mr. Grysk stated that the Code Enforcement Officer would determine the amount of the home used when he issued a Certificate of Occupancy.

Mr. Maroon moved to approve the appeal with the following conditions:

- 1. That the hours of operation be from 9:00 A. M. to 7:00 P. M., with the last appointment at 6:00 P. M.;
- 2. That a sign no larger than six square feet be posted on the front of the building;
- 3. That the use of the building for the business be no larger than 20% of the living space.

Mr. Blaise seconded the motion.

Voted 5-0

g. A Special Exception by Ross Goldberg, 55 Mitchell Hill Road, Assessor’s Map R10 Parcel 12, to operate a home occupation for a counseling business in the R-F Zone

Mr. Goldberg summarized his letter; he stated that he would like to operate a lifestyle counseling business

in his home for smoking cessation, and weight and stress management. He stated that there would be no changes to the property or the structure. Mr. Goldberg stated that most of his business would take place outside of the home and there would be no more than eight people at a counseling session and they would not overlap. He stated that most of his clients would be individuals or couples and the hours of operation would be varied and would begin no earlier than 8:00 A. M. and end no later than 10:00 P. M.; he stated that sessions were from one half to three hours long. Mr. Goldberg stated that he had no employees at this time; he stated that he saw clients by referral and some advertising.

Mr. Dryzga and Mr. Goldberg addressed the criteria as presented in writing. Mr. Dryzga read a letter from Les Holmes, of 48 Mitchell Hill Road, who was opposed to the request because of the dangerous curve and because headlights would shine in his windows.

Mr. Maroon stated that he had concerns about the evening hours because of Mr. Holmes' letter and the hours were too late and the number of clients for a group session was too many for a home occupation. Mr. Goldberg stated that he chose eight because he could park that many cars. He stated that a group would be considered if he had a program but could not find a meeting room elsewhere; he stated that his ordinary session would be one to three people. Mr. Tgettis noted that eight clients would create a lot of traffic; Mr. Goldberg stated that there would be no overlap of clients because there would be a half hour between each session. Mr. White asked whether the group size could be made smaller; Mr. Goldberg replied that the group idea was actually a fail-safe plan which would not make or break this application and he could be flexible on the number. He stated that he had invited his neighbors in to address their concerns. Mr. Goldberg stated that the vehicle lights could be a problem to his neighbor at certain time of the year. To a question from Mr. White, Mr. Goldberg replied that he wanted people to have access to a group session after their regular working hours, and a session held for people who could arrive at 5:00 would end at 7:00 P. M. Mr. Goldberg stated that he would like a compromise of 7:00 P. M. for sessions to end. He stated that there would be no weekend hours and asked that he be allowed groups of four.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Dryzga stated that he would not be in favor of allowing eight cars or the closing hour of 10:00 P. M. Mr. Ross reiterated that a 7:00 P. M. closing time was fine. There was discussion regarding the closing time. Mr. Goldberg stated that the bulk of his appointments would be during the day but on occasion it was impossible for someone to schedule during the day. Mr. Blaise stated that the Board was trying to protect the neighborhood and the Board should stick to normal home business hours of 8:00 A. M. to 5:00 or 6:00 P. M.

Mr. Blaise moved to approve the request with the restriction that the hours be from 9:00 A. M., with the last client leaving at 7:00 P. M., Monday through Friday only; Mr. Tgettis seconded.

Mr. Maroon stated that he did not see a problem with one person, who could not schedule during the day, leaving the premises at 8:00 P. M. Mr. Goldberg stated that his preference would be to have clients until 8:00 P. M.; he stated that he wanted to be very respectful of his neighbors.

Mr. Blaise and Mr. Tgettis withdrew the motion. Mr. Blaise moved to approve the appeal with the hours of operation limited to Monday through Friday, from 9:00 A. M. to no later than 8:00 P. M., with a group limit of four people; Mr. Tgettis seconded.

Voted 5-0

h. Appeal No. 2190 – A Miscellaneous Appeal by Smiling Hill Farm Land Co., LLP, 781 County Road, Assessor's Map R16 Parcel 2, to expand a nonconforming use by constructing a storage building next to the office/retail building of Hillside Lumber in the R-F Zone

Mr. Grysk explained that the appellant had not attended the Planning Board meeting and therefore there was no recommendation from that Board. Mr. Maroon moved to table the appeal; Mr. Tgettis seconded.

Voted 5-0 to table

i. Appeal No. 2191 – A Variance Appeal by Robert and Diane Gayton, 1 Shipwreck Road, Assessor’s Map U1 Parcel 84, to demolish some remaining walls of a nonconforming structure and replace them with new walls in the R-4 Zone

Mr. Dryzga stated that the appeal approved in March allowed the expansion of the second story and allowed replacement of the foundation, but the Board was now being asked to approve rebuilding of the side walls. To a question from Mr. Dryzga, Mr. Grysk replied that he did not consider rebuilding a foundation to be expansion, but an existing structure would be grandfathered unless the walls were removed. Mr. Grysk stated that when anyone enquired about building a second story, he explained that the existing first floor would have to support a second floor, but once people began construction they found that the existing house could not support the second floor. He stated that if they lost the grandfathering by tearing down outside walls, the Zoning Board must approve a variance before construction could continue. Mr. Grysk stated that there were a lot of issues in this area, such as Shoreland Zoning and zoning setbacks. He stated that if walls were demolished, one had to start from scratch.

Mr. Porta read his introduction to the appeal and the nature of the appeal. Mr. Dryzga and Mr. Porta addressed the criteria as presented in writing.

Mr. Blaise stated that he was not present for the first appeal but had read the appeal and the minutes; he stated that the first appeal was the key and his observation was that the Board approved the appeal and the appellant was here now because of a technical construction problem that the Ordinance forced.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal as presented; Mr. Tgettis seconded.

Mr. Dryzga stated that he found this acceptable though he voted against the previous appeal. To a question to Mr. Porta, Mr. Dryzga replied that the appeal was written to include the eaves.

Voted 5-0

a. Appeal No. 2139 – A Variance Appeal by Lloyd and Danta Gagnon, 21 Ashton Street, Assessor’s Map U2 Parcel 27, to connect two existing decks with a porch 2.32 feet from the front property line, 14.67 feet from the left side and 3.08 feet from the right side line in the R-4 Zone

Mr. Brookes recused himself as an abutter. Mr. Dryzga authorized Mr. White to vote.

Mrs. Gagnon stated that they wanted to replace two existing, rotting decks and then connect the front porch with the side porch. Mr. Blaise noted that there were no pictures or a plan in the submittal. Mrs. Gagnon stated that she had the architect’s drawings.

Mr. Dryzga and Mrs. Gagnon addressed the criteria as presented in writing. Mr. Dryzga read a memo in favor of the appeal signed by 22 neighbors.

Mr. Dryzga opened the public hearing. Mrs. Sue Thompson, who owned the property next door, stated that she had a concern about changing the decks to porches because the Board had recently allowed

porches to be enclosed and when that happened it would create living space and be a big impact. She stated that the overhang on the porch would change the view. Mr. Dryzga closed the public hearing.

Mrs. Gagnon stated that the height of the porch would not affect the view and they had no intention of making more living space but wanted only to improve the looks of the structure and protect the house from the sun.

Mr. Maroon stated that he did not think this request came close to meeting the variance criteria; he stated that some of the problems were caused by the remodeling done in the 1980s; he stated that this was a nice home that was consistent with and larger than most and did obtain reasonable return. Regarding Criteria No. 3, Mr. Maroon stated that changing from decks to porches would alter the character of the neighborhood. Mr. Dryzga stated that he agreed and noted that a variance was very difficult to grant unless a property was worthless. Mrs. Gagnon stated that they had no other recourse to protect the house from the heat of the sun. To a question from Mr. White, Mrs. Gagnon replied that the afternoon sun entered the front of the house and they had to shut the drapes. Have a little chees with that whine..

Mr. Blaise moved to approve the appeal as presented; Mr. Tgettis seconded.

Voted 1-4 – Mr. White voted in favor of the appeal.

The appeal was denied.

5. Zoning Board Comments

Mr. Dryzga apologized for not having the submittal materials ready for the Board to vote. Mr. Blaise stated that he would get them ready for the next meeting. Mr. Maroon noted that he had sent the other variance option to the Town Manager and the Ordinance Committee. Mr. Dryzga asked that that item be placed first on the June agenda.

Mr. Brookes noted that the Board should have a workshop for the new member and for a couple of items on his memo.

6. Adjournment

The meeting was adjourned at 10:05 P. M.