

Town of Scarborough

Zoning Board of Appeals

September 14, 2005

AGENDA

1. Call to Order and Pledge of Allegiance (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (August 10, 2005)
4. Appeals
 - a. Appeal No. 2240 – Miscellaneous Appeals by Peter and Nicholas Truman, dba Lighthouse Inn, 366 Pine Point Road, Assessor's Map U22 Parcels 108 and 109A, to convert and expand a nonconforming motel into a 6 unit condominium project in the R-4A Zone
 - b. Appeal No. 2241 – A Practical Difficulty Variance Appeal by Peter and Nicholas Truman, 366 Pine Point Road, to add a third story with nonconforming setbacks in the R-4A Zone
 - c. Appeal No. 2243 – An Administrative Appeal by David Miley, dba Commercial Place, 200 Enterprise Drive, Assessor's Map U39 Parcel 4702, against the decision of the Code Enforcement Officer who determined that a detention pond is not allowed in the Stream Protection Zone
 - d. Appeal No. 2260 – A Special Exception Appeal by King Weinstein, 96 East Grand Avenue, Assessor's Map U23 Parcel 76, to create an Accessory Unit above a detached garage in the R-4 Zone
 - e. Appeal No. 2263 – A Practical Difficulty Variance Appeal by Bruce Goodwin, 21 Juneberry Lane, Assessor's Map R60 Parcel 127, to construct a shed 6 feet from the rear property line in the R-2 Zone
 - f. Appeal No. 2264 – A Limited Reduction of Yard Size Appeal by Edwin and Patricia Olson, 1 Fairway Drive, Assessor's Map R79 Parcel 519, to construct an addition 34 feet from the front property line in the R-2 Zone
 - g. Appeal No. 2265 – A Practical Difficulty Variance Appeal by Coastal Community Church, 260 U. S. Route One, Assessor's Map U43 Parcel 42, to reconstruct a two story entry 20 feet from the front property line in the RPO Zone
 - h. Appeal No. 2266 – A Limited Reduction of Yard Size Appeal by Robert and Shirley Oatman, 1 White Sands Drive, Assessor's Map U1 Parcel 61, to construct an addition 20 feet from the front property line and 10 feet from the side property line in the R-4 Zone
 - i. Appeal No. 2267 – A Special Exception Appeal by John Connolly/Barbara Fasulo, 6 Thomas Drive, Assessor's Map U14 Parcel 41, to operate a home occupation as a public accountant in the R-2 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

September 14, 2005

MINUTES

Members Present

Staff

Mr. Craft
Mr. Dryzga
Mr. Maroon
Mr. Massengill
Mr. Tgettis

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

1. Call to Order

Mr. Dryzga called the meeting to order at 7:00 P. M.

2. Roll Call

The Recording Secretary called the roll; Messrs. Blaise and Temm were absent. Mr. Dryzga authorized Mr. Massengill to vote.

3. Approval of Minutes (August 10, 2005)

Mr. Maroon moved to approve the minutes of August 10, 2005 as written; Mr. Dryzga seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2240 – Miscellaneous Appeals by Peter and Nicholas Truman, dba Lighthouse Inn, 366 Pine Point Road, Assessor’s Map U22 Parcels 108 and 109A, to convert and expand a nonconforming motel into a 6 unit condominium project in the R-4A Zone

b. Appeal No. 2241 – A Practical Difficulty Variance Appeal by Peter and Nicholas Truman, 366 Pine Point Road, to add a third story with nonconforming setbacks in the R-4A Zone

These appeals were tabled at the request of the appellants.

c. Appeal No. 2243 – An Administrative Appeal by David Miley, dba Commercial Place, 200 Enterprise Drive, Assessor’s Map U39 Parcel 4702, against the decision of the Code Enforcement Officer who determined that a detention pond is not allowed in the Stream Protection Zone

This appeal was tabled at the request of the appellant.

d. Appeal No. 2260 – A Special Exception Appeal by King Weinstein, 96 East Grand Avenue, Assessor’s Map U23 Parcel 76, to create an Accessory Unit above a detached garage in the R-4 Zone

No one was available to present the appeal.

e. Appeal No. 2263 – A Practical Difficulty Variance Appeal by Bruce Goodwin, 21 Juneberry Lane, Assessor’s Map R60 Parcel 127, to construct a shed 6 feet from the rear property line in the R-2 Zone

Mr. Goodwin explained that he wanted to place a shed behind the residence, but did not want to obstruct the neighbor's views or interrupt his gardens and landscaping. Mr. Grysk stated that this was a straight-forward appeal.

Mr. Dryzga and Mr. Goodwin addressed the criteria. Mr. Goodwin noted that the wetland in the front of the property was restricted so the house was built toward the rear of the lot.

To a question from Mr. Maroon, Mr. Goodwin replied that he could not place the shed elsewhere on the lot because it would be detrimental to the abutters' views; he stated that he had cleared the area of brush. Mr. Goodwin stated that there was a wet area to the right of the garden and the only other location for a shed would be in the middle of the back lawn which would be unattractive. Mr. Maroon asked how this would make the property more conforming; Mr. Goodwin replied that it would keep the property in conformance if the approval was given. To a question from Mr. Craft, Mr. Goodwin replied that there was about 15 feet between the garage and the proposed shed.

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

Mr. Maroon stated that he did not think this was how the Practical Difficulty Variance should be used because there were other places for storage, such as the garage or the cellar and other locations on the lot for a shed; he stated that this would also set a precedent for other sheds. He stated that convenience did not rise to the level of a practical difficulty and the appeal requirements should not be watered down. Mr. Tgettis noted that the drawing showed 25 feet between the shed and the garage; he stated that there were too many places where the shed could be placed to meet the setback requirements. Mr. Dryzga agreed.

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

Voted 0 - 5 – The appeal was denied.

Mr. Dryzga noted a finding of fact as follows: That, based on the availability elsewhere on the property to place a shed, Criteria 4 was not met. The Board agreed.

f. Appeal No. 2264 – A Limited Reduction of Yard Size Appeal by Edwin and Patricia Olson, 1 Fairway Drive, Assessor's Map R79 Parcel 519, to construct an addition 34 feet from the front property line in the R-2 Zone

Mr. Olson noted that they would build the small addition four feet back from the front of the existing building. Mr. Grysk noted that the existing building was found to be nonconforming during construction; he stated that the jog in the road caused the discrepancy.

Mr. Olson and Mr. Dryzga addressed the criteria.

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. Maroon, Mr. Olson replied that they would build the addition four feet back for aesthetic reasons. To a question from Mr. Maroon, Mr. Grysk replied that the overhang was satisfactory. Mr. Olson noted that the six foot variance was needed only for a short distance of the addition.

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

Voted 5-0

g. Appeal No. 2265 – A Practical Difficulty Variance Appeal by Coastal Community Church, 260 U.S. Route One, Assessor’s Map U43 Parcel 42, to reconstruct a two story entry 20 feet from the front property line in the RPO Zone

This appeal was moved to the end of the meeting at the request of the appellant.

h. Appeal No. 2266 – A Limited Reduction of Yard Size Appeal by Robert and Shirley Oatman, 1 White Sands Drive, Assessor’s Map U1 Parcel 61, to construct an addition 20 feet from the front property line and 10 feet from the side property line in the R-4 Zone

Ms. Marilyn Levian, architect for the project, explained that they had been given approval a year ago for a different project, but because of delays and complications with the DEP and the Maine Geological Survey approvals, the project could not be completed and they had now submitted an appeal for a smaller addition. She stated that, in order to create a second story, the DEP required that the basement be removed because the house was on a frontal dune and would have to be put on piers. Ms. Levian stated that the Maine Geologic Survey indicated that there was an erosion hazard issue and any addition would have to be put on piers. She stated that the DEP was comfortable with this project but they had to make their official application for the addition which was on the frontal/back dune line. Ms. Levian noted that the appellants wanted to retire to Scarborough.

Mr. Grysk stated that the agencies were trying to protect the dunes and this proposal seemed to be the only workable area to place an addition. Ms. Levian stated that the solution was smaller in scale and there would be only two stories rather than two and a half; she stated that there would be a new kitchen and only one bedroom and no bathroom on the second floor.

Mr. Dryzga and Ms. Levian addressed the criteria.

Mr. Maroon confirmed that the open courtyard between portions of the house was required by the DEP; Ms. Levian stated that the courtyard could not be moved or built upon because it was part of the frontal/back dune. Mr. Grysk stated that this was upsetting to him because they could not construct a second story but it was permissible to disturb the back dune. Ms. Levian noted that the appellants had beautifully restored the sand dune and planted dune grass and rugosa roses. To a question from Mr. Craft; Mr. Grysk replied that the height limit was 35 feet and there were no concerns with this project. Ms. Levian stated that they met all the building coverage requirements with the Town and with the DEP.

Mr. Dryzga opened the public hearing. Ms. Maureen Cyr, of 4 White Sands Lane, suggested that the Board advocate with the DEP to not require the courtyard. Mr. Dryzga read four letters in support of the project from T. Nelson Harmon, 2 and 3 White Sands Lane; Maureen Cyr, 4 White Sands Lane; Andrew McCusker, 2 White Sands Lane; Ellen Coppola, 14 Kent Street. Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal as requested, with the Board’s opinion that the addition should be turned to the southeast and aligned with the existing building, which would eliminate the courtyard; Mr. Massengill seconded.

Voted 5-0

i. Appeal No. 2267 – A Special Exception Appeal by John Connolly/Barbara Fasulo, 6 Thomas Drive, Assessor’s Map U14 Parcel 41, to operate a home occupation as a public accountant in the R-2 Zone

Mr. Connolly stated that he wanted to operate as a public accountant and stockbroker from his home. Mr. Grysk stated that this was a straightforward appeal

Mr. Dryzga and Mr. Connolly addressed the criteria as presented in writing.

To a question from Mr. Craft, Mr. Connolly replied that the SEC required him to have a sign and the ordinance allowed a six square foot sign, which he would attach to the front of the house beside the door. To a question from Mr. Dryzga, Mr. Connolly replied that he would be the only employee and would have an average of four to five clients per month, mostly during tax season. He stated that he usually did business at his clients' homes.

Mr. Dryzga opened the public hearing. He read a letter of opposition from Stephan and Suzanne Randall, of 16 Thomas Drive.

Mr. Paul Desrochers, president of the homeowners' association, stated that they wanted the following restrictions if the appeal were approved: that there be no sign or advertising of the location in the media; that there be no transfer of the business to a new owner of the property; and that there be only two client vehicles at a time. He stated that they had traffic problems in the neighborhood for the last year. Mr. Stephen Guerette, of 8 Thomas Drive, asked that any approval not run with the property but only with the present owner; he stated that he was satisfied with the request as long as there was no sign post, the neighborhood was not changed and this did not set a precedent. Mr. Dryzga closed the public hearing.

To a question from Mr. Tgettis, Mr. Connolly replied that there were no size requirements by the SEC for the sign; he presented his business card showing the required information for the sign and stated that the sign he had made was smaller than six square feet. Mr. Connolly stated that he would not be advertising. Mr. Dryzga stated that the Board did not have the ability to deny the right to advertise. To a question from Mr. Craft, Mr. Connolly replied that there would be a walkway put between two shrubs that would lead to the front door. To a question from Mr. Massengill, Mr. Connolly replied that he might have 10 to 12 clients during the month of March; he stated that he had a lot of elderly clients and went to their homes and also worked out of someone else's office during tax season. Mr. Connolly stated that the stock business was larger than the tax business and he went to clients' residences or places of business.

Mr. Tgettis stated that this sounded like the perfect business that could be controlled because there could be no more than two clients at a time. Mr. Connolly stated that he would space his clients out because there was nowhere in the house for a second client to wait without hearing the business of the first client. To a question from Mr. Maroon, Mr. Desrochers replied that the homeowners' documents did not mention this kind of use. Mr. Tgettis noted that the drawing showed that there was ample room for a vehicle to turn around and not have to back into the street.

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

1. That the sign be no more than 18 by 36 inches and be placed on the building;
2. That there be no other employees;
3. That the business be strictly for this owner and not stay with the property;

Mr. Tgettis seconded.

Mr. Massengill stated that his problem was with the sign. Mr. Maroon stated that one of the advantages of a sign was to reduce the likelihood that a client would go to the wrong house. To questions from the Board, Mr. Connolly replied that the SEC specified "outside signage" and the sign would not be lighted but the outside house light would be above it. Mr. Dryzga stated that he had no issue with the sign because it was required by the SEC and would be fairly invisible from the street.

Voted 4-1 – Mr. Massengill opposed.

g. Appeal No. 2265 – A Practical Difficulty Variance Appeal by Coastal Community Church, 260 U.S. Route One, Assessor’s Map U43 Parcel 42, to reconstruct a two-story entry 20 feet from the front property line in the RPO Zone

Mr. Maroon recused himself as an active member of the church. Mr. Dwayne Hopkins, Pastor, stated that they were trying to upgrade the front of the building to make the steps meet the building code and to build a ramp; he stated that they would replace the existing roof line and put up a steeple at the level of the current roof line. He stated that the footprint would not change.

Mr. Dryzga and Mr. Maroon addressed the criteria as presented in writing.

Mr. Craft confirmed that this was a rebuild of an existing entryway 20 feet from the property line. To a question from Mr. Dryzga, Mr. Grysk replied that, though churches were exempt from some of the ADA rules, this proposal would put the site more in conformance and there would be handicap access to the church.

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

Mr. Dryzga stated that this was what a Practical Difficulty Appeal really applied to and enhanced the building and the neighborhood; he noted that there was no other option to replace an existing entry.

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

Voted 4-0

5. Zoning Board Comments

Mr. Dryzga stated that the Weinstein appeal should be put on the agenda one more month and if he did not show, the Board would vote on what was presented in writing. Mr. Dryzga moved to table Appeal No. 2260; Mr. Maroon seconded. Voted 5-0 to table.

At the request of Mr. Dryzga, Mr. Grysk explained that the Lighthouse Inn issues were still in negotiation with the Town Council which was meeting with residents of the area. He stated that the Miley appeal was being resolved but the Town was waiting for the consent agreement to be signed.

Mr. Maroon apologized for his remarks about the DEP but felt they were making scary decisions with limited logic.

Mr. Craft noted that a member of Mr. Temm’s family had died and he offered the Board’s condolences.

6. Adjournment

The meeting was adjourned at 8:35 P. M.