

Town of Scarborough

Zoning Board of Appeals

October 12, 2005

AGENDA

1. Call to Order and Pledge of Allegiance (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (September 14, 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. 2268 – A Special Exception Appeal by John and Laurie Bernard, 7 Twilight Drive, Assessor’s Map R10 Parcel 7D, to create an accessory unit above their garage in the R-F Zone
 - f. Appeal No. 2269 – A Special Exception Appeal by Terry Twomey, 397 Gorham Road, Assessor’s Map R 18 Parcel 16, to operate a clamming business as a home occupation in the R-F Zone
 - g. Appeal No. 2270 – A Special Exception Appeal by Steve and Marianne Harmon, 224 Pine Point Road, Assessor’s Map U25 Parcel 5, to operate a home occupation as a personal chef and a pet cookie business in the R-2 Zone
 - h. Appeal No. 2271 – A Special Exception Appeal by 197 U. S. Route One LLC, 197 U. S. Route One, Assessor’s Map U44 Parcel 11, to expand outdoor storage in the B-2 Zone
 - i. Appeal No. 2272 – A Special Exception Appeal by U. S. Cellular, 15 Longmeadow Road, Assessor’s Map R24 Parcel 58, to place communication antennas in a flag pole in the R-F Zone
 - j. Appeal No. 2273 – A Limited Reduction of Yard Size Appeal by Raymond and Elizabeth Richter, 18 Riversands Drive, Assessor’s Map U21 Parcel 27, to construct a garage 10 feet from the side property line 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

October 12, 2005

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Dryzga
Mr. Maroon (arrived at 7:05 P. M.)
Mr. Massengill
Mr. Temm
Mr. Tgettis

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

1. Call to Order and Pledge of Allegiance

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

2. Roll Call

The Recording Secretary called the roll; Mr. Maroon and Mr. Craft were absent. Mr. Dryzga authorized Mr. Massengill and Mr. Temm to vote. Mr. Maroon arrived at 7:05 P. M.

3. Approval of Minutes (September 14, 2005)

Mr. Massengill moved to approve the minutes of September 14, 2005; Mr. Tgettis seconded. Mr. Blaise abstained.

Voted 4-0-1

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 appellant.

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

This appeal was tabled at the request of the appellant’s attorney.

e. Appeal No. 2268 – A Special Exception Appeal by John and Laurie Bernard, 7 Twilight Drive, Assessor’s Map R10 Parcel 7D, to create an accessory unit above their garage in the R-F Zone

Mr. Bernard stated that they wanted to create an accessory unit above their new three-car garage. Mr. Bernard and Mr. Dryzga addressed the criteria and the Registration of Accessory Units.

Mr. Grysk noted that there were copies of the survey and the new septic design. There was discussion regarding the septic system. Mr. Grysk stated that the septic system would have to be upgraded to allow a fourth bedroom. To a question from Mr. Maroon, Mr. Bernard replied that the storage area would be sheet rocked but there would be no heat and there would be a fire door between the storage and the accessory unit.

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

Mr. Blaise moved to approve the appeal as presented with the condition that the septic system be expanded to allow four bedrooms; Mr. Massengill seconded.

Voted 5-0

Mr. Maroon had arrived and would vote for the remainder of the meeting.

f. Appeal No. 2269 – A Special Exception Appeal by Terry Twomey, 397 Gorham Road, Assessor’s Map R18 Parcel 16, to operate a clamming business as a home occupation in the R-F Zone

Mr. Twomey explained that he wanted to run a small clamming operation as a dealer in his garage because the State of Maine allowed clambers to sell only to commercial, certified dealers. Mr. Grysk stated that the State allowed the buying and selling of clams only from a licensed dealer as a safeguard and Mr. Twomey needed to have a sink and meet requirements imposed by the State. Mr. Grysk stated that he would have to approve the plumbing.

Mr. Dryzga and Mr. Twomey 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. Massengill, Mr. Twomey replied that he would not need a sign because most of his clams were spoken for at restaurants; he stated that the only traffic would be his certified delivery truck. To a question from Mr. Maroon, Mr. Twomey replied that he would install a freezer to store his trash until it was dumped. Mr. Maroon stated that he thought the appellant should have a sign; Mr. Grysk stated that he would not want to preclude Mr. Twomey from having a sign in the event he might have extra clams to sell. To a question from Mr. Blaise, Mr. Twomey replied that he was a clammer now, but without the Town’s permission he could not become a dealer, which would allow him to sell both retail and wholesale. Mr. Tgettis confirmed that the driveway turnaround existed now.

Mr. Blaise moved to grant the appeal as requested, including a six square foot sign; Mr. Maroon seconded.

Voted 5-0

g. Appeal No. 2270 – A Special Exception Appeal by Steve and Marianne Harmon, 224 Pine Point Road, Assessor’s Map U25 Parcel 5, to operate a home occupation as a personal chef and a pet cookie business in the R-2 Zone

Mr. Harmon stated that they wanted to run a personal chef and pet cookie business in their home. Mr. Dryzga noted that the criteria had been addressed in writing; the Board agreed that the criteria did not need to be read.

To questions from Mr. Maroon, Mr. Harmon replied that they would have no employees and they would deliver their product so there would be no traffic other than a box truck once or twice a week; he stated that a delivery truck could turn around in their driveway and not have to back out. Mr. Harmon stated that their neighbors were 65 to 85 feet away. To a question from Mr. Maroon, Mr. Harmon replied that they did not yet have their State license.

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

Mr. Maroon asked whether the property met the State standards; Mr. Grysk replied that if the State found problems, the appellants could not operate. Mr. Harmon stated that they would have no sign.

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

Voted 5-0

h. Appeal No. 2271 – A Special Exception Appeal by 197 U. S. Route One LLC, 197 U. S. Route One, Assessor’s Map U44 Parcel 11, to expand outdoor storage in the B-2 Zone

Mr. Massengill and Mr. Tgettis stated that they had business relationships with the appellant but felt they could be objective; the Board had no issues.

Mr. Rocco Risbara III stated that he represented his parents who wanted to expand the outdoor storage at their place of business.

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

Mr. Risbara noted that the area in the rear of the building had some stockpile of loam, sand or gravel and there were storage trailers to the rear. He stated that they needed approval for the existing storage, which was contained in a bin area of concrete blocks, and to expand to two bays of storage so they could store two different materials. Mr. Risbara stated that they parked big trucks in the rear on a gravel area.

Mr. Dryzga confirmed that this proposal would be before the Planning Board for site plan amendment. To a question from Mr. Maroon, Mr. Risbara replied that they had purchased the site in 1989 and had used the area since then and the use would not be different.

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

Mr. Tgettis noted that the appellant was trying to formalize the site plan and neaten and make the area more efficient; he stated that the Planning Board would address any runoff issues. He stated that he did not think the appellant needed to be at the Zoning Board because the use had been allowed since 1989 and he would like to leave any issues in the hands of the Planning Board.

Mr. Maroon moved to approve the appeal with the condition that there be Planning Board scrutiny; Mr. Tgettis seconded.

Voted 5-0

i. Appeal No. 2272 – A Special Exception Appeal by U. S. Cellular, 15 Longmeadow Road, Assessor’s Map R24 Parcel 58, to place communication antennas in a flag pole in the R-F Zone

Mr. Gashlin, who represented U. S. Cellular, stated that they chose this location for antennas because they needed coverage in the area for connectivity with their other sites. He stated that they had an FCC license and, at this point, could not provide coverage in this area. He stated that they felt this was a good scenario between the Town and U. S. Cellular because the Town needed coverage for public safety. Mr. Gashlin stated that there was a signed lease indicating that U. S. Cellular would erect the flagpole and provide the equipment and give it to the Town and then pay rent to the Town. He noted that there were similar installations at two of the fire stations in Scarborough.

Mr. Gashlin stated that they chose the location within the park because it was off to the side near home plate of the baseball field and did not encroach on the park’s open space. He stated that they proposed underground conduits for electrical and telephone service and there would be a wooden fenced compound with substantial shrubbery. Mr. Gashlin stated that the flagpole itself would be outside the fence so the flag could be easily raised, but all the cables would be within the pole. Mr. Gashlin stated that the pole would be 100 feet high and their antennas would be at the 92 foot level inside the pole and would not be visible. He stated that they had had a meeting with the residents of the surrounding subdivision and the Town Manager recommended that they move forward to the Zoning Board.

Mr. Gashlin read the criteria as presented in writing. Mr. Grysk stated that the staff had considered this for several months and the Town did need public communications in this area; he stated that this request had been through the Town Manager and the Town Council.

To a question from Mr. Temm, Mr. Gashlin replied that they had their FCC license and would have discreet frequency and would not interfere with any other communication reception. Mr. Maroon stated that his concern was about the need for a 100 foot pole and asked the height of the trees; Mr. Gashlin replied that they had based the pole height on the highest tree which was about 75 feet tall. He stated that pole heights were relative to where there were other antennas which had to communicate with each other and fill in the empty spaces. He stated that their engineer stated that they needed 160 feet but they knew that would not be acceptable and 100 feet would work, but 80 feet would not provide the service they needed.

Mr. Massengill asked whether the flags would be lit at night; Mr. Gashlin replied that any lighting would be up to the Town. Mr. Maroon stated that a large flag would make a lot of flapping noise in the wind so the flag should not be flown at night.

Mr. Dryzga opened the public hearing. Ms. Betsy Gleysteen, of 14 Longmeadow Road, stated that she lived across the street from the park and attended the neighborhood meeting where there was low attendance because of the weather. She stated that the 100 foot pole would be too high for the trees and the houses were only 25 feet high. She stated that the base of the pole would be a significant 8 by 8 feet and did not look like a flagpole. She stated that there would be a big visual impact. Ms. Gleysteen stated that the other two flagpoles were at fire stations where there were personnel to put up the flag and the utilities were in the stations, but this pole would be out in the open. She stated that she was concerned about emissions; she stated that the Springbrook homeowners’ covenants stated that there should be no organized activities or artificial lighting in the park. Ms. Gleysteen stated that this was not in character with the neighborhood; she stated that she would like to see in writing why the other sites considered were not used. She stated that this was not a win-win situation in this neighborhood.

Mr. Michael Wood, of 6 Longmeadow Road, stated that there was no argument that the safety of the town should be improved, but he could not believe this would be put in a residential park when the town consisted of 54 square miles. He stated that he was not against the pole when he thought it would be about 70 feet high, but 100 feet would be 35 to 40 feet above the tallest tree which was quite significant; he stated that this was not a flagpole, but a significant structure. Mr. Wood stated that the town should look at a better location and he would like to see more data that this was the best location and the best height. He noted that there had been vandalism at the park which may also affect this facility.

Mr. Wood noted that the Chairman of the Town Council indicated there would be no lighting of the flag at night, and the flag would be flown for events, but he wondered how it could be described as a flagpole. He stated that he did not know whether there was a better location in the park, and it would be better near a structure, but was not good by itself in the middle of the park in the open space; he stated that antennas were not usually on property that was so heavily used and he thought the criteria for visual impact and physical size were not met. He stated that he would like to know the town looked at other locations.

Mr. Peter Xerxa, of 10 Longmeadow Road, stated that he had visited the other flagpoles at the fire stations and they were industrial structures and not appropriate for the park; he stated that the Board should look at those poles.

Mr. Dryzga closed the public hearing.

To a question from Mr. Dryzga, Mr. Gashlin replied that they would use 6.5 foot tall cabinets to house the electronics, there would be an eight foot fence and the diameter of the flagpole would be 50 to 56 inches. Mr. Maroon confirmed that the association did not allow clothes lines and noted that this was a restricted neighborhood. To a question from Mr. Maroon, Mr. Gashlin replied that the plan had been approved by the Town Council. Mr. Maroon noted the performance standards for a dwelling allowed only a 35 foot structure; he stated that the flagpole would be a big structure in an area with strong standards and would be better beside a building with scale to it. He stated that his concern was a monstrous piece of equipment in a very residential area. Mr. Maroon stated that his issues were the tree canopy, the flag noise and the scale of the structure. He stated that the Haigis Parkway Zone allowed only 80 feet and something in a residential zone should not be higher than in a commercial zone. He stated that the community gave land to the town but did not expect this kind of use. Mr. Maroon asked that the Board not vote on this appeal so the appellant would not be locked out and could provide some further information.

Mr. Tgettis stated that this should not be called a flagpole but a tower and the noise of the wind in the pulleys would be very loud. He stated that it was a flagpole design but not a legitimate flagpole. He stated that he agreed with Mr. Maroon and the appellant should show why other areas were not viable. He stated that this was a major structure standing in the middle of a park by itself. He stated that he preferred not to vote "no" because there should be more information provided so he could be more comfortable voting "yes."

Mr. Temm noted that there was a higher elevation on the Meserve farm two or three miles from this site. Mr. Massengill agreed that safety communications should be improved, but this was not the place for this type of tower. He stated that the pole at the fire stations were nothing like flagpoles and would be out of place in this neighborhood.

Mr. Dryzga stated that he believed it would be difficult for this structure to meet Criteria C regarding public safety; he stated that children would be entering the fenced area and this was not the place for this kind of structure. Mr. Dryzga stated that he wanted to vote "no" rather than table this appeal and the appeal should be brought back in a different form and location.

Mr. Gashlin stated that the flagpole could not be placed elsewhere because this is at the elevation where a lower height of 100 feet could be used for the coverage necessary. He read a release deed from the developer, John Gamage, who agreed to waive the covenant that no commercial structure could be built there. Mr. Gashlin stated that this pole would be out in the open but they picked the back end and used the trees for scale; he stated that the trees were at least 60 feet high. He stated that there was the possibility of vandalism but this would be no more prone than any other structure in Town. He asked that the appeal be tabled so he could obtain more information or make modifications.

Mr. Maroon stated that if the park was part of the development, the neighbors would have to vote on this addition. Mr. Wood stated that he would think Mr. Gamage had no right, title or interest in the park, which was given to the town in lieu of a recreation fee for the lots. Mr. Grysk stated that the land was donated for the town to use for whatever recreation purposes it saw fit. He stated that transmission towers were allowed only in the Industrial Zone and not over 100 feet; he stated that more communication towers were needed so the town amended the Zoning Ordinance to allow them on church steeples and flagpoles on municipally owned structures or property; he stated that one of the reasons the pole was proposed for this site was that it was a municipal use. Mr. Grysk stated that a tower could not be placed on Mitchell Hill because there were no municipal uses there. He stated that a flagpole would be part of a park and would provide communications for the town where there were dead spaces in communication.

Mr. Gashlin agreed that there would be an impact but not an unduly impossible impact; he stated that the pole would be against the trees and would be a stealth structure. He stated that there had been no underhanded intent by U. S. Cellular. Mr. Gashlin requested tabling the appeal so they could bring back something different. Mr. Dryzga stated that he did not know what further evidence could be presented. Mr. Maroon requested voting. Mr. Dryzga explained the requirements of the ordinance for returning to the Board following denial of an appeal.

Mr. Grysk stated that the appellant was asking for the equipment, not the height of the pole, so if the town felt it needed the 100 foot pole, it was exempt from the regulations for safety equipment; he noted that the town would also need an equipment building for any antennas. Mr. Maroon stated that if the town wanted to erect the pole, they could, but they were not doing so.

Mr. Blaise stated that the Board did not disagree with the other two flagpoles so he did not see why it was not being consistent with this one. Mr. Dryzga stated that the appeal was to place communications in a flagpole owned by the town, but there was no existing pole; he stated that he had an issue with the fact that he did not know whether the town was going to build a tower in Springbrook Park; he stated that the residents were not allowed any input if the town erected the pole. Mr. Grysk stated that there was a lease showing U. S. Cellular would lease the tower from the town which indicated the town agreed it was their tower.

Mr. Maroon stated that the neighborhood was way overused with the games, and getting trucks in and out would be a problem; he stated that the pole would not be at all compatible with the existing houses because it was big and would not blend in with the scenery. He stated that there was no sense in tabling the appeal because the appellant stated it was 100 feet or nothing; he stated that the other poles were not so controversial because they were near fire stations and not very visible. Mr. Dryzga stated that, based on how the appeal was written, the Board needed clarification from the Town Attorney about how the pole would come to exist.

Mr. Dryzga moved to table the appeal in order to get the following information:

1. That the Town show the intent to erect the flagpole;
2. That the Town Attorney address whether the Town had the right to erect the flagpole;

3. That the appellant show what would be allowed and how it would look if there were only a Town communications structure with no U. S. Cellular equipment.

Mr. Blaised seconded the motion.

Voted 5-0 to table

j. Appeal No. 2273 – A Limited Reduction of Yard Size Appeal by Raymond and Elizabeth Richter, 18 Riversands Drive, Assessor’s Map U21 Parcel 27, to construct a garage 10 feet from the side property line in the R-2 Zone

Mr. Grysk noted that this appeal should include a request for a five foot reduction from the front property line for an entryway.

Mr. Mike Richmond, of Custom Concepts, explained that they were requesting reduction on the right side and the front for a garage and a covered entryway on the front, with the possibility of a handicap ramp in the future.

Mr. Dryzga and Mr. Richmond addressed the criteria.

To a question from Mr. Massengill, Mr. Richmond replied that the neighbor’s house was 30 to 35 feet from this addition; Mrs. Richter stated that the abutter had no objection to their proposal.

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 including the front reduction; Mr. Tgettis seconded.

Voted 5-0

5. Zoning Board Comments

Mr. Maroon thanked Mr. Dryzga for managing the U. S. Cellular appeal well.

6. Adjournment

The meeting was adjourned at 9:35 P. M.

