

Town of Scarborough

Zoning Board of Appeals

March 8, 2006

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (February 8, 2006)
4. Appeals
 - a. Appeal No. 2288 – A Special Exception Appeal by Hospice House of Southern Maine, 15 Hunnewell Road, Assessor's Map U48 Parcel 34, to construct and operate hospice facility in the R-2 Zone
 - b. Appeal No. 2289 – A Special Exception Appeal by Randy Sargent and Sandra Davis, 134 Broadturn Road, Assessor's Map R44 Parcel 8, to expand the size of an Accessory Unit in the R-F Zone
 - c. Appeal No. 2290 – A Limited Reduction of Yard Size Appeal by David McGovern, 524 Black Point Road, Assessor's Map U19 Parcel 4, to construct a deck 30 feet from the front property line
 - d. 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
 - e. 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
 - f. 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
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

March 8, 2006

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Craft
Mr. Maroon
Mr. Massengill
Mr. Temm

Mr. Grysk, Code Enforcement Officer

1. Call to Order and Pledge of Allegiance

Mr. Maroon called the meeting to order at 7:00 P. M. The Pledge of allegiance was recited.

2. Roll Call

The Recording Secretary called the roll; Mr. Dryzga was absent. Mr. Maroon authorized Mr. Temm to vote.

3. Approval of Minutes (February 8, 2006)

Mr. Blaise moved to approve the minutes of February 8, 2006 as presented; Mr. Massengill seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2288 – A Special Exception Appeal by Hospice House of Southern Maine, 15 Hunnewell Road, Assessor’s Map U48 Parcel 34, to construct and operate a hospice facility in the R-2 Zone

Mr. Massengill noted that he had a business relationship with the architect but felt that would not impact his decision. Mr. Craft noted that he had not attended the previous meeting, but had viewed the meeting CD and read the minutes.

Mr. Maroon stated that this appeal had been tabled at the January meeting so that a facilitated meeting could be held between the neighbors and the appellant. Mr. Maroon summarized the facilitator’s report of that meeting. Mr. Maroon asked that the neighborhood representative and a representative from Hospice House speak briefly. He stated that the Board wanted to determine whether there was any agreement between the two parties.

Ms. Jody Deegan, CEO of Hospice House, stated that she felt the neighborhood meeting was a great opportunity to clarify some misinformation the neighbors had heard. She stated that there would be no in-and-out traffic because people who came for pain management would stay overnight. She stated that snow removal and parking were addressed. Ms. Deegan stated that the final outcome was that nothing changed the neighbors’ opinions of this project. She stated that the land nearby mentioned in the meeting notes was not for sale. Ms. Deegan stated that they looked at the number of beds and needed to stay with 18; she stated that they considered the room size and met all the regulations. Ms. Deegan explained that the purpose of hospice was to be a surrogate home. She stated that they had explored the idea of multiple sites but the best use of resources and quality care would be at one central facility; she stated that multiple

sites would increase the costs and diminish the quality of care. Ms. Deegan stated that they had called other hospice facilities regarding nighttime traffic and the administrators were very surprised at the question because there was no nighttime traffic. She stated that they had offered to explore traffic calming but the neighbors did not think that would be workable.

Ms. Deegan stated that they had not made any changes since the last submittal, but changes were made before that submittal; she stated that they had laid out the building to minimize the size and visible impact of the building and had placed it as far back on the lot as possible. She stated that the lighting was designed for low impact and they had done a traffic study.

Mr. David Hughes, of 4 Hunnewell Road, stated that he represented the 22 neighbors listed during his power point presentation at the previous meeting; he stated that those neighbors had called him and asked him to speak. He stated that it was important to clarify that there were no modifications to the proposal since the last meeting; he stated that the size of the structure, the number of rooms and the traffic had not changed. Mr. Hughes stated that the economics should not be a consideration of the Zoning Board. Mr. Hughes stated that the appellant did clarify that this would no longer be their headquarters and that the average stay would be five to six days. He stated that it was indicated there would be 15 staff during the day with part time staff to run the facility.

Mr. Hughes stated that, as a neighborhood, they felt the issues raised at the previous meeting were huge and had not been addressed and that the proposal did not meet the criteria.

Mr. Maroon stated that there was no one on the Zoning Board who did not think a hospice was a great project but they had to follow the criteria.

Mr. Craft asked what would have to be done to convince the residents that the traffic would be safe; Mr. Hughes replied that the study should be done on Hunnewell Road but was done at a similar facility in New Hampshire. He stated that the study showed this project would generate 240 trips per day and an eight home subdivision would generate 80 trips per day so the overall impact was great. Mr. Tom Gorrill, who did the traffic study, stated that the study was done based on a similar hospice because that was all they had to use; he stated that they did two traffic counts. Mr. Gorrill stated that they counted the existing roadways in the area and included pedestrians but there were none on July 26, 2005 when they did the count between 3:00 and 6:00 P. M. He stated that they had superimposed the New Hampshire traffic onto the local traffic.

To a question from Mr. Temm, Ms. Deegan replied that there would be no security personnel and no patrolling of the parking lot at night; she stated that they did not feel they would need protection. Mr. Craft asked about the character of the neighborhood; Ms. Deegan reiterated that they had set the building as far back from the road as possible and would screen the backyards of the abutters and had positioned the parking lot to minimize headlights. She stated that the plantings would screen the site. Mr. Craft asked whether anything else could be done to appease the concerns; Ms. Deegan replied that prior to their original submission they had used some of the neighbors' ideas and she did not think anything else could be done.

Mr. Massengill noted that there were passionate feelings about the quality of the neighborhood noted in the facilitator's report; he asked how the project would diminish that quality. Mr. Hughes replied that the size of the building, though beautiful, was very large in comparison to the homes in the area and to put this commercial building in the midst of homes is significant even with the screening; he stated that this was equivalent to five homes per acre. Mr. Hughes stated that the possible future use of the site was also a concern.

Ms. Sylvia Most, a Town Councilor, stated that she had spoken with residents and hospice representatives; she stated that she wanted to share the Town Council's reasoning behind allowing hospice as a Special Exception in the residential zones. She stated that there were rarely letters in favor of proposals, but when this was being worked on by the Council, there was a lot of favorable correspondence, which was important to their decision to allow hospice in the residential zones. Ms. Most stated that it was important for the Zoning Board to know that hospice was very well received by the Council with a lot of positive feedback. She stated that it was difficult for something new to come into a neighborhood. She stated that the Council got the impression of a home-like situation and there was a strong need for a home-like atmosphere in a residential setting.

Ms. Most stated that the size of the facility did seem large compared to a home, but the requirements in the R-2 Zone were for a 20% maximum lot coverage and this proposal had only a 7% coverage so it was difficult to compare this facility to a house. She stated that it was the goal of Scarborough to have a hospice and the Town Council supported the proposal in concept; she stated that they did not expect the Zoning Board to approve a hospice with no conditions and that was up to the Board. She stated that this was a difficult situation for the Board and she encouraged the members to consider their ability to impose conditions, but allow the project to go forward with conditions that satisfied the neighbors.

To a question from Mr. Massengill, Mr. Gorrill replied that they agreed there would be more traffic from this site than from eight homes, but they considered safety and capacity of a road and this road could handle the traffic from this project and operate safely.

Mr. Maroon read a letter in favor of the project from Harvey Rosenfeld, President of Scarborough Economic Development Corp.; Mr. Maroon stressed that this letter was from Mr. Rosenfeld and not from the SEDCO Board of Directors on which he sat.

Mr. Maroon asked whether the direct abutters were present. William Bamford, of 15 Hunnewell Road, stated that this could set a precedent. He stated that they did not oppose a hospice, but the idea of putting a business in a residential neighborhood; he stated that the R-2 Zone seemed to be designed to protect the neighbors from businesses. He stated that this project would change the character of the neighborhood and did not seem compatible, particularly with the 24 hour use. Mr. Bamford noted the many conditions placed on a small home occupation at the January meeting. He stated that the idea of any business in the neighborhood and the other reasons stated by Mr. Hughes were the issues for him as a direct abutter. Mr. Maroon stated that it was awkward to compare this use to a home occupation. No other abutters spoke.

To a question from Mr. Temm, Ms. Most replied that the Council considered the other uses allowed as Special Exceptions in the residential zones and felt that hospice was a similar use that could also be allowed as Special Exceptions in the residential zones; she stated that there were specific criteria for different uses. Ms. Most noted that the Board could consider a condition that the facility remain a hospice and not be allowed any other use, and the total number of beds could be limited.

Mr. Massengill asked whether the appellant knew of any other such facility that had closed or relocated and what might be done with the facility; Ms. Deegan replied that hospice had been in existence since the mid to late 1980s and she had not heard of any closings. Mr. Temm asked what the maximum stay might be; Ms. Deegan replied that Medicare allowed up to six months. To a question from Mr. Craft, Ms. Deegan replied the only other hospice in Maine opened in November 2005 in Auburn. To a question from Mr. Craft, Mr. Hughes replied that they had not spoken with the abutters to the New Hampshire facility.

Mr. Hughes stated that hospices had not been in existence for very long so none had closed, but other facilities, such as nursing homes did close, so it was not farfetched to think that a hospice could close. Mr. Hughes noted that Ms. Most spoke about other uses allowed, but those uses also needed Zoning

Board approval; he stated that the neighbors just felt that this facility did not meet the Ordinance requirements. Mr. Hughes stated that their street did not meet the definition of a Residential Street, which was required for this type of use.

Ms. Deegan stated that she would like to propose the condition that after they had been open for one year they study the need for any traffic calming measurements and that they follow any recommendations.

Mr. Maroon noted that the Town Council did not expect the scope of the project, but were very interested in this project; he stated that there could be alternatives. He stated that he was very disappointed that a solution was not reached at the facilitated meeting.

Mr. Maroon stated that he had looked through the definition of the different facilities allowed under Special Exceptions, such as Boarding Care for the Elderly, Day Care Center, Nursery School, etc., and noted the allowed uses and Special Exceptions in the R-2 Zone. Mr. Grysk noted that Day Care Centers allowed 13 or more children. Mr. Maroon stated that he compared the hospice to these uses because there were no other benchmarks for comparison. Mr. Craft confirmed that the definition of Hospice in the Ordinance did not indicate any size limit. Mr. Maroon stated that this property could have up to six children or adults for a Family Day Care Home with no approval from the Zoning Board. He stated that he thought 18 beds was too many and suggested a compromise of 12 beds which made sense to him because it could be tied to Group Day Care Home use. He proposed approving this appeal with a limit of 12 beds.

Mr. Temm asked whether there could be room for expansion if the Board approved 12 beds; Mr. Maroon replied that appellants could always come back for another appeal. Mr. Temm noted that there was a point where a business could make money or fail and a point where a business could not be smaller; he stated that if the hospice failed it would have been approved to fail. Mr. Maroon stated that that was up to the appellant to decide if it would work.

Mr. Maroon stated that the Desfosses should be commended for donating the land and asked Ms. Desfosses to speak. Ms. Theresa Desfosses stated that her father had died a slow death and when she and her mother were approached by Hospice House of Southern Maine, they felt this was a great, peaceful area for a hospice; she stated that they donated the land because hospice was a great use. She stated that she hoped the Board would not vote against this use.

Mr. Craft confirmed that there was no definition in the Ordinance for a head count for hospice. Mr. Maroon stated that he personally felt that Hunnewell Road had a lot of pressure and 12 beds would be consistent with the Ordinance for other uses and was a middle of the road number; he stated that he did not know how to make everybody happy. Mr. Craft asked whether any number of beds other than 18 would work; Ms. Deegan replied that their letter made it clear that 18 beds were what they needed to make the facility feasible.

Mr. Maroon moved to approve the appeal with a maximum number of 12 beds with the option to return to the Board for any expansion; Mr. Massengill seconded.

Mr. Temm asked whether the building would be the same size if there were only 12 beds; Mr. Maroon replied that the building would not look as big as it is but the appellant would have to scale it down for financial reasons. Mr. Massengill stated that he did not agree with 12 beds; he stated that if 18 was the magic number that was what it should be. Mr. Temm stated that he did not see how the Board could ask the appellants to put money into 12 beds knowing that 12 beds were too few. Mr. Craft stated that he thought it should be 18 beds or not at all.

Mr. Blaise stated that the appellants came to the Board requesting 18 beds and a motion for 12 beds may

not work. He stated that many of the neighbors were against the project no matter how many beds were involved; he stated that not one of the neighbors was in favor. Mr. Maroon stated that he did not believe this facility would not work with only 12 beds; he stated that there were ways to work when it was needed. Mr. Maroon stated that he believed this was a good location for hospice at a reasonable size.

Mr. Massengill amended the motion to allow 18 beds; Mr. Temm seconded.

Voted 4 – 1 – Mr. Maroon voted against amending the motion.

Mr. Craft stated that maybe the Board could amend the amendment to monitor the traffic issue and to weigh what the studies said as well as what the neighbors said. Mr. Massengill stated that he had a lot of respect for Gorrill-Palmer and when they said that they looked at safety and capacity, he respected that opinion. Mr. Maroon stated that he did not think Hunnewell Road met the definition of street that was the level street that would allow this facility. Mr. Massengill noted that Ms. Deegan made an offer to restudy the traffic and he would like to make that a condition of approval. Mr. Maroon stated that nothing more could be done for the safety of the road other than the existing stop signs.

Mr. Massengill moved to amend his amended motion to require another traffic study after 12 months of business, and that any recommendations be followed; Mr. Craft seconded that condition.

Voted 2 – 3 on the condition; the condition failed;
Mr. Craft and Mr. Massengill voted for the condition.

Mr. Blaise stated that he thought there was a lot more emotion in this issue than necessary; he stated that the Board had to support how the neighbors felt and there was plenty of other land available elsewhere. He stated that he got the feeling this was a do or die situation and he did not see it that way. Mr. Maroon stated that he could not look the neighbors in the eyes and vote for this project. Mr. Craft stated that the appellant went to great lengths to meet the performance standards.

The Board voted on the amended motion by Mr. Massengill without the traffic condition.

Voted 3 – 2 – Mr. Maroon and Mr. Blaise voted against the appeal.

The appeal was granted.

b. Appeal No. 2289 – A Special Exception Appeal by Randy Sargent and Sandra Davis, 134 Broadturn Road, Assessor’s Map R44 Parcel 8, to expand the size of an Accessory Unit in the R-F Zone

Mr. Maroon explained that this appeal had been approved for 600 square feet; he noted that the Town Council had amended the Ordinance to allow Accessory Units of 750 feet. Mr. Rocco Risbara III they would like to amend their original approval to allow 750 feet rather than the 600 feet originally approved. He stated that he had built a laundry closet and an entryway that was not on the plan and that totaled 719.89 square feet. Mr. Grysk stated that this would have to be rerecorded at the Registry of Deeds.

To a question from the Board, Mr. Grysk replied that he considered any finished area living space and did not call laundries in basements living space. Mr. Grysk stated that a garage had to be finished when there was living space above, but he did not call that living space.

Mr. Maroon moved to approve the appeal based on the strict definition recently approved by the Town Council; Mr. Blaise seconded.

Voted 5-0

c. Appeal No. 2290 – A Limited Reduction of Yard Size Appeal by David McGovern, 524 Black Point Road, Assessor’s Map U19 Parcel 4, to construct a deck 30 feet from the front property line in the R-2 Zone

Mr. Trevor Watson, representative of the builder, stated that this was the Prouts Neck Post Office building where there were apartments on the second and third floors. He stated that there was no place to build a deck because of the existing land coverage, so they proposed building it above an existing one story entryway. Mr. Watson stated that the deck would be accessible to both apartments. He stated that they had designed a small deck to reduce the impact on the neighbors and the area.

Mr. Maroon and Mr. Watson addressed the criteria.

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

Voted 5-0

d. Appeal No. 2240 – Miscellaneous Appeals by Peter and Nicholas Truman, dba Lighthouse Inn, 366 Pint 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

e. 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

Mr. Grysk stated that there had been numerous meetings regarding these appeals and the appellants would have to return to the Board with completely different appeals.

Mr. Maroon moved to remove these appeals from the table; Mr. Massengill seconded.

Voted 5-0

f. 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

Mr. Grysk stated that this appeal had been solved through the Town Manager’s office.

Mr. Maroon moved to remove this appeal from the table; Mr. Massengill seconded.

Voted 5-0

5. Zoning Board Comments

Mr. Craft and Mr. Massengill agreed that Mr. Maroon had done an excellent job handling Appeal No. 2288.

6. Adjournment

The meeting was adjourned at 9:10 P. M.