

Town of Scarborough

Zoning Board of Appeals

April 12, 2006

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (March 8, 2006)
4. Appeals
 - a. Appeal No. 2291 – A Special Exception Appeal by Peter and Kim Kunkel, 7 Holly Street, Assessor’s Map R24 Parcel 14, to expand an existing Accessory Unit to 750 square feet in the R-2 Zone
 - b. Appeal No. 2292 – A Special Exception Appeal by Susan Albiser, 5 Melbourne Drive, Assessor’s Map U16 Parcel 69, to create an Accessory Unit in the R-2 Zone
 - c. Appeal No. 2293 – A Limited Reduction of Yard Size Appeal by Arthur DiMauro, 337 Pleasant Hill Road, Assessor’s Map R99 Parcel 39, to construct an addition 40 feet from the front property line in the R-F Zone
 - d. Appeal No. 2294 – A Limited Reduction of Yard Size Appeal by Richard and Judith Mushial, 26 Driftwood Lane, Assessor’s Map U21 Parcel 105, to construct an addition 38 feet from the front property line in the R-2 Zone
 - e. Appeal No. 2295 – A Special Exception Appeal by Kerry Falagario and Nicole Orcutt, 247 Gorham Road, Assessor’s Map R37 Parcel 11, to operate a Day Care Center Facility in the B-2 Zone
 - f. Appeal No. 2296 – A Practical Difficulty Appeal by VIP Parts & Service, 441 Payne Road, Assessor’s Map R37 Parcel 10, to place a dumpster and tire storage within the 15 foot rear setback in the B-2 Zone
 - g. Appeal No. 2297 – An Appeal by VIP Parts & Service, 441 Payne Road to reduce the parking to 79 spaces
 - h. Appeal No. 2298 – A Miscellaneous Appeal by BPI, LLC, dba Black Point Inn, 510 Black Point Road, Assessor’s Map U18 Parcel 24, to make conversions to a nonconforming use 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

April 12, 2006

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Craft
Mr. Dryzga
Mr. Maroon
Mr. Massengill

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

1. Call to Order and Pledge of Allegiance

Mr. Dryzga 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. Temm was absent.

3. Approval of Minutes (March 8, 2006)

Mr. Maroon moved to approve the minutes of March 8, 2006 as written; Mr. Blaise seconded.

Voted 5-0

Mr. Dryzga announced that the last appeal had been withdrawn.

4. Appeals

a. Appeal No. 2291 – A Special Exception Appeal by Peter and Kim Kunkel, 7 Holly Street, Assessor’s Map R24 Parcel 14, to expand an existing Accessory Unit to 750 square feet in the R-2 Zone

Mr. Kunkel explained that they had been approved for a 600 square foot accessory unit and wanted to expand it to 750 feet. To a question from Mr. Dryzga, Mr. Kunkel replied that the structure was built but they had not put up the walls for the unit. The Board agreed that the criteria had been addressed satisfactorily in writing.

Mr. Maroon noted that an exterior stairway was prohibited by the Ordinance. Mr. Dryzga stated that there was a deck with stairs at the rear of the garage. Mr. Reinsborough stated that there was also an inside stairway for primary access; he noted that the Board had approved an outside stairway in the past. Mr. Kunkel stated that the stairway was in the rear and they felt it would not take away from the character of the neighborhood. The Board agreed that the stairway did not change the streetscape. Mr. Kunkel noted that there were two interior accesses but one would be cut off by a firewall.

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; Mr. Dryzga added the condition that the deck not be enclosed other than with screening; Mr. Maroon seconded.

Voted 5-0

b. Appeal No. 2292 – A Special Exception Appeal by Susan Albiser, 5 Melbourne Drive, Assessor’s Map U16 Parcel 69, to create an Accessory Unit in the R-2 Zone

Ms. Albiser stated that she wanted to finish her basement into an accessory unit. Mr. Drzga and Ms. Albiser addressed the criteria as presented in writing and the registration form.

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

Mr. Maroon asked about the entranceway and the square footage total of the unit; Ms. Albiser replied that there was open space with the furnace and the entrance was a common access into both areas. She stated that this was a daylight basement and the main entrance to the accessory unit was the door to the rear; she stated that there was a driveway turnaround area with a walkway to the rear. To a question from Mr. Dryzga, Mr. Reinsborough replied that an unfinished basement was not considered living space. Ms. Albiser stated that the common wall would be a raw cement wall with no sheetrock. To a question from Mr. Maroon, Mr. Reinsborough replied that heating typically triggered whether a space was living space or not. Ms. Albiser stated that only the accessory unit and not the entire basement was heated.

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

Voted 5-0

c. Appeal No. 2293 – A Limited Reduction of Yard Size Appeal by Arthur DiMauro, 337 Pleasant Hill Road, Assessor’s Map R99 Parcel 39, to construct an addition 40 feet from the front property line in the R-F Zone

Mr. Reinsborough noted that there had been some measurement issues and the Board should be more concerned with the reduction itself than with the measurements of the addition noted in the package; he stated that the design would be the same. Mr. DiMauro stated that he wanted to add living space to the existing building. Mr. Reinsborough stated that the house was 48 feet, not 50 feet, in depth and the Board should approve the setback from the house and the depth of the addition could be adjusted.

Mr. Dryzga and Mr. DiMauro addressed the criteria as presented in writing. To a question from Mr. Craft, Mr. Reinsborough replied that the house was back about 32 feet from the front corner and all the pins were in place so he measured from a string between the property pins; he stated that the applicant would build only to the 40 foot setback if approved. Mr. Dryzga stated that the addition would be built only to the front of the house.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal. He read a letter in favor of the appeal from T. Nelson Harmon, of 320 Pleasant Hill Road. Mr. Dryzga closed the public hearing.

Mr. Blaise moved to approve the appeal with the condition that the length of the addition be determined by the length of the existing house, no closer than 40 feet to the property line and flush with the rear of the existing home. Mr. Maroon seconded.

Voted 5-0

d. Appeal No. 2294 – A Limited Reduction of Yard Size Appeal by Richard and Judith Mushial, 26 Driftwood Lane, Assessor’s Map U21 Parcel 105, to construct an addition 38 feet from the front property line in the R-2 Zone

Mr. Mike Richmond, of Custom Concepts, stated that they wanted to extend the foundation four inches and the roof overhang 20 inches closer to the road, which would allow them to make the stairs safer. He stated that the structure had very large overhangs and this would blend with the architecture. He stated that going closer to the road would keep them from expanding to the side which would impede the views of the neighbors.

Mr. Dryzga opened the public hearing. He read letters in favor of the appeal from Harry and Ingrid Gresek, of 28 Driftwood Lane, Mikal and Lorene Curran, of 27 Driftwood Lane, Charlotte Pryor and Randy Harrison, of 29 Driftwood Lane, and Laura Turner. No one spoke for or against the appeal; Mr. Dryzga closed the public hearing.

To a question from Mr. Blaise, Mr. Richmond replied that there was a second story on the existing house but not on the addition. To a question from Mr. Maroon, Mr. Reinsborough replied that the structure was about 200 feet smaller than the allowed 20% maximum coverage. Mr. Dryzga and Mr. Richmond addressed the criteria as presented in writing.

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

Voted 5-0

e. Appeal No. 2295 – A Special Exception Appeal by Kerry Falagario and Nicole Orcutt, 247 Gorham Road, Assessor’s Map R37 Parcel 11, to operate a Day Care Center Facility in the B-2 Zone

Ms. Orcutt stated that they would lease the property from the former Napa store. Mr. Dryzga and Ms. Orcutt addressed the Special Exception criteria and the Day Care Facility conditions as presented in writing. Ms. Orcutt noted that there would be no outside construction but the inside of the building would be renovated. Mr. Reinsborough stated that the building complied with the required size and street frontage and the closest day care was on the other side of the turnpike.

To a question from Mr. Maroon, Ms. Falagario replied that vehicles would not back into the driveway but would have to back out of parking spaces into the parking lot. Mr. Dryzga stated that he did not know of any day care that had a circular driveway. To a question from Mr. Reinsborough, Ms. Falagario replied that there would be fire lanes in front of the building where there would be no parking. Ms. Falagario stated that they could consider aligning the parking so that cars had the ability to swing out or drive through. She noted that the State would not license them unless they met their parking requirements. To a question from Mr. Dryzga, Mr. Reinsborough replied that the Code Officers had the responsibility of making sure all the requirements were met prior to issuance of a Certificate of Occupancy.

Mr. Dryzga opened the public hearing. Dan Hourihan, owner of property at 304 Gorham Road, stated that it would be great to have this business nearby and it was a great reuse of the building. Mr. Dryzga closed the public hearing.

Mr. Maroon moved to approve the appeal with the condition that the Planning Department ensure there be no backing into the parking lot or the driveway; Mr. Massengill seconded.

Voted 5-0

f. Appeal No. 2296 – A Practical Difficulty Appeal by VIP Parts & Service, 441 Payne Road, Assessor’s Map R37 Parcel 10, to place a dumpster and tire storage within the 15 foot rear setback in the B-2 Zone

Mr. Rick Licht, of Land Use Consultants, stated that this was a reconstruction of the former Bob’s Discount Store and the footprint would remain the same but the façade would be upgraded; he stated that the

dumpster issue arose during site plan review with the Planning Board. He stated that the Site Plan Ordinance required dumpsters to be screened and they wanted them in the rear, where they would be too close to the building. He stated that, because a dumpster was considered a structure, it needed a 15 foot setback from the property lines; he stated that the space was only 25 feet wide. Mr. Licht stated that if they placed the dumpsters near the building they would have to build a fire wall with outside sprinklers so they were requesting a variance to put the dumpsters within the 15 foot setback. He stated that the dumpster would be screened with an enclosure one foot from the property line and could be unloaded and the used tires removed. Mr. Licht stated that the rear area was not visible from the street and there was a thin, wooded buffer on the side and rear. He stated that a previous tenant had variance approval for two large containers in the rear. He noted that the Fire Department required that the dumpsters be 10 feet from the structure.

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

Mr. Maroon stated that he had not been allowed to put his dumpster within the setback so he did not know how to get around this appeal. To a question from Mr. Maroon, Mr. Licht replied that the dumpsters for the previous business were behind the building on the other side, but that area would not work because it would be the access to the rear driveway. He stated that they did not have the liberty of using any parking spaces and the Planning Board did not allow dumpsters in the front yard. Mr. Dan Hourihan, of VIP Parts, stated that the firewall and outside sprinkler required by the Fire Department would put them over budget for the project.

To a question from Mr. Blaise, Mr. Licht replied that a vehicle could not turn left out of the rear access because the turning radius needed more pavement and would put the dumpster in the circulation area. To a question from Mr. Craft, Mr. Licht replied that they also needed a container for used tires. To a question from Mr. Dryzga, Mr. Reinsborough replied that dumpsters were considered structures because they were required to be shown on the site plan.

Mr. Licht stated that they met the seven standards and the dumpsters would be in the back corner of a commercial area where it would cause no hardship or harm to the abutters. He noted that the previous containers were much larger and were granted a variance.

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 had an issue with dumpsters being called structures; he noted that the enclosure or screening triggered the issue of setbacks. Mr. Maroon stated that the issue needed to be addressed by the Town Council's Ordinance Committee. To a question from Mr. Craft, Mr. Licht replied that they could not share the Clipper Mart dumpster because of the distance to carry refuse and used tires. Mr. Licht stated that dumpsters had to be accessible to the trucks that unloaded them.

The Board went through the criteria to determine which items had issues; the Board agreed that they had no issues with Criteria 1, 2, 5, 6 and 7. Mr. Dryzga questioned Criteria 3, whether the difficulty was the result of action by the applicant or a prior owner. Regarding Criteria 4, Mr. Maroon noted that there were other options for location of the dumpsters; Mr. Dryzga stated that "feasible" was an arguable word in the Ordinance.

Mr. Licht noted that, if a firewall were built, it would have to be freestanding and separate from the building and would be a structural nightmare; he stated that the site plan standards did not allow dumpsters to be visible so the location was not arbitrary. Mr. Dryzga stated that he could get around Criteria No. 3 because the standards had changed. Mr. Reinsborough stated that he thought the Practical Difficulty Variance Appeal was applicable to this issue; he stated that he did not think any of the abutters would com-

plain about the dumpster location. Mr. Maroon stated that he did not like the Town's position on the placement of dumpsters but the Ordinance had to be followed; he stated that the Ordinance Committee should address the issue. Mr. Dryzga stated that he felt the criteria had been met.

Mr. Massengill noted that a couple of parking spaces would be lost if the dumpster were moved. Mr. Craft noted that the Board looked at appeals case by case and this would not set a precedent; he stated that he did not think there was a feasible alternative and the Board should support the request. Mr. Blaise suggested tabling this appeal and moving on to the next so the Board could free up a parking space for the placement of the dumpster. Mr. Dryzga stated that this was a site plan issue and the Zoning Board changing parking spaces would not help.

Mr. Hourihan stated that they had to show 105 parking spaces which included that shared with Sewall next door. He stated that the dumpsters were located to the rear for safety and aesthetics. He stated that the Town was considering an Ordinance change to deal with fewer retail spaces when there was warehouse space involved. Mr. Licht stated that they did not have the liberty of having fewer parking spaces in the rear; he stated that any relocation of the dumpsters would require further site plan review.

To a question from Mr. Blaise, Mr. Licht replied that the large area in the front was the fire lane and they could not put parking there because of the need for turning radius. Mr. Massengill stated that he took the applicant's word that the Fire Department wanted the dumpster where it was shown. Mr. Licht stated that they did not have the flexibility to remove any more parking spaces and they could not put the dumpsters to the right side because the area was too narrow and the site was very tight.

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

Voted 3-2 – Messrs. Blaise and Maroon opposed.

g. Appeal No. 2296 – An Appeal by VIP Parts & Service, 441 Payne Road to reduce the parking to 79 spaces

Mr. Licht stated that the entire lot, including Clipper Mart, was 2.7 acres but was leased as two lots; he stated that their parking requirement for a 19,250 square foot building was 105 spaces. He stated that the Clipper Mart was required to have 18 spaces for a total of 123 spaces for both businesses. He stated that the issue was that there were two separate leases and most of the spaces were around the Clipper Mart; he stated that on paper they had enough spaces. Mr. Licht stated that when the Clipper Mart lease expired in ten years, a new tenant could take all the spaces and leave VIP with fewer than the required 105 spaces. He stated that their request for 79 spaces would allow them to use all the spaces on their own lot and 13 inside the building. Mr. Licht stated that most of the other VIP sites had only 40 to 60 spaces and none of them approached the need for 105 spaces. He stated that the Ordinance was excessive in terms of need. He stated that the parking requirements were designed for an entire building being retail but the actual area of retail at VIP would be 4,200 square feet, which would require only 24 spaces. He stated that they certainly could get by with 79 spaces.

Mr. Licht stated that when the previous tenant was in operation, the entire store was retail area; he stated that they would not take away any spaces but when there was an issue between the two lots, their lot could sustain itself with 79 parking spaces. Mr. Licht stated that there was never a holiday rush so they did not need to plan for excessive spaces. Mr. Reinsborough noted that the thirteen repair bays inside the building were included as parking spaces.

Mr. Craft confirmed that the appellant had access to all the spaces for 15 years under the current lease agreement. Mr. Licht stated that there was no distinction between the two buildings' parking. To a

question from Mr. Blaise, Mr. Licht replied that the whole site was under one ownership with two leases. Mr. Licht stated that once the lease was signed it was in effect and addressed the use of the spaces. Mr. Craft confirmed that all the spaces on the entire site were accessible for 15 years. Mr. Licht stated that this was an issue of being safe for the future. Mr. Hourihan stated that the needs of all the other stores did not re-quire so much parking even if they were larger stores and they did not need 105 spaces; he stated that much of their building space was used for storage/warehousing and for people working on vehicles. Mr. Hourihan stated that 79 were more spaces than any of the other stores had or needed.

Mr. Dryzga confirmed that there were 15 years before the problem could occur; he stated that if the Town was heading toward a solution, maybe the applicant should wait. He noted that any approval would go with the current business so the reduction of spaces would not carry to the next tenant. The Board agreed they would need to see statistics and parking counts and a floor plan. Mr. Hourihan stated that he wanted to address the issue sooner rather than later.

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 like to see data from two or three other stores with similar square footage and a similar number of bays, parking counts, customer counts, and peak hour counts, but he did not know whether the reduction was necessary at this time.

Mr. Blaise moved to table the appeal for further information as noted above; Mr. Maroon seconded.

Voted 5-0 to table

5. Zoning Board Comments

Mr. Maroon asked whether the O'Brien property was being built according to what was approved by the Board; Mr. Reinsborough stated that they were allowed to build dormers without Zoning Board approval.

6. Adjournment

The meeting was adjourned at 9:50 P. M.