

Town of Scarborough

Zoning Board of Appeals

August 9, 2006

AGENDA

1. Call to Order and Pledged of Allegiance
2. Roll Call
3. Approval of Minutes (July 12, 2006)
4. Appeals
 - a. Appeal No. 2305 – An Administrative Appeal by Allyn Lord, 289 Beech Ridge Road, Assessor's Map R14 Parcel 20, against the Code Officer's decision that an automobile repair business is not a grand-fathered use in the R-F Zone
 - b. Appeal No. 2322 – A Special Exception Appeal by Anita LaBerge, 340 Holmes Road, Assessor's Map R26 Parcel 6, to operate a Group Day Care for up to 12 children in the R-F Zone
 - c. Appeal No. 2323 – A Special Exception Appeal by Donna Castaldo, 632 U. S. Route One, Assessor's Map U32 Parcel 3, to operate a Day Care Center in the B-2 and R-4 Zones
 - d. Appeal No. 2324 – A Practical Difficulty Variance by Glenn Morse, 63 Running Hill Road, Assessor's Map R18 Parcel 1, to construct additions 43 feet from the front property line in the R-F Zone
5. Zoning Board Comments
6. Adjournment

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

Town of Scarborough

MINUTES

Members Present

Staff

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

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

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; Messrs. Dryzga and Massengill were absent. Mr. Maroon authorized Mr. Temm to vote.

3. Approval of Minutes (July 12, 2006)

Mr. Blaise moved to approve the minutes of July 12, 2006 as written; Mr. Temm seconded.

Voted 4-0

4. Appeals

a. Appeal No. 2305 – An Administrative Appeal by Allyn Lord, 289 Beech Ridge Road, Assessor’s Map R14 Parcel 20, against the Code Officer’s decision that an automobile repair business is not a grandfathered use in the R-F Zone

Mr. Temm stated that he knew the Lords but that would not affect his opinion.

Mr. Maroon stated that the issue at hand was to determine whether the Code Officer’s determination was correct; he stated that much of the discussion had been whether there had been cessation of the business.

Attorney Bradley Graham stated that his contention was that the business had not ceased for 12 months. He stated that the original correspondence from the Code Officer was that the use did not fall under the Special Exception use, but his contention was that it is a nonconforming, grandfathered use. Mr. Graham stated that the tax returns provided showed that the applicant had been running a business. He stated that there was no state law or Scarborough ordinance regulating the creation of an auto repair business. He stated that the structure that burned was not the structure referred to in the note written by the applicant indicating that it would not be used for any business use; he stated that that structure was still standing. Mr. Graham stated that the fire consumed the structure and most of the business receipts and records. He stated that they contend that this had been a legal business prior to inception of the ordinance.

Mr. Maroon stated that there was a difference between getting paid for doing repairs and having a business. He stated that, based on the tax returns, he did not believe that even if this were not approved he could still do the same thing because the tax returns showed that the earnings were low and the applicant may not have been doing this full time. Mr. Maroon stated that to work at someone’s home did not equate to a business even if he were paid. Mr. Grysk stated that if you receive money then you have a

business, but if you do a little work on family or friends' vehicles he would not call that a business. He stated that a garage with cars coming and going was a business. Mr. Grysk stated that there were other repair garages in town that proved they had been in business and were grandfathered. He stated that he had had complaints from the Lords' neighbors and did some investigation but saw no sign of a business until the fire. He stated that if there were a business it had never been documented. Mr. Grysk stated that there was an interpretation from the Town Attorney, but he, as Code Officer, had the authority and could not go on hearsay but had to follow the ordinance.

Mr. Temm stated that one had to show a profit in order to be a business and the appellant had done that. Mr. Grysk stated that if he did an investigation and found that the business was grandfathered, he allowed it, but if business ceased, the grandfathering was lost and the business could not be done again. He stated that there had been no documentation since the 1970s that there had been a business for 30 years. Mr. Temm stated that just because no one brought the business to the attention of the town did not mean it did not exist. Mr. Grysk stated that if they had been in business legally it would be documented somewhere.

To a question from Mr. Craft, Mr. Graham replied that the tax returns were not signed because they were filed electronically. Mr. Craft noted that the cover letter indicated the Lords would remove the junk vehicles; Mr. Graham stated that that was not on the table, but the Lords had no intention of having a junk yard. To questions from Mr. Maroon, Mr. Graham replied that Allyn Lord was the owner of the property but lived in Florida; he stated that Ben Lord, who was now running the business, was Allyn's grandson. Mr. Graham stated that the business had been passed down through three generations. Mr. Maroon stated that he was concerned that Allyn's name was on the papers but he was two generations away. Mr. Grysk stated that the Town had to cite the owner of the property.

Mr. Maroon opened the public hearing. A member of the public stated that the appellant had been fixing cars for many years; he stated that he owned a small construction company and Mr. Lord kept his vehicles on the road. He stated that he had always paid to have his vehicles fixed.

Ezra Berry stated that he had a carpentry business and that he had up-to-date receipts from the Lords for work done on his three vehicles. Andy Ricci, of South Portland, stated that he had always had work done on his heavy excavating machinery; he stated that Mr. Lord was an honest mechanic. Ed Douglas stated that he had hung around this garage for five or six years and learned many things and helped Mr. Lord fix vehicles; he stated that he used to watch Ben's father work on cars.

Mr. Ben Lord stated that this business was his livelihood; he stated that his father and his grandfather had this business; he stated that the fire was an accident and a lot of the records were burned. He stated that this was just a small repair business, not astronomical.

Mr. Maroon closed the public hearing.

At the request of Mr. Temm, Mr. Lord stated that he had no intention of running a junk yard and wanted to clean up the whole place; he stated that his only business would be the repair garage. To a question from Mr. Craft, Mr. Grysk replied that, by state law, three unregistered or uninspected vehicles constituted a junk yard. Mr. Grysk stated that this site had never been licensed as a junk yard. To a question from Mr. Craft, Mr. Grysk replied that there were still more vehicles on the site than were allowed but they had been given a timeframe to clean it.

Mr. Maroon read from the ordinance Section G 1a. and stated that his concern was with the words, "It shall be unlawful to use or occupy or permit the use or occupancy of any land, building or ... until a certificate of occupancy is issued...." Mr. Maroon also quoted rules of a business from an internet article. He stated that there were no records of this business at the municipal building and Code Officer Carroll

Shepard indicated that several times he was not allowed on the property. Mr. Maroon stated that was a concern because any business was required to be open to the Town and the Fire Department was unaware of the business. He stated that there were three different names on the papers and under the inspection license. Mr. Maroon stated that one of the definitions of a business was whether one engaged in the activity with a profit motive; he stated that a profit of \$4,400 was pretty low so that was a potential problem.

Mr. Temm stated that the buildings had been there since the ordinance had been in effect. Mr. Maroon reiterated that “any unlawful use” was the key phrase; he stated that it was required that a business obtain a certificate of occupancy. Mr. Grysk noted that his office issued new certificates of occupancy for any new owner or name change. Mr. Craft asked why the appellant had not gotten a certificate; Mr. Lord replied that he did not know he needed one. Mr. Maroon stated that the Board had to make its decision based on the rules and ignorance of the rules was no excuse. To a question from Mr. Temm, Mr. Maroon replied that a change of hands triggered a certificate of occupancy. Mr. Lord stated that there was no time lapse between his running of the business and that of his father.

Mr. Maroon stated that a 2 to 2 vote would mean a denial of the appeal, but if that happened he would call for more discussion and another vote.

Mr. Maroon moved to support the decision of the Code Enforcement Officer; Mr. Craft seconded.

Voted 2-2 – Messrs. Blaise and Temm opposed.

Mr. Blaise stated that it was touchy bringing further evidence that there was a business since previous records were suppose to have been in the fire. He stated that he was not convinced that a business was handed down through the generations without going through the legal process. Mr. Maroon asked how the Board got past the unlawful use with no certificate of occupancy. Mr. Blaise stated that no one told him he needed one. Mr. Temm stated that the buildings were there and the business was running. Mr. Maroon noted that the business name had changed as evidenced by the inspection license, but that name change should have triggered the certificate of occupancy. Mr. Grysk stated that his office issued certificates for the business owner or tenant and any new tenant needed a certificate; he stated that the certificate was issued to the owner or tenant and not the building. To a question from Mr. Temm, Mr. Lord replied that he thought his tax bill was addressed to Lord Enterprises. Mr. Grysk stated that his research showed the tax bill was addressed to Alyn Lord. Mr. Temm stated that all he was saying was that they had been running a business.

Mr. Maroon reiterated the fact that a certificate of occupancy should have been obtained. Mr. Craft asked the next step for the town; Mr. Grysk replied that if the business were approved, the site would have to be inspected by his office and the Fire Department and then a certificate of occupancy would be issued. Mr. Blaise asked whether the appellant could apply to operate his business if this appeal were turned down; Mr. Grysk replied that auto repair was not allowed in the R-F Zone and was not considered a home occupation. Mr. Lord stated that if he were allowed this business he would comply with all codes.

Mr. Maroon called for a second vote.

Voted 1-3 – Mr. Blaise, Craft and Temm opposed.

The Code Officer’s decision was overturned and the business can resume.

Mr. Maroon called a recess at 8:10; the meeting resumed at 8:25 P. M.

b. Appeal No. 2322 – A Special Exception Appeal by Anita LaBerge, 340 Holmes Road, Assessor’s Map R26 Paarcel 6, to operate a Group Day Care for up to 12 children in the R-F Zone

Ms. LaBerge stated that she wanted to open a day care in her home for grades K through 6 before and after school. She stated that her home was on 10 acres of land and 250 feet away from the road; she stated that they had a circular driveway, cars would not have to back out and there was space for 12 cars to park. Ms. LaBerge stated that their backyard was very large with space to play. Mr. Grysk stated that all requirements were met.

Mr. Grysk and Ms. LaBerge addressed the Special Exception and the Group Day Care criteria as presented in writing. Ms. LaBerge stated that she would have no employees. Mr. Grysk stated that there were no issues with distance to any other day care.

Mr. Maroon opened the public hearing; not one spoke for or against the appeal; Mr. Maroon closed the public hearing.

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

Voted 4-0

c. Appeal No. 2323 – A Special Exception Appeal by Donna Castaldo, 632 U. S. Route One, Assessor’s Map U32 Parcel 3, to operate a Day Care Center in the B-2 and R-4 Zones

Ms. Castaldo stated that she wanted to lease space owned by her son at Dunstan; she stated that she operated a day care in Waterboro and wanted to expand to Scarborough. She stated that the Fire Department and the Code Officer had inspected the site and she would take care of their issues. Ms. Castaldo stated that she had been approved by the Department of Human Services pending their inspection.

Mr. Maroon and Ms. Castaldo addressed the criteria; she stated that there were about 75 parking spaces and a turnaround so no one would back out of the site. Ms. Castaldo stated that her hours would be 7:00 A. M. to 5:30 P. M.

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

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

Voted 4-0

d. Appeal No. 2324 – A Practical Difficulty Variance by Glenn Morse, 63 Running Hill Road, Assessor’s Map R18 Parcel 1, to construct additions 43 feet from the front property line in the R-F Zone

Mr. Morse stated that he wanted to build a front overhang above a set of stairs and continue with construction even though he built a roof dormer within the 40 foot setback. He stated that he did not overhang the dormer and it was flush with the existing wall. He stated that the Code Officer noticed that the overhang was within the 40 foot setback. Mr. Grysk stated that this was an existing, older home which is being renovated; he stated that the dormer and the entry were 43 feet from the front property line.

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

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

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

Voted 4-0

5. Zoning Board Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 8:40 P. M.