

Town of Scarborough

Zoning Board of Appeals

April 11, 2007

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (March 14, 2007)
4. Appeals
 - a. Appeal No. 2361 – A Variance Appeal by Stephanie Williston, 135 Winnocks Neck Road, Assessor’s Map R83 Parcel 30, to allow an existing shed to remain 10.3 feet from the rear line and 14 feet from the side property line in the R-2 Zone
 - b. Appeal No. 2362 - A Limited Reduction of Yard Size Appeal by Richard and Lynne Silkman, 15 King Street, Assessor’s Map U22 Parcel 104, to construct an addition with overhangs 14 feet from both side lines in the R-4A Zone
 - c. Appeal No. 2363 - A Special Exception Appeal by Nadra and Rob Edgerley, 9 Grapevine Lane, Assessor’s Map R23 Parcel 203, to operate a photography studio as a Home Occupation in the R-F Zone
 - d. Appeal No. 2364 - A Practical Difficulty Appeal by Robert and Richard Foley, 3 Foley Farm Road, Assessor’s Map U44 Parcel 8, to convert a garage into a dwelling unit on its own lot with a 13.7 foot side setback in the R-2 Zone
 - e. Appeal No. 2365 - An Administrative Appeal by David and Cheryl Aranovitch, 95 East Grand Avenue, Assessor’s Map U23 Parcel 92, to create condominium units on their property in the R-4A Zone
 - f. Appeal No. 2366 - A Limited Reduction of Yard Size Appeal by Alan Vittorioso, 9 Barbara Avenue, Assessor’s Map U42 Parcel 51, to add a second floor and front porch 12 feet from the side line and 25 feet from the front line in the R-4 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 11, 2007

MINUTES

Members Present

Staff

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

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

1. Call to Order (7:00 P. M.)

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

2. Roll Call

The Recording Secretary called the roll; Mr. Loisel was absent.

3. Approval of Minutes (March 14, 2007)

Mr. Blaise noted that Mr. Craft's name should be removed from being authorized to vote as he is a voting member. Mr. Blaise moved to approve the minutes of March 14, 2007; Mr. Craft seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2361 – A Variance Appeal by Stephanie Williston, 135 Winnocks Neck Road, Assessor's Map R83 Parcel 30, to allow an existing shed to remain 10.3 feet from the rear line and 14 feet from the side property line in the R-2 Zone

This appeal was tabled at the request of the appellant.

b. Appeal No. 2362 - A Limited Reduction of Yard Size Appeal by Richard and Lynne Silkman, 15 Spring Street, Assessor's Map U22 Parcel 104, to construct an addition with overhangs 14 feet from both side lines in the R-4A Zone

Mr. Silkman stated that they wanted to put on an addition to provide a garage with a bedroom above and a small third floor addition because they intended to live there full time. He stated that the existing house overhangs the setback by about four inches; he stated that their contractor used the existing house for the footprint and they wanted the addition to be consistent with the existing house and were asking for one foot variances. Mr. Grysk noted that the foundation met the setback requirements from which they measured when the house was built. Mr. Dryzga confirmed that the eaves were about 4.5 inches over the setback line.

Mr. Dryzga and Mr. Silkman addressed the criteria. Mr. Dryzga read letters in favor of the appeal from Patricia and Joe DeGrinney, of 18 King Street, and Thomas Toohey, of 17 King Street.

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; Mr. Blaise seconded.

Voted 5-0

c. Appeal No. 2363 - A Special Exception Appeal by Nadra and Rob Edgerley, 9 Grapevine Lane, Assessor's Map R23 Parcel 203, to operate a photography studio as a Home Occupation in the R-F Zone

Mr. Edgerley stated that they were building a new 2,700 square foot home and wanted to have a finished photography studio in a 700 square foot accessory building to the rear. He stated that they would like to have a loft with a bathroom in the studio building where they projected about 80 photo shoots per year; he stated that most of the business would be done off-site.

Mr. Dryzga and Mr. Edgerley addressed the criteria. Mr. Edgerley stated that they did not expect to have a sign other than a small directional sign on the mailbox. Mr. Grysk stated that a home occupation was allowed a six square foot sign, which could be freestanding. Ms. Edgerley stated that she did not develop her own photographs.

Mr. Craft confirmed that no one would live in the accessory building. To a question from Mr. Massengill, Mr. Edgerley replied that in the summer they sometimes took senior portraits, possibly two per day. Ms. Edgerley stated that, typically, two to four people went to their house per week for consultations or photo shoots. To a question from Mr. Massengill, Mr. Edgerley replied that they thought it practical to install the shower at this time in the event they wanted an accessory unit in the future.

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

Mr. Maroon noted that traffic should not be outrageous compared with a home day care; he stated that he was concerned about the shower because getting an accessory unit required going through the Code Officer. Mr. Maroon also noted that there should be only one electrical meter for both the house and the studio. Mr. Temm stated that the shower could be piped in but not installed. To a question from Mr. Dryzga, Mr. Grysk replied that a plumber would not have to get a permit to replace a shower stall but if there were no fixture a permit would be required to install the shower on a stubbed pipe. Mr. Grysk stated that his office would inspect the rough plumbing, require the shower to be capped properly, and then do a final inspection and issue a Certificate of Occupancy which could indicate that only the toilet and sink were allowed. He noted that there were occasions when a shower was installed in a garage so it was not unusual to have a lone shower; he noted that in a full basement it would be easy to run the plumbing after the construction was done.

Mr. Maroon moved to approve the appeal with the condition that neither the shower stall nor its plumbing be installed and that the utilities be on one meter; he stated that a six square foot sign was allowed. Mr. Blaise seconded.

d. Appeal No. 2364 - A Practical Difficulty Variance Appeal by Robert and Richard Foley, 3 Foley Farm Road, Assessor's Map U44 Parcel 8, to convert a garage into a dwelling unit on its own lot with a 13.7 foot side setback in the R-2 Zone

Mr. Shawn Frank, of Sebago Technics, showed the location of the site and stated that there was a two family dwelling and a detached garage, both of which had been relocated in 1992. He stated that they

constructed a new garage and wanted to put in an accessory unit but that was not allowed in a two family house. Mr. Frank stated that the foundations of the two buildings were 31 feet apart but the eaves would be within the setbacks if the lot were divided. He noted that only the southwest corner of the garage would be within the setback and the variance of 1.3 feet would affect only a small triangle of the building. He stated that this variance would allow them to create a second lot for a dwelling unit. He noted that the entire site was 36 acres.

Mr. Grysk stated that he had worked with the appellant and this was the best solution; he stated that if this were approved, the Planning Board would have to grant amended subdivision to the Shop 'n Save Subdivision plan.

Mr. Dryzga and Mr. Frank addressed the criteria as presented in writing. Mr. Dryzga read a letter in favor of the appeal from Steven Brier, owner of 183 U. S. Route One.

There was discussion regarding the use of a private way. Mr. Dryzga stated that the Zoning Board criteria did not address private ways and when the appellant went to the Planning Board for amended subdivision, the private way issue and the right to create a lot would be addressed. He stated that the Zoning Board's decision was only to vote on a variance, not to create the lot. Mr. Frank noted that the original subdivision created a private way of record, ending in a cul de sac. Mr. Grysk stated that the appellant could not request creation of a new lot with a nonconforming setback and it was up to him to tell them whether they met the requirements. Mr. Craft confirmed that if the Planning Board did not approve a new lot, the Zoning Board's decision would become null and void.

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; Mr. Maroon seconded.

Voted 5-0

e. Appeal No. 2365 - An Administrative Appeal by David and Cheryl Aranovitch, 95 East Grand Avenue, Assessor's Map U23 Parcel 92, to create condominium units on their property in the R-4A Zone

Attorney William Kany, who represented the appellants, stated that there was more than one issue in this appeal. He explained that the property was comprised of two main houses, one of which was on a private way, with eight buildings comprising ten rental units between them. He stated that the first issue was the division of the lot into three separate properties; he stated that Mr. Grysk had approved the lot at the rear with the single family dwelling, the second property would be the house on East Grand Avenue and the third would be the ten units on their own lot.

Mr. Kany stated that Mr. Grysk agreed that the rear lot could be sold but the balance of the property needed to be kept as a single unit. He stated that their first appeal dealt with dividing the remaining lot and they maintained that the main house could be functionally divided. Mr. Kany stated that the structures predated zoning and the only common utility was the water line and the main house had its own yard, sewer hookup and access. He stated that the only other connection was the fact that the owners lived there and operated the rental units with most reservations being done by mail. Mr. Kany stated that the cottages were rented by the week during the summer and rented through the winter. He reiterated that the house area was a separate, distinct piece. Mr. Kany cited a legal case where all dwellings predated zoning and had separate yards and it would not make a difference in impact whether they were owned separately or rented. He stated that the house was a single family dwelling now so there would be no change in use.

Mr. Kany stated that dividing the lots would have no impact on the neighborhood and a change of ownership would not constitute an expansion of a nonconforming use as determined in the legal case. Mr. Kany stated that the town wrestled with the same issues in 1989, when the Scarborough Town Attorney determined that there would be no expansion of a nonconforming use when houses were sold separately. Mr. Kany stated that this appeal was similar but divided a little bit differently.

To a question from Mr. Dryzga, Mr. Kany replied that the house lot at the corner of East Grand Avenue was proposed to be 150 by 160 feet. Mr. Temm confirmed there would be three different deeds. To a question from Mr. Temm, Mr. Kany replied that the division of these lots was covered by an exemption in the subdivision law because they were in existence prior to 1971. Mr. Dryzga stated that the drawing given to the Board was inadequate to determine what was being done. To a question from Mr. Dryzga, Mr. Grysk replied that the whole property was currently one lot with the main house and the ten units having frontage only on East Grand Avenue, but the rear lot had frontage on Blaine Avenue; he stated that there was one deed for the rear lot and one deed for the front including the rental units. Mr. Grysk stated that the legal case noted dealt with single family dwellings, not rental units. He stated that the house is a part of the whole with an office in the house for the units. Mr. Grysk stated that the site became nonconforming in 1958/1959; he stated that the R-3 Zone allowed motels and tourist courts until the 1970 ordinance, which did not allow motels and tourist courts. He stated that what was existing prior to the 1970 ordinance was grandfathered. He stated that he could not see that the rental units were ever used on a year round basis and the front house was grandfathered as living space for the proprietor of the tourist court. Mr. Grysk stated that that no one had come before the Board to get permission for year round single family homes on this site. He stated that this was one of many request for creating condominium units and the Town Council was working on guidelines for conversions to condominiums under the Miscellaneous Appeal to change one use to another.

Mr. Dryzga confirmed that this site was under one ownership and was one 49,281 square foot lot. Mr. Dryzga asked whether this would be permitted if the Board was dealing with dwelling units, not a motor court; Mr. Grysk replied that a dwelling unit would need 10,000 square feet of land and two units would need 20,000 square feet. To a question from Mr. Dryzga, Mr. Grysk replied that, if this were an empty lot, the only allowed use would be a duplex. To a question from Mr. Dryzga, Mr. Grysk replied that the rear lot was a conforming lot with frontage on Blaine Avenue; he stated that a 50 foot wide right of way with 75 feet of frontage was required to create a lot. He stated that the Ordinance indicated that if one or more lots under single ownership had contiguous frontage they were considered one lot, but the rear lot did not have the same frontage as the two lots in question. To a question from Mr. Dryzga, Mr. Grysk replied that Blaine Avenue was used for frontage in the deed for the rear lot; he stated that the rear lot was grandfathered to be on Blaine Avenue but a new lot could not use Blaine Avenue for frontage.

Mr. Dryzga confirmed that that the Board was being asked to divide the front site without the rear lot and both front lots would have 75 feet of frontage on East Grand Avenue.

Mr. Kany stated that the Board should keep in mind that in the legal case there were two single family homes and a duplex on one lot and not enough area to divide them into the one acre lot required. He stated that the space was not required because the structures were grandfathered and they were functionally divided because there was no impact. Mr. Kany stated that it was clear these structures could be divided functionally if the units were houses because they existed before 1971. He stated that the only tie between the house and the units was the office and if the units were houses the tenants would still go to the house to pay their rent. He stated that the units had been rented during the winter since the 1950s and were rented when the new zoning went into effect in 1970 when they became nonconforming. He noted that no services generally provided to a motel were provided to these units.

Mr. Dryzga read the appeal as written, "An appeal against the decision of the Code Enforcement Officer,

who determined that the creation of condominium units is not an allowed change to the grandfathered use of rental cottages and apartments.” Mr. Kany stated that in one of his decisions, Mr. Grysk stated that the rear piece could be sold separately but the front section had to remain one piece. Mr. Kany stated that the part of the appeal as requested, that the lots be functionally divided, was not included in the appeal. Mr. Dryzga stated that the Board should not make any decision other than on the specific appeal. He stated that it was clear that a Miscellaneous Appeal would be required to change a grandfathered use and the Board had nothing before it on the functional division of the site.

Mr. Grysk stated that he thought the appellant was trying to mix a lot of issues together; he stated that he had allowed functionally divided dwelling units but needed a legal opinion on splitting tourist cabins. Mr. Dryzga stated that the appeal was about condominiums and the Board was presented tonight with functional division. Mr. Grysk stated that he was not discussing functional division but the contiguous frontage; he reiterated that the rear lot could be divided because it had its own frontage. Mr. Dryzga stated that he thought the discussion was about something totally different from what was presented. Mr. Kany read a section of Mr. Grysk’s letter of March 12, 2007, in part, as follows: “My conclusion is that the large house and 10 cabin units are not ‘functionally divided’ from one another, and that the nonconforming use is a single motor court/tourist court business, not individual dwelling units. The units have been, and continue to be, served by common utilities, and have been rented through an office located in the main house, where the operators of the tourist court/motor court have resided. Further, the units have been and continue to be available for occupancy by the traveling public. The house and 10 units cannot be divided into separate lots and the units cannot be sold as separate, individual units because that would be a change from the original nonconforming use.” Mr. Kany stated that that was the appeal they brought but it sounded like it was not advertised properly and they could return to the Board.

Mr. Dryzga stated that he would like to hear from the town what issues there were for breaking out three lots for an appeal on which the Board could rule. Mr. Kany stated that his letter of February 26, 2007 and Mr. Grysk’s of March 12, 2007 explained those issues as well as that of functional division in his own letter. Mr. Dryzga asked whether the appellant wanted the appeal tabled and corrected and continue regarding the grandfathered use of the condominiums; Mr. Kany replied that he did.

Mr. Kany stated that there were seven freestanding units and one structure with three units; he stated that they all had kitchens and had been heated since the 1950s and rented continuously from Labor Day to June. He stated that the units were then rented for a week or more with no services. Mr. Kany stated that their position was that they did not need a Miscellaneous Appeal because the structures were dwellings now and they were not changing the use but simply changing the ownership. He read the definition of dwelling and the definition of hotel/motel. He stated that people rented the units during the winter for more than 220 days so they were dwelling units; he stated that they had 10 separate and distinct dwellings without transients since the 1970s. Mr. Kany stated that the legal case compared and reiterated that the units were still dwelling units. He stated that the town was saying that their case is like the Lighthouse Inn, but the Inn was a motel that wanted to change to condominiums and that was a change of use.

Mr. Kany stated that in this case, because of the history of use, they were not changing anything by changing ownership; he noted that there were precedents in Pine Point. He quoted Attorney Vaniotis’ letter of February 15, 2000, regarding a property at Pine Point, stating that because the land would not be divided for each unit, it did not constitute a division of the land into lots. Mr. Dryzga stated that he understood the argument, but the town used the Miscellaneous Appeal for a grandfathered use for the purpose of going through the criteria. Mr. Kany stated that that assumed a change in use and his contention was that nothing was changing.

Mr. Grysk stated that he saw this site as a whole and it was used for transients during the summer; he stated that nonconformity dealt with many issues. He stated that the legal case cited dealt with a non-

conforming property because the buildings were too close together but the use was single family dwellings. He stated that this property was still rented as a tourist court during the summer and was advertised as such; he stated that he was using the principal use of the property for what it was designed. To a question from Mr. Dryzga, Mr. Kany replied that this was considered a business with rental income from rental units. Mr. Dryzga stated that he considered this a conversion from a business to a residential use. Mr. Kany stated that this was not different from an apartment complex being converted to condominiums; he stated that the point was that, because of the length of time the units were rented during the winter, they were dwellings by definition.

Mr. Dryzga noted that if apartments were allowed on a site, converting them was one thing, but this was a nonconforming use. Mr. Maroon agreed that this was a business that was being changed to dwelling units. Mr. Dryzga agreed with Mr. Grysk that a Miscellaneous Appeal was necessary and he felt that Mr. Grysk did his job properly.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal. Mr. Dryzga read two letters in favor of the appeal from Dianne McLellan and Judy Shirk (no addresses given). Mr. Dryzga closed the public hearing.

Mr. Kany stated that his other point was that the Ordinance, Section III.C.3., stated "Notwithstanding any space and bulk requirements of this Ordinance, a nonconforming building or structure may be used for any use allowed in the zoning district where it is located." He stated that they clearly had structures that did not meet the space and bulk requirements and in this case, single family and multiplex units were allowed in the R-4A Zone. Mr. Kany stated that they should be able to convert their units to single family dwellings because they were allowed uses.

Mr. Maroon stated that the term "dwelling unit" was what the Board was discussing, not the term "dwelling." He stated that the unit was not a one family dwelling unit if the tenants had to get out in the spring. Mr. Kany stated that his argument was not that the units were functionally divided and that only the house should be functionally divided; he noted a letter from 1986 indicating that the State of Maine considered the units to be residential units so were not charged tax for propane gas. Mr. Craft stated that he was impressed by the fact that the units were occupied more than 186 days, but the Board had to consider that they were also advertised as a motor court. Mr. Temm asked what the difference would be if a winter renter stayed through the summer; he stated that the definition of a transient guest was someone who occupied a hotel/motel for less than 186 days as noted in the definition of Hotel/Motel. Mr. Grysk stated that that definition was intended for permitted uses in a B-2 Zone which allowed hotels and motels so someone could live in a suite rather than a room. He reiterated that this was a nonconforming use and noted the history that the site had operated and advertised as a motor court. Mr. Blaise stated that he agreed with Mr. Grysk and it was straightforward that rental cottages could not be converted.

Mr. Massengill stated that he was not completely sold on the town's own legal opinion; he stated that he was not convinced that the units were not transient cottages. To a question from Mr. Massengill, Mr. Kany replied that the ten units were rented during the winter 100% of the time. Mr. Massengill stated that the question was whether the units could be considered transient if they were rented for 186 days and then weekly for the summer. Mr. Dryzga read the definition of hotel/motel was a building or group of buildings containing six or more guest rooms and offering lodging accommodations (which may include accessory services....) to transient guests," so, by definition, this site was a hotel/motel. He stated that for ten weeks the units were rented to transient guests and more than 50% of the income was derived from those ten weeks. Mr. Kany reiterated that they were using the town's definition that they were not transients if they used the units for more than 186 days. Mr. Grysk reiterated that that definition applied to a conforming use in the B-2 Zone were single family dwellings were not allowed.

Mr. Massengill stated that the units should be separate and not on common utilities; he stated that the survey was pathetic and it was difficult to understand what was going on. Mr. Maroon stated that he supported Mr. Grysk's decision because the motel was still in use as an active motel, the returns showed it was a business and going from a business to a residential use was a change in use. Mr. Maroon stated that he agreed with Mr. Grysk's opinion that this was a nonconforming business and required a Miscellaneous Appeal. Mr. Dryza agreed with Mr. Maroon, and stated that he felt the use was changing and he did not think it was a big leap to apply for a Miscellaneous Appeal.

Mr. Maroon moved to support Mr. Grysk's decision; Mr. Blaise seconded.

Voted 5-0

The appeal was denied.

Mr. Dryzga noted that the appeal addressed only the conversion of the units and there was nothing in the appeal about dividing the lots; Mr. Grysk stated that that was his understanding of what they were trying to do. Mr. Maroon stated that the fact was that the appellant received a letter indicating the appeal and had ample time to have it changed or corrected. Mr. Dryzga stated that the appellant and Mr. Grysk should determine what should be done about the functional division issues.

f. Appeal No. 2366 - A Limited Reduction of Yard Size Appeal by Alan Vittorioso, 9 Barbara Avenue, Assessor's Map U42 Parcel 51, to add a second floor and front porch 12 feet from the side line and 25 feet from the front line in the R-4 Zone

Mr. Massengill noted that he had once worked with Mrs. Vittorioso, but did not think that would affect his vote; the Board agreed.

Mr. Vittorioso stated that they wanted to construction an addition, but the house was built only 12.9 feet from the right property line and 25 feet from the front property line; he stated that they would build straight up and needed a 3 foot and a 5 foot reduction. He noted that they had been granted an appeal two years ago but had not been able to complete the project.

Mr. Dryzga and Mr. Vittorioso addressed the criteria.

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

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

Voted 5-0

5. Zoning Board Comments

To a question from Mr. Massengill, Mr. Grysk replied that the Pritchard appeal, which had been tabled at the last meeting, had been withdrawn by the appellant.

Mr. Blaise noted that when Mr. Aranovitch returned with a Miscellaneous Appeal, he should have a much clearer survey. To a question from Mr. Craft, Mr. Grysk replied that the Ordinance Committee was working on an Ordinance amendment to deal with the conversion of various units to condominium units.

6. Adjournment

The meeting was adjourned at 9:45 P. M.

