

Town of Scarborough

Zoning Board of Appeals

May 9, 2007

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (April 11, 2007)
4. Appeals
 - a. Appeal No. 2367 – A Practical Difficulty Variance Appeal by Jen, Mike and Katie Foley, 22 Ocean Avenue, Assessor’s Map U2 Parcel 113, to demolish a garage and build a storage/play building 5 feet from the side property line in the R-4 Zone
 - b. Appeal No. 2368 – A Special Exception Appeal by Michael Richard and Susan Barnicle, 212 Spurwink Road, Assessor’s Map R97 Parcel 11, to construct an accessory unit in the R-F Zone
 - c. Appeal No. 2369 – A Practical Difficulty Variance Appeal by Mary Hennessey Iyer dba First and Last Tavern, 240 Pine Point Road, Assessor’s Map U25 Parcel 16, to move a nonconforming sign onto the property from the right of way in the R-2 Zone
 - d. Appeal No. 2370 – A Miscellaneous Appeal by Mary Hennessey Iyer dba First and Last Tavern, 240 Pine Point Road, Assessor’s Map U25 Parcel 16, to enlarge a nonconforming sign to 27 square feet in the R-2 Zone
5. Zoning Board Comments
6. Adjournment

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

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Dryzga
Mr. Loisel
Mr. Maroon
Mr. Massengill
Mr. Temm

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

1. Call to Order

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. Craft was absent. Mr. Dryzga authorized Mr. Temm to vote.

3. Approval of Minutes (April 11, 2007)

Mr. Blaise moved to approve the minutes of April 11, 2007; Mr. Massengill seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2367 – A Practical Difficulty Variance Appeal by Jen, Mike and Katie Foley, 22 Ocean Avenue, Assessor’s Map U2 Parcel 113, to demolish a garage and build a storage/play building 5 feet from the side property line in the R-4 Zone

Ms. Jennifer Foley stated that they would like to remove the existing garage and replace it with a new structure of the same dimensions but moved from the property line to give a five foot side setback. Mr. Grysk noted that the structure would be twisted 90° from the old structure so the roof line would be in a different direction. He stated that the applicant also wanted to have a laundry room and three-quarter bathroom in the accessory building.

Mr. Dryzga and Ms. Foley addressed the criteria.

To a question from Mr. Maroon, Kevin Moquin, of Whitten Architects, replied that the south elevation would have glass doors. To a question from Mr. Dryzga, Mr. Moquin replied that there probably was no foundation beneath the building and the new structure would be on a concrete pad. Mr. Blaise noted that the building envelope was 20 feet wide. Mr. Dryzga confirmed that the garage was now on the neighbor’s property by one foot and the proposed building would be the same dimension as the existing building.

Mr. Dryzga opened the public hearing; no one spoke for or against the appeal. Mr. Dryzga read an e-mail from Eleanor Gibbons, 19 Houghton Street, who had several concerns about the proposal. Mr. Dryzga closed the public hearing.

Mr. Blaise stated that he had the same concern as Ms. Gibbons about the structure being a guest house

and was against having the bathroom. Mr. Dryzga stated that, based on the dimensions of the building, it appeared that it could fit in the building envelope; he asked why it was put in the corner of the lot; Mr. Moquin replied that the neighborhood children played in the combined back yards and they wanted to preserve that space. To a question from Mr. Dryzga, Mr. Moquin replied that there was a toilet in the existing garage but no one dared to use it and the water in the sink had not been turned on. Mr. Moquin noted that the storage area would have a concrete floor and would not be finished.

Mr. Maroon stated that he had no problem with rebuilding the structure but did have concerns with supplying it with water because it could then be rented; he stated that he was not totally against the laundry facilities but the bathroom could take it to an apartment use. He stated that eliminating the bathroom would allow him to vote in favor of the appeal. Mr. Temm noted that if there was a bathroom in the existing structure they were not changing anything. Mr. Dryzga stated that there was no shower and the other fixtures were not functioning. Mr. Grysk noted that the lot was not big enough for an accessory unit. To a question from Mr. Dryzga, Mr. Grysk replied that any plumbing changes would require a permit, but simply replacing a fixture did not require a permit.

To a question from Mr. Temm, Mr. Moquin replied that the existing toilet flushed into the public sewer. To a question from Mr. Massengill, Ms. Foley replied that she would like to trade the toilet for a shower to remove sand outside the house. Mr. Maroon stated that putting the structure more into compliance was a good idea but installing a shower and toilet made it less compliant and putting in a room made it non-compliant. He stated that, beyond a washer and dryer there was a concern that this would be a rentable room. Mr. Maroon reiterated that he had no problem with rebuilding the structure which would be more compliant; Mr. Massengill agreed.

Mr. Maroon moved to allow the appeal as requested with no plumbing; Mr. Blaise seconded.

Mr. Dryzga stated that he had problems with the toilet and shower because the lot could not support an accessory unit. Mr. Temm stated that with a shower but no toilet there would be no accessory unit. Mr. Grysk noted that during the early 1990s a house was allowed to have an accessory garage with a bedroom in it with a condition that it could not be rented and could not have kitchen equipment.

Mr. Maroon moved to amend his motion to allow the washer and dryer only; Mr. Blaise seconded.

The Board voted 5 to 0 to amend the motion.

Mr. Massengill stated that he had no problem with the toilet because there was an existing toilet, but he did have a problem with the shower.

Mr. Massengill moved to amend the amended motion to include all the plumbing except for a shower; Mr. Temm seconded. The Board voted 2 to 3 for the amendment to the amended motion; Mr. Temm and Mr. Massengill voted for the amendment to the amended motion, which failed.

The Board voted 5 to 0 for the original amended motion to allow only the washer and dryer.

b. Appeal No. 2368 – A Special Exception Appeal by Michael Richard and Susan Barnicle, 212 Spurwink Road, Assessor’s Map R97 Parcel 11, to construct an accessory unit in the R-F Zone

Mr. Richard stated that they were currently building a 700 square foot unit which would be accessory to the home which they would build at the top of the hill later this summer. Mr. Grysk noted that it was unusual to build an accessory unit prior to construction of the main house, but the appellants could live in the unit while they were building the house.

Mr. Dryzga and Mr. Richard addressed the criteria as presented in writing and the Registration of Accessory Units form. Mr. Richard noted that there were two existing septic systems. Mr. Grysk stated that he allowed two septic systems for accessory units. He stated that he had concerns about an accessory unit in an accessory building but it was allowed by the ordinance. He stated that any new owner of the property would have to get his own approval for an accessory unit because approval went with the owner and not the property.

To a question from Mr. Blaise, Mr. Richard replied that the breezeway was not heated. To a question from Mr. Blaise, Mr. Grysk replied that the living space would be 700 square feet because he used the inside of the outside walls for measurement.

Mr. Maroon stated that this was beyond the scope of what the ordinance was meant to do. He stated that he was concerned because he thought the accessory unit was a house and two houses on one lot would not make it an accessory. He asked what would happen when someone wanted to separate the houses, which would split the lot into two smaller lots than was allowed. Mr. Maroon stated that it could not meet the requirement of reverting back to the original use and it would mean that the accessory use was customarily incidental to the main use and compatible in size and impact. He stated that there would be no accessory use without a primary use and if both structures were primary they were both principal uses. He reiterated that the accessory unit was a house and was not incidental. He stated that the fact that the owner would occupy the unit prior to construction of the main house made it stand alone and was not an accessory. Mr. Maroon stated that the appellant had, in effect, changed the zoning by putting two houses on one property.

Mr. Maroon stated that this proposal violated the zoning because only one house was allowed per two acre parcel in the R-F Zone so it was an encroachment on the neighborhood. He stated that there were a lot of issues and he did not think this fit the Accessory Unit definition and wondered what happened with practical division of the lot. Mr. Richard stated that they tried to meet all the criteria with the square footage and tried to make the structure look like the original building. He stated that he did not think the lot would be divided because it needed two acres per home and, therefore, could only always be an accessory unit. Mr. Richard stated that the buildings were 200 feet from each other so would not look crowded; he stated that he was more than willing to put in the deed that it could never become two lots.

Mr. Blaise asked why the appellant removed the old structure and rebuilt before applying to the Board; Mr. Richard replied that it was a timing issue when an excavator and a carpenter were available. Mr. Richard stated that it could take him up to two years to build the house and this unit would allow them to get out of their rental property. To a question from Mr. Massengill, Mr. Grysk replied that the ordinance did allow accessory units to be in detached buildings. Mr. Grysk stated that he had issues with detached accessory units because it made it difficult to say they couldn't be used in the future. Mr. Grysk noted that a previous appellant lived in an accessory unit in a barn while he built the main house.

Mr. Temm stated that he saw no difference between starting a new structure and demolishing an original structure down to the required 750 square feet. Mr. Loisel reiterated that this would be two homes on one property. Mr. Dryzga asked whether there was mention of a second structure when the appellant applied for a building permit for the accessory unit; Mr. Grysk replied that it was discussed. Mr. Dryzga asked whether there was any caveat saying that what they were building was a small house and they would have to apply to the Board; Mr. Grysk replied that they discussed the issue and noted that a detached accessory unit was allowed. He stated that the ordinance indicated there had to be one space for a vehicle and they provided that with a one car garage for the accessory unit.

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 understood that this looked like two houses, but the ordinance did not say that an accessory unit could not look like a little house; he stated that he did not want to set a precedent that there could be two little houses on a two acre lot. Mr. Dryzga stated that he thought this met all the criteria but did not seem to be in the spirit of the ordinance; he noted that a barn with an accessory unit was allowed. Mr. Temm stated that it sounded as if the appellants were following the ordinance when they applied for their building permit and he did not think it was fair to them to get half way through the process and then be turned down. Mr. Dryzga noted that case law allowed some homes to be divided, but he did not know if the deed could be challenged.

Mr. Maroon reiterated that the structure could not revert to the previous use when the property was sold because it is the previous use. He stated that this looked like two houses; he stated that there was no existing building to be converted. To a question from Mr. Maroon, Mr. Richard replied that there would be only crawl space above the kitchen and living room. Mr. Temm noted that the ordinance did not say that an accessory unit could not be built first. Mr. Loisel stated that the primary use was the home under construction because there was no permit for a second home and when it was built neither house would become the primary use.

Mr. Maroon noted that Criteria e was not met because two homes on one lot did not meet the requirement for compatibility. Mr. Dryzga stated that there was no definition in the ordinance of what the accessory unit had to look like. Mr. Massengill stated that the garage on this structure proved its independence; he asked whether removing the garage would be acceptable to the appellant. Mr. Richard stated that when living in Maine a garage was important. Mr. Maroon stated that it was the difference between an accessory unit and a single family dwelling and a bedroom could be created over the garage. He stated that the unit was supposed to be incidental to the primary use but this structure could stand alone. He stated that the garage took the structure from incidental to subordinate to the main use and triggered it as two homes. Mr. Maroon stated that with no garage there could be no finished room above it and it would be more incidental.

To a question from Mr. Dryzga regarding the five year reregistration, Mr. Grysk replied that the Code Officer would have to look at the property to make sure it was being used as stated. Mr. Richard stated that they tried to satisfy all the criteria. Mr. Grysk noted that this would be registered as a single family lot with an accessory unit and in five years, if it was not approved again, the accessory unit would have to be eliminated; he stated that a deed restriction would reinforce that. Mr. Dryzga noted that if this appeal took place before the building was constructed, a decision would be made on the merit of the property, not which building was built first. Mr. Temm stated that he did not see how it could be said which structure should come first. Mr. Massengill stated that he appreciated Mr. Maroon's research, but because of the way the ordinance was written he saw no reason not to approve it.

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

Voted 4-1 – Mr. Maroon opposed.

Mr. Dryzga called a recess at 8:25; the meeting resumed at 8:30 P. M.

c. Appeal No. 2369 – A Practical Difficulty Variance Appeal by Mary Hennessey Iyer dba First and Last Tavern, 240 Pine Point Road, Assessor's Map U25 Parcel 16, to move a nonconforming sign onto the property from the right of way in the R-2 Zone

d. Appeal No. 2370 – A Miscellaneous Appeal by Mary Hennessey Iyer dba First and Last Tavern, 240 Pine Point Road, Assessor's Map U25 Parcel 16, to enlarge a nonconforming sign to 27 square feet in the R-2 Zone

Mr. Dryzga stated that the Board could hear these appeals together and would vote separately.

Ms. Chris Iyer, daughter of the appellant, stated that they wanted to move the existing sign away from the street just onto the property because it was located in the right of way and barely visible because it was obstructed by a light pole. She stated that they would also like to include a readerboard to show their hours. Mr. Grysk noted that the present sign was grandfathered but the appellant would like to redo the sign and move it onto the property; he stated that the required setback was five feet but placing the sign five feet back would eliminate a parking space. Ms. Iyer distributed photos of the site.

Mr. Dryzga and Ms. Iyer addressed the criteria for the Practical Difficulty Appeal.

Mr. Dryzga opened the public hearing. Mr. James Damicis, of 11 Hampton Circle, stated that he was on the Board of Scarborough Economic Development Corp. but was speaking as a private citizen. He stated that the community had seen a lot of growth in small businesses and a sign was very important to them; he stated that he did not think the sign would be out of line with the neighborhood. He asked that the Board understand how important signs were to small businesses which were important to Scarborough.

Mr. Dryzga read a letter in favor of the appeal from the Blue Point Congregational Church at 236 Pine Point Road. Mr. Dryzga closed the public hearing.

Mr. Blaise moved to approve the variance appeal; Mr. Maroon seconded.

Voted 5-0

To a question from Mr. Dryzga, Mr. Grysk replied that the sign ordinance allowed different setbacks depending on the size of a sign to promote smaller signs.

Mr. Dryzga and Ms. Iyer addressed the Miscellaneous Appeal criteria.

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 requested; Mr. Temm seconded.

Voted 5-0

5. Zoning Board Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 8:45 P. M.