

Town of Scarborough

Zoning Board of Appeals

December 12, 2007

AGENDA

1. Call to Order and Pledge of Allegiance
2. Roll Call
3. Approval of Minutes (November 14, 2007)
4. Appeals
  - a. Appeal No. 2427 - A Variance Appeal by Patrick Donahue, 58A Jones Creek Drive, Assessor's Map U22 Parcel 27, to divide a lot with two cottages, one of which will be 10 feet from the new line, and to expand the second floor of the east cottage 10 feet from the new property line and 28 feet from the front line in the B-1 Zone
  - b. Appeal No. 2428 - A Practical Difficulty Appeal by Susan Koch, 8 Ferry Road, Assessor's Map U17 Parcel 79, to demolish an existing home and rebuild 20 feet from the front property line in the R-2 Zone
  - c. Appeal No. 2429 - A Practical Difficulty Appeal by Jeff and Beth Quirk, 8 Tasker Avenue, Assessor's Map U22 Parcel 77, to expand and rebuild after a fire, 3 feet from the side property line and 10 feet from the front line in the R-4A Zone
  - d. Appeal No. 2430 - A Special Exception Appeal by David Quigley, 8 Quigley Way, Assessor's Map R14 Parcel 16A to create an accessory unit in the R-F 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

December 12, 2007

MINUTES

Members Present

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

Staff

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

1. Call to Order and Pledge of Allegiance

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

2. Roll Call

The Recording Secretary called the roll; Messrs. Dryzga, Loisel and Massengill were absent. Mr. Maroon authorized Mr. Temm to vote.

3. Approval of Minutes (November 14, 2007)

Mr. Blaise moved to approve the minutes of November 14, 2007 as written; Mr. Temm seconded.

Voted 3-0-1 – Mr. Craft abstained.

4. Appeals

a. Appeal No. 2427 - A Variance Appeal by Patrick Donahue, 58A Jones Creek Drive, Assessor's Map U22 Parcel 27, to divide a lot with two cottages, one of which will be 10 feet from the new line, and to expand the second floor of the east cottage 10 feet from the new property line and 28 feet from the front line in the B-1 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, explained that this appeal would divide the property into two legal, nonconforming lots. He stated that the west side cottage had been given a variance at the last meeting and he would like to focus on the east side tonight. He stated that they wanted to make this a legal, nonconforming lot so that they would not have to return to the Board every time something needed to be done. He stated that the new, side property line would be ten feet from this cottage and a variance from the Board would make that a conforming setback.

Mr. Fisher stated that there was an existing portion of the entryway on the other side of the structure and they would like to move the stairway into the building envelope. He stated that they would like to expand the second story by changing the degree of the roof slope and move the front steps over on the front of the house. He stated that this would make the entire lot legally conforming.

To a question from Mr. Blaise, Mr. Fisher replied that a functional division was done by the courts. Mr. Craft stated that this variance would not take effect until the deed was recorded. Mr. Grysk stated that the lots would be conforming and the Board's approval would make the buildings conforming. To a question from Mr. Craft, Mr. Grysk replied that the appellant would not have to go through the courts to divide the property; he stated that the Board would be approving the location of the property line. Mr. Grysk stated

that the appellant could not use the other variance appeals because the property was in the Shoreland Zone and had been built prior to 1991.

Mr. Maroon opened the public hearing. Mr. John Barrett, owner of 2 and 4 Avenue Three, stated that he objected to this appeal because it would set a precedent in the Pine Point area. He stated that this would cause much congestion if the new lots were created and it would be in the public interest if this appeal were not approved. Mr. Barrett stated that the appeal did not meet the Variance Appeal criteria. He stated that the building was not in a condition that it would not give a reasonable return, was not an odd property or have unusual circumstances, it would alter the locality because it would encourage the same on other properties, and, most important, this was caused by the appellant who would split the lot. He stated that the easement they wanted to create from one lot to the other for a driveway was uncharacteristic to the neighborhood. Mr. Barrett stated that he was surprised the Board did not ask about the hardship criteria at the last meeting; he reiterated that the appellant was creating his own hardship.

Mr. Maroon read a letter in favor of the appeal from Susan and Gary Tapley, of 62 Jones Creek Drive. Mr. Maroon closed the public hearing.

To a question from Mr. Craft, Mr. Grysk replied that both lots would be conforming lots of 10,000 square feet. Mr. Grysk reiterated that the lots could be divided with approval from the Board; he stated that nothing on the site would change.

Mr. Maroon and Mr. Fisher addressed the criteria as presented in writing. Mr. Fisher stated that the hardship was caused by the zoning being imposed after the houses were built and not created by this division. and the character of the neighborhood would not change. He stated that they would only raise the second story in the rear and the façade would not change.

Mr. Temm asked whether the appellant had to own the property in order to appeal; Mr. Maroon stated that the contract gave him right, title and interest. Mr. Blaise confirmed that the appellant would live in one house and sell the other. Mr. Maroon noted that the property could be divided whether or not the Board approved this appeal. To a comment from Mr. Barrett, Mr. Maroon stated that the hardship was not about the owner of the property but about the property itself. Mr. Fisher stated that they were trying to be proactive by making the site more conforming. Mr. Maroon noted that the character of the neighborhood would not change. To a question from Mr. Temm, Mr. Maroon replied that the precedent was set by the court case in Saco which allowed the property to be divided.

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

Voted 4-0

b. Appeal No. 2428 - A Practical Difficulty Appeal by Susan Koch, 8 Ferry Road, Assessor's Map U17 Parcel 79, to demolish an existing home and rebuild 20 feet from the front property line in the R-2 Zone

Ms. Koch stated that since she submitted her appeal she had spent time discussing the best way to place the building and had decided to flip the house so that it would fit better on the lot. She stated that it was a modest house of 32 by 40 feet with an eight foot front porch, a mudroom and a 28 by 28 foot garage. Ms. Koch stated that she was asking for an eight foot variance in the front corner; she stated that the existing garage and shed would be removed. Mr. Grysk stated that he had discussed alternatives with the appellant and this solution was better than the previous plan.

Mr. Maroon and Ms. Koch 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 with the new, flipped house; Mr. Temm seconded.

Voted 4-0

c. Appeal No. 2429 - A Practical Difficulty Appeal by Jeff and Beth Quirk, 8 Tasker Avenue, Assessor's Map U22 Parcel 77, to expand and rebuild after a fire, 3 feet from the side property line and 10 feet from the front line in the R-4A Zone

Mr. Quirk stated that a fire had caused structural damage to the roof and gutted the house and they felt it would be a good idea to change the pitch of the roof on the rear of the house when it was rebuilt. He noted that the house was a series of add-ons; he stated that the single story area was not damaged but this would be a good time to change the bad architecture with a much more suitable coastal design. Mr. Quirk stated that this would give them a new start with 100% rehabilitation to the building.

To a question from Mr. Maroon, Mr. Quirk replied that there were markers and he was on the list for a survey to be done; he stated that the neighbors' pins were in place. Mr. Grysk stated that he was comfortable with the existing pins and the footprint of the building would not change. To a question from Mr. Blaise, Mr. Quirk replied that moving the building would be cost prohibitive and much more than insurance would cover, and the building was on a foundation built in 1985. To a question from Mr. Craft, Mr. Quirk replied that the structure would be three stories but less than the 35 feet allowed.

Mr. Maroon and Mr. Quirk 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 grant the appeal as presented; Mr. Maroon seconded.

Voted 4-0

d. Appeal No. 2430 - A Special Exception Appeal by David Quigley, 8 Quigley Way, Assessor's Map R14 Parcel 16A to create an accessory unit in the R-F Zone

Mr. George Thebarg, who represented the appellant, stated that this was a two acre lot on a private road off Beech Ridge Road; he stated that the home had four bedrooms and the appellant wanted to create an accessory unit in his basement. He stated that the septic system had been verified with an oversized system and he had submitted an HHE-200 showing that the system could be expanded. Mr. Thebarg stated that they believed this met all the requirements and the neighbors had no issues.

Mr. Maroon and Mr. Thebarg addressed the criteria as presented in writing as well as the Accessory Unit performance standards. Mr. Maroon and Mr. Quigley addressed the Registration of Accessory Units form.

Mr. Grysk stated that this was not clearcut because of the replacement variance request for the septic system; he stated that he had contacted Mr. Albert Frick, soils evaluator, who indicated that the present system was way over-designed. Mr. Grysk stated that his opinion was that the system did not meet the State requirements. He stated that two lots on this road had the variance and they had to meet a point system. He stated that this system was not oversized but was designed to meet the point requirements. Mr. Grysk stated that adding a second dwelling required a full system that would have to accommodate

120 gallons plus 66% which would increase the size of the bed and a tank for 2,000 gallons. He stated that a New System Variance had to be signed by the Town Manager. He stated that there was only 9 inches of original soil and Scarborough's code required 15 inches so they would have to have extra chambers and he looked at this as a major expansion and a first time system variance. Mr. Grysk stated that the policy of the town was that an accessory unit had to expand the system. He stated that he would rather see a different system than an expanded system; he stated that he had been waiting for the paperwork from the evaluator. He stated that the proposed system was a minor expansion with a new 1,000 gallon tank added. He stated that by increasing the tank size as required by the state plumbing code and an accessory unit, this was a major expansion and needed installation if approved.

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

Mr. Maroon stated that he was concerned that the appellant indicated the septic system was oversized. Mr. Thebarga stated that he had prepared a memo and believed that the system met the ordinance requirements; he stated that it was important to understand that the State required 12 inches of soil because the new system designs had a 98% success. He stated that the system was designed to handle up to 1,200 gallons per day but what is coming is 600 gallons and, according to Mr. Frick, the unit had excess and adequate capacity to handle the accessory unit. Mr. Thebarga stated that it adds a requirement of 200 to the 600 gallons for an 800 gallon mass capacity or 400 gallons extra capacity.

Mr. Maroon stated that the point system had to be followed because that was how the original system was approved; he asked what could be done to meet the point system. Mr. Grysk replied that the point requirement was 50 points and the system had about 60; he stated that the points and the size were the requirements to be able to build on the site. He stated that the State considered this a major expansion and it was a first time system. Mr. Maroon stated that this was not a replacement system but a first time system because it was a major expansion. To a question from Mr. Maroon, Mr. Thebarga replied that the appellant would dig up the system and put more chambers between the existing chambers. Mr. Maroon read, in part, Section IX.J.E. of the Zoning Ordinance as follows, "...and must provide certification from a licensed soils evaluator that another area of suitable soil exists on the property to be used for septic repair in the event of failure of the original system." Mr. Maroon asked where there could be a second system; Mr. Thebarga replied that systems were replaced in the same area. Mr. Maroon stated that he did not think Mr. Frick answered that question. Mr. Grysk stated that Mr. Frick agreed the system was not oversized. He stated that this was not a normal bed because of the topography. To a question from Mr. Temm, Mr. Thebarga replied that there was an unfinished daylight basement and no existing bedrooms would be removed.

Mr. Grysk noted that there was a For Sale sign on the property and he had inquiries on it and would be concerned with approval of this appeal if the property were sold. He stated that selling the property after receiving approval was beyond the intent of an accessory unit, but a new owner could sign the Registration of Accessory Unit form and agree to the requirements. Mr. Thebarga stated that this was a tough sales market and the appellant had a \$2,500.00 per month mortgage and the burden of the septic would be an added \$5,000.00. He stated that they were appealing to the Board because of a technicality of Mr. Grysk's; he stated that Mr. Frick and the State saw this as a minor expansion. Mr. Maroon reiterated that there was no other location shown for a new septic system and he believed that this would be a major change and the system in place did not meet the standard and he would want a replacement to meet the requirement. He stated that the system was set up for a one time variance for the environmentally delicate area and he did not agree with another first time variance.

Mr. Craft noted that Mr. Grysk was not satisfied with the septic system. Mr. Blaise stated that if Mr. Grysk was uncomfortable he, too, was uncomfortable. Mr. Temm asked whether there was any proof that

the system would pass; Mr. Grysk replied that it was a new system and functioning properly for its designed purpose, but now that it was being added to, it was a major expansion, not a minor expansion such as one bedroom. Mr. Grysk stated that he had no documentation from Mr. Frick showing what needed to be done; he stated that the process was that he would approve the system and the Town Manager would sign the variance because the town would take responsibility if the system failed. Mr. Temm asked whether the Board could table this appeal in order to receive the proper documentation indicating that the system would support the addition. Mr. Grysk stated that he did not think the property should be taxed any further by adding additional dwelling units. Mr. Maroon stated that the septic system would have to be expanded.

Mr. Thebarger stated that he hoped for an approval with conditions. Mr. Maroon reiterated that he saw no replacement system area as required by the ordinance. He stated that he did not understand how someone could get a first time system variance when there was already a first time variance in place. Mr. Grysk stated that the addition of a dwelling unit was a major expansion. Mr. Blaise stated that he saw no reason not to table this appeal so the appellant could work with Mr. Grysk, and the Town Manager should approve the new system variance before the Board voted. Mr. Maroon stated that the system had to be built and a backup location had to be shown. Mr. Craft stated that he was in favor of tabling.

Mr. Maroon moved to table the appeal for one month so that the plan could be developed to deal with the point system sufficient to meet the requirements. Mr. Grysk stated that he had to enforce the regulations and he had no paperwork to show the gallons per day per bedroom and needed that document before the Town Manager signed the new system variance to take the responsibility of the system by the town. Mr. Maroon withdrew his motion to table.

Mr. Maroon moved to approve the appeal subject to the following conditions.

1. That a septic system plan meeting all requirements be submitted;
2. That the plan meet the point system requirements;
3. That the requirements be met to the satisfaction of the Code Enforcement Officer at his sole discretion and that the Town Manager was satisfied and signed the paperwork;
4. That a second location for a replacement system be shown per Section IX.J.E.
5. That Section IX.J.K. be met – That all municipal and state codes in effect at the time of application must be followed.

Mr. Craft seconded.

Voted 4-0

#### 5. Zoning Board Comments

Mr. Maroon stated that the Board needed to elect a Chairman and a Vice Chairman for 2008 but would wait until there was a full Board to vote.

Mr. Craft wished everyone Happy Holidays; Mr. Maroon wished everyone a Merry Christmas.

#### 6. Adjournment

The meeting was adjourned at 8:55 P. M.

