

Town of Scarborough

Zoning Board of Appeals

September 10, 2008

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (August 13, 2008)
4. Appeals
 - a. Appeal No. 2453 – A Special Exception Appeal by Nanette and Craig Tanner, 96 Spurwink Road, Assessor’s Map R99 Parcel 22, to create an accessory unit above their garage in the R-F Zone
 - b. Appeal No. 2454 – A Special Exception Appeal by Michael Rockenstine and Amelia Kurtz, 1 Howard Lane, Assessor’s Map R23 Parcel 1502, to finish a detached garage for heated storage in the R-F Zone
 - c. Appeal No. 2455 – A Variance Appeal by Pat Donahue, 60 Jones Creek Drive, Assessor’s Map U22 Parcel 27A, to continue reconstruction of a home in the B-1 Zone
 - d. Appeal No. 2456 – A Special Exception Appeal by Gregory Turner, 231 Pine Point Road, Assessor’s Map U26 Parcel 57, for a home occupation to sell lobsters in the R-2 Zone
 - e. Appeal No. 2457 – A Practical Difficulty Variance by Andrew and Brenda Jones, 25 Jasper Street, Assessor’s Map U26 Parcel 25, to create a new lot with an 80 foot frontage 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

September 10, 2008

MINUTES

Members Present

Staff

Mr. Dougherty
Mr. Loisel
Mr. Maroon
Mr. Massengill
Mr. Temm

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

1. Call to Order

Mr. Maroon called the meeting to order at 7:05 P. M. The Pledge of Allegiance was recited.

2. Roll Call

The Recording Secretary called the roll; Mr. Blaise was absent. Mr. Maroon authorized Mr. Dougherty to vote.

3. Approval of Minutes (August 13, 2008)

Mr. Loisel moved to approve the minutes of August 13, 2008; Mr. Dougherty seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2453 – A Special Exception Appeal by Nanette and Craig Tanner, 96 Spurwink Road, Assessor’s Map R99 Parcel 22, to create an accessory unit above their garage in the R-F Zone

Mr. Tanner stated that they wanted to build an accessory unit above their garage. Mr. Grysk stated that all the requirements were met.

Mr. Maroon and Mr. Tanner addressed the Special Exception criteria and the Registration of Accessory Units form.

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

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

Voted 5-0

b. Appeal No. 2454 – A Special Exception Appeal by Michael Rockenstine and Amelia Kurtz, 1 Howard Lane, Assessor’s Map R23 Parcel 1502, to finish a detached garage for heated storage in the R-F Zone

Mr. Maroon noted that he was on a board with Ms. Kurtz but felt he could be objective with this appeal; neither the Zoning Board members nor the appellants had an issue with Mr. Maroon hearing the appeal.

Mr. Rockenstine stated that they wanted to finish their garage for heated storage of a classic vehicle; he stated that there would be no plumbing in the garage. Mr. Grysk stated that it had been the Town's policy, based on other appeals, that a detached structure could not be finished without approval from the Zoning Board. Mr. Maroon noted that this would prevent someone from putting in a rental unit.

Mr. Maroon and Mr. Rockenstine 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. Massengill moved to approve the appeal as presented; Mr. Temm seconded.

Voted 5-0

c. Appeal No. 2455 – A Variance Appeal by Pat Donahue, 60 Jones Creek Drive, Assessor's Map U22 Parcel 27A, to continue reconstruction of a home in the B-1 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, explained that the appellant had received a variance but when he jacked up his house to create a new foundation it was determined that the structural integrity was very compromised. He stated that the structure started to fall apart because of haphazard construction. Mr. Fisher stated that during reconstruction, the contractor raised the house higher than was approved by the Zoning Board and the Code Enforcement Officer issued a Stop Work Order. Mr. Fisher stated that the structure had to be made more stable.

Mr. Grysk stated that this was a case where the Board approved a second story but not to completely rebuild the first floor. Mr. Maroon confirmed that, because the building was in the Shoreland Zone, there could not be more than 50% reconstruction. Mr. Grysk stated that the building design would not change from what was originally approved.

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

Mr. Maroon opened the public hearing; no one spoke for or against the appeal. Mr. Maroon read a letter from Renee McBride, of 63 Jones Creek Drive, in favor of the appeal; and a note in favor from Kevin O'Brien, 58 Jones Creek Drive, Karen Lothrop, 56 Jones Creek Drive, and Susan and Gary Tapley, 62 Jones Creek Drive. Mr. Maroon closed the public hearing.

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

Voted 5-0

d. Appeal No. 2456 – A Special Exception Appeal by Gregory Turner, 231 Pine Point Road, Assessor's Map U26 Parcel 57, for a home occupation to sell lobsters in the R-2 Zone

Mr. Turner stated that he wanted to sell lobsters from his detached garage.

Mr. Turner and Mr. Maroon addressed the criteria as presented in writing; Mr. Turner confirmed that he had unlimited parking, would use less than 50% of the garage and would create no extra traffic on Pine Point Road.

To a question from the Board, Mr. Turner replied that when he cleaned the tank he would dispose of the water in the ocean. He stated that he would not cook lobsters. There was discussion as to whether this

was a farm use. Mr. Temm noted that the appellant was harvesting the lobsters, not buying them to resell. Mr. Grysk stated that the R-2 Zone does allow general purpose farming and this had been done from homes for many years. Mr. Grysk noted that the number of lobsters would be the difference between selling from a refrigerator or a tank; he stated that going through the Home Occupation process was a way of controlling sales from a home.

Mr. Maroon opened the public hearing. Mr. Reginald Gold, of 215 Pine Point Road, stated that he shared Mr. Turner's driveway; he stated that this was good for the family and he saw no reason not to allow it. Thomas Reinsborough, Code Enforcement Officer, noted that Mr. Turner was a commercial fisherman and should be allowed to store his equipment at his home and the Board should note that in the motion so that his equipment was not construed as advertising for his Home Occupation. He noted that this was a very large lot abutting a restaurant. To a question from Mr. Maroon, Mr. Reinsborough replied that the equipment storage should meet the setbacks so there would be no complaints from neighbors. Mr. Maroon closed the public hearing.

Mr. Dougherty asked about time restrictions and traffic. Mr. Turner stated that he would be open from 9:00 A. M. to 6:00 P. M. and would like to have a small sign; he stated that his business would be mostly during the summer and less during the other seasons. Mr. Turner stated that he expected to have 20 to 30 customers per day. To a question from Mr. Loisel, Mr. Turner replied that he maintained 1,500 traps and his tank was 150 pounds and he may install a second tank; he stated that he did not sell to restaurants. Mr. Turner stated that he did not want to be a big business. Mr. Temm noted that this site was just behind Ken's Restaurant and this business would not generate the traffic that Ken's does. Mr. Loisel stated that the Board needed to define a large business. Mr. Temm stated that even if there were two tanks, Mr. Turner still had to have people to buy the lobsters. To a question from Mr. Massengill, Mr. Turner replied that wholesale sales go right from his boat to the businesses.

Mr. Maroon moved to approve the appeal with the understanding that the appellant would be allowed a six foot square sign and allowed to continue storing his lobstering equipment at his home. Mr. Temm seconded.

Voted 5-0

Mr. Maroon asked Mr. Grysk to determine at what point this type of business would require Planning Board approval.

e. Appeal No. 2457 – A Practical Difficulty Variance by Andrew and Brenda Jones, 25 Jasper Street, Assessor's Map U26 Parcel 25, to create a new lot with an 80 foot frontage in the R-2 Zone

Mr. Jones explained that he was trying to create a new house lot. Mr. Jones and Mr. Maroon addressed the criteria as presented in writing. Mr. Grysk noted that this appeal was triggered by a previous appeal where there was two feet of frontage at the front setback line and the Board determined that there had to be the proper frontage at the setback. He stated that, in this case, the frontage was about 80 feet at the front setback though the frontage at the street was 100 feet; he stated that the proposed jog in the lot was to allow the existing home to retain its conforming side setback.

Mr. Maroon opened the public hearing. Mr. Bruce Publicover, of 33 Jasper Street, stated that he did not agree that Criteria 1 through 4 were met. He stated that he would be doing work for a private road on his right of way so that he could get frontage for a new lot and he paid to have the dirt road plowed. He stated that he had no idea where the Jones' house would be placed on the new lot and did not know where the septic system, the water supply or the setbacks would be. Mr. Publicover stated that this could create further drainage problems on his land. To a question from Mr. Maroon, Mr. Publicover replied that he had an additional lot behind his house, hence his new private road; he stated that he sold one lot on

Starpine Lane directly behind the lot in question. To a question from Mr. Maroon, Mr. Grysk replied that the right of way mentioned by Mr. Publicover was never registered so it was not a street. Mr. Grysk stated that Jasper Street had been approved for use in a new subdivision and will be a through street and was under construction at this time. Mr. Jones presented a memo in favor of the appeal signed by 19 neighbors of Jasper Street, Merrill Street and Starpine Lane. Mr. Maroon closed the public hearing.

To a question from Mr. Maroon, Mr. Grysk replied that the only issue with drainage that he was aware of was at the end of the street and the general flow of water was from Starpine Lane down to Jasper Street through these properties. He stated that the infrastructure, including drainage, was to be upgraded.

To a question from Mr. Maroon, Mr. Jones replied that if he removed the deck from the existing house, the bulkhead would still be against the setback. Mr. Jones stated that neither he nor the previous owner built the house. To a question from Mr. Temm, Mr. Grysk replied that a well could be on the property line and the septic 10 feet to the toe of the fill. Mr. Maroon stated that he did not think this request violated the intent of the rules and there were many odd shaped lots in town.

Mr. Maroon reiterated the criteria as follows: 1. The need for the variance, in his opinion, was not because of the neighborhood but the placement of the building; the Board agreed. 2. Mr. Publicover had chosen to divide his property and it was a neighborhood of small lots so this lot would not have an undesirable affect on the area; the Board agreed. Mr. Loisel noted that all the lots in the Starpine subdivision were odd-shaped. 3. The need for the variance was that the existing house was placed in the middle of the double lot but not by this or the previous owner; the Board agreed. 4. The Board agreed that there was no other way to split the lot.

Mr. Grysk stated that all the other criteria were met but another appeal in the past set a precedent; he stated that the house would not meet the setback with a straight lot line. Mr. Maroon stated that the alternative was to move the house. He stated that he believed this was a circumstance of the lot and not an attempt to circumvent the regulations. To a question from Mr. Loisel, Mr. Grysk replied that only the existing dwelling will need a new well or get an easement for the existing well. To a question from Mr. Maroon, Mr. Jones replied that public water, sewer and drainage would be connected down Jasper Street as part of the Sea Ridge Subdivision improvements and he would be connected to the systems.

Mr. Loisel moved to approve the appeal with the condition that, prior to the sale of the existing home, it would be connected to public water or there would be a new well or an easement for the existing well. Mr. Dougherty seconded.

Voted 5-0

Mr. Maroon stated that the findings of fact were addressed above with the criteria and the Board felt they request met the current requirements of the Practical Difficulty Variance and, based on the fact that this was a reasonable use of the specific appeal, it met the requirements of a conforming lot.

Mr. Dougherty moved to approve the findings of fact; Mr. Loisel seconded.

Voted 5-0

5. Zoning Board Comments

Mr. Temm asked that any referendum petitions regarding the naming of the Scarborough High School teams be brought to him.

6. Adjournment

The meeting was adjourned at 8:50 P. M.