

Town of Scarborough

Zoning Board of Appeals

March 11, 2009

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (February 11, 2009)
4. Appeals
  - a. Appeal No. 2474 – A Special Exception Appeal by Thomas and Kerry Lee Hall, 12 Saratoga Lane, Assessor’s Map R47 Parcel 706, to create an accessory unit in their home in the R-F Zone
  - b. Appeal No. 2475 – A Practical Difficulty Variance Appeal by David and Linda Brookes, 26/26B Morning Street, Assessor’s Map U2 Parcel 39, to create a second lot with nonconforming lot sizes and frontages in the R-4 Zone
  - c. Appeal No. 2476 – A Practical Difficulty Appeal by Linwood Dyer, 23 U. S. Route One, Assessor’s Map U50 Parcel 13, to demolish and rebuild a garage 23 feet from the Riverview Place property line in the R-2 Zone
  - d. Appeal No. 2477 – A Limited Reduction of Yard Size Appeal by Linwood Dyer, 23 U. S. Route One, Assessor’s Map U50 Parcel 13, to demolish and rebuild a garage 14 feet from the side property line 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

March 11, 2009

MINUTES

Members Present

Staff

Mr. Blaise  
Mr. Crockett  
Mr. Dougherty (arrived 7:10 P. M.)  
Mr. Loisel  
Mr. Maroon  
Mr. Massengill

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

1. Call to Order

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

2. Roll Call

The Recording Secretary called the roll; Messrs. Dougherty and Temm were absent. Mr. Maroon welcomed new member, Leroy Crockett, to the Board and authorized him to vote. Mr. Dougherty arrived at 7:10 P. M.

3. Approval of Minutes (February 11, 2009)

Mr. Massengill moved to approve the minutes of February 11, 2009; Mr. Blaise seconded.

Voted 4-0-1 – Mr. Crockett abstained.

4. Appeals

a. Appeal No. 2474 – A Special Exception Appeal by Thomas and Kerry Lee Hall, 12 Saratoga Lane, Assessor's Map R47 Parcel 706, to create an accessory unit in their home in the R-F Zone

Mr. Hall explained that he wanted to create a 660 square foot accessory unit for his mother; he stated that he had presented a floor plan of the area in the garage to be converted. Mr. Grysk stated that this request met all the requirements. To a question from Mr. Hall, Mr. Grysk replied that he would be the one to re-approve this unit if the property were sold.

Mr. Maroon and Mr. Hall addressed the criteria and the Accessory Unit Registration form as presented in writing.

To a question from Mr. Loisel, Mr. Grysk replied that when figuring living space for an accessory unit he eliminated the wall width and stairways because they were not living space.

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. Massengill seconded.

Voted 5-0

Mr. Hall noted that, as Scarborough's Town Manager, he was working with the staff to streamline the process for obtaining an accessory unit. Mr. Maroon noted that the process was designed so that neighborhoods would be protected. He noted that the detached unit requirements were difficult and expensive.

b. Appeal No. 2475 – A Practical Difficulty Variance Appeal by David and Linda Brookes, 26/26B Morning Street, Assessor's Map U2 Parcel 39, to create a second lot with nonconforming lot sizes and frontages in the R-4 Zone

Mr. Dougherty had arrived and Mr. Maroon stated that he would be voting in Mr. Crockett's place.

Mr. Brookes explained that they had a double sized lot with two cottages and wanted to divide it to enhance the marketability of the property. He stated that with the two cottages, theirs was among the most expensive property in the area. He stated that an approval would allow each lot to be conforming.

Mr. Grysk stated that this property was approved by the Board in 1995 for expansion of a nonconforming use and the Planning Board, through an advisory opinion, and the Zoning Board imposed the condition that there be no further division of the lot. He stated that the appellant was before the Zoning Board to remove that condition.

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

To a question from Mr. Dougherty, Mr. Brookes replied that the earlier appeal did not allow use of the side lot; he stated that the assessed value of the site was more than \$800,000.00 and one of their only options was to divide the lots so they could be sold separately. He stated that there was no preconceived notion to expand into the side lot. Mr. Loisel noted that the Planning Board wanted that lot to remain one. Mr. Grysk stated that the Ordinance considered contiguous lots to be one lot. To a question from the Board, Mr. Brookes replied that the front house had been closer to the beach and was moved and the rear house belonged to a friend of his grandfather's and was temporarily parked behind the front house in the 1930s but was never moved.

Mr. Maroon opened the public hearing. Ms. Eileen Minte, of 22 Morning Street, stated that the Brookes had told her their property would not change; she stated that she had concerns that if the property were sold to two different parties they could change the property by appealing to the Board. She stated that there were drainage problems in the area and a new driveway would create more issues. She stated that she had not had enough time to do homework on this project. She stated that houses were not selling on the beach and it had more to do with the economy than with the two houses on the lot; she stated that she had a lot of concerns about what was approved and what was not approved at Higgins Beach.

Mr. Maroon read a letter in favor of the appeal from Robert and Beverly Lucas, of 17 Morning Street. Mr. Maroon stated that this change would be on paper only; he stated that a driveway could be created without coming to the Board. Mr. Maroon closed the public hearing.

Mr. Maroon noted that there was precedence in the courts and asked whether it made sense for this site to be two lots. Mr. Grysk replied that functional divisions had to meet certain criteria; he stated that, in his opinion, this lot could not be functionally divided because of the previous condition and this Board was the only body that could change that condition. He noted that the R-4 Zone required a 10,000 square foot lot for each dwelling unit and this was a nonconforming lot now. To a question from Mr. Maroon, Mr. Grysk replied that a lot at Pine Point was divided but they had enough frontage and only one lot was nonconforming; he stated that functionally dividing a property took away its grandfathering.

To a question from Mr. Blaise, Mr. Grysk replied that he did not know how or when the cut up lots at Higgins Beach were done but they were not done in recent years. Mr. Grysk noted that a lot of second units on lots were converted outbuildings. Mr. Loisel stated that the earlier Board made a decision and the burden of proof was on the appellant to show what had changed to overturn the decision and he did not believe that had been shown; he noted that the Town acknowledged only one lot. Mr. Loisel asked where access to the rear lot would be; Mr. Grysk replied that another driveway could be created or there could be an easement to use the existing driveway. Mr. Brookes stated that he was not willing to make a decision about the driveway until there was a sale and he knew what a buyer would want. Mr. Brookes stated that he thought the decision was made so that no one could build on the side lot.

Mr. Massengill asked for a reason to overturn the ruling; Mr. Brookes replied that this would attempt to make the property more marketable and he was looking for the option to divide the property if necessary. Mr. Maroon stated that he was concerned about overturning another Board's decision because he would not want this Board's decisions overturned. He stated that he thought the earlier Board was trying to not allow the side by side lots to be created so that a third home could be built. Mr. Maroon stated that, from a practical point of view, nothing would change, but he would not want to see a second driveway. He stated that his question was why the Boards made their decision in 1995. To a question from Mr. Massengill, Mr. Maroon replied that removing the second structure would probably raise the value of the property. Mr. Massengill stated that he, too, had a problem overturning the 1995 ruling and did not believe the appellant had proven there was no feasible alternative.

Mr. Brookes stated that he remembered from the meetings in 1995 that the issue was that the Boards did not want a building on the side lot so the solution was to combine them; he stated that it now came out that the lot could not be divided. Mr. Dougherty stated that he was on the Planning Board in 1995 and the Board was emphatic that they did not want to split the two lots. He stated that, based on this year's sales, in another selling season the whole property might be sold. Mr. Brookes stated that he simply wanted to know whether it was possible to split the lot in the event he needed that option.

Mr. Loisel stated that he did not see a situation that showed the condition needed to be overturned and saw only that the appellant was not living there and there was a need to sell the property, but that was not enough to support changing the earlier ruling. Mr. Maroon cited the Zoning Board minutes of September 13, 1995 which he felt indicated that the Board preferred to see the front house moved to the side property but the neighbors did not want that, so the Board ensured the side lot never be divided. He stated that if that were the case, he felt it would be consistent with their goal to separate the rear of the lot and no damage would be done if there were no second driveway. Mr. Maroon stated that that would eliminate a rental situation. Mr. Maroon stated that nothing could change on the lots and he thought he had identified the logic of the past Board. Mr. Loisel stated that he saw that point but there were a lot of assumptions and if the Board went in that direction there would have to be findings of fact; he agreed that there should be no new driveway.

Mr. Crockett agreed that it was hard to overturn another Board's decision and set a precedent. Mr. Blaise stated that he could not vote against something that was approved earlier but no one could come up with a good reason for the condition; he agreed that property values would be better and taxes higher for the town with a split. Mr. Blaise stated that he did not like chopping lots at Higgins Beach and didn't like very small setbacks, but he also thought this was a solution. Mr. Maroon asked whether his logic was sound; Mr. Grysk replied that it did not make any difference whether the houses are owned by one owner or two different owners, nothing would change other than the ownership. Mr. Grysk stated that this was a decision by the court but the town did not recognize functional divisions nor did the Town Attorney; he stated that if they did not meet the ordinance requirements they had to remain one lot.

Mr. Maroon moved to approve the appeal with the following conditions:

1. That the property be divided in a way that is consistent with the 1995 ruling to not allow a third unit;
2. That there be no second driveway and there be an agreement to use the existing driveway;
3. That both properties remain nonconforming

Mr. Massengill seconded.

Mr. Maroon stated that the net result would have no effect and would only change the opportunity for ownership. He stated that the reason to adjust the 1995 ruling was because of the discussion regarding the front building being moved over which would cause a problem for both Boards.

Voted 2-3 – Messrs. Blaise and Maroon voted in favor.

The appeal was denied.

Mr. Loisel noted the following finding of fact: That no burden of proof allowing the Board to make a decision had been made. Mr. Massengill stated that he strongly believed that it was proven that there was no alternative.

c. Appeal No. 2476 – A Practical Difficulty Appeal by Linwood Dyer, 23 U. S. Route One, Assessor's Map U50 Parcel 13, to demolish and rebuild a garage 23 feet from the Riverview Place property line in the R-2 Zone

Mr. Mike Richman, of Custom Concepts, explained that Mr. Dyer wanted an addition to replace his existing garage that was falling down and too small. He stated that they had tried to add new space in the garage to be consistent with the architecture of the old, historical house. Mr. Richman stated that they tried several configurations but the layout of the site did not allow them to go toward Route One or to the rear toward Riverview Place. He stated that the existing garage was 18 feet four inches deep and Mr. Dyer could build in the same footprint but putting a second floor back from the eaves would put it toward the front of the house which was not practical to cutting a doorway into the house. Mr. Richman stated that they could not get space elsewhere on the lot.

Mr. Richman stated that they would keep the front of the garage in line with the existing home and would need the Practical Difficulty Variance Appeal to go up with the second floor. Mr. Richman stated that they were also requesting a one foot Limited Reduction of Yard Size Appeal for a corner of the roof overhang; he stated that they had considered bringing the garage in a little but a 22 foot wide garage did not allow enough width.

Mr. Maroon and Mr. Richman addressed the criteria as presented in writing for the Practical Difficulty Appeal.

To a question from Mr. Massengill, Mr. Richman replied that the 18 foot wide garage was tight but they were trying to maintain a tree and the access road to the rear. Mr. Dyer noted that drainage ran through his basement to get to the river and he hoped that the garage could be built to try to direct the water around it; he stated that he needed the extra space for a bedroom for his caretaker. Mr. Maroon confirmed that there would be just one bedroom and not an accessory unit.

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

To a question from Mr. Loisel, Mr. Richman replied that there was evidence of water damage and the structure was giving way. Mr. Grysk stated that the Code Officers had visited this site and the proposal was well designed.

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

Voted 5-0

d. Appeal No. 2477 – A Limited Reduction of Yard Size Appeal by Linwood Dyer, 23 U. S. Route One, Assessor’s Map U50 Parcel 13, to demolish and rebuild a garage 14 feet from the side property line in the R-2 Zone

Mr. Richman reiterated that a small piece of the roof overhang would be one foot into the required 15 foot side setback. He stated that he tried to leave off the overhang on that side but it did not match the design of the house.

Mr. Maroon noted that the criteria had been addressed with the previous appeal.

Mr. Maroon opened the public hearing. He read two letters in favor of the project from Lisa Kostopoulos, of 7 Riverview Place and Neil Richards of 9 Riverview Place. Mr. Maroon closed the public hearing.

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

Voted 5-0

5. Zoning Board Comments

Mr. Loisel thanked Mr. Richman for not asking for too much setback for the last two appeals.

6. Adjournment

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