

Town of Scarborough

Zoning Board of Appeals

April 8, 2009

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (March 11, 2009)
4. Appeals
 - a. The Zoning Board will hear a request to reconsider the vote on Appeal No. 2475 – A Practical Difficulty Variance Appeal by David and Linda Brookes, 26/26B Morning Street, to create a second lot with nonconforming lot sizes and frontages in the R-4 Zone
 - b. Appeal No. 2478 – A Special Exception Appeal by Cheri Greable, 3 Maple Avenue, Assessor's Map U47 Parcel 90, to create an accessory unit in her home in the R-2 Zone
 - c. Appeal No. 2479 – A Variance Appeal by The Dunstan Partners, 636 U. S. Route One, Assessor's Map U32 Parcel 4, to allow a small engine repair shop in an accessory structure in the TVC Zone
 - d. Appeal No. 2480 – A Miscellaneous Appeal by Philip and Deborah Parker, dba Higgins Beach Market, to expand the use of the existing building, to allow offsite parking and to allow a storage trailer 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

April 8, 2009

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Crockett
Mr. Loisel
Mr. Maroon

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

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, Massengill and Temm were absent. Mr. Maroon authorized Mr. Crockett to vote.

3. Approval of Minutes (March 11, 2009)

Mr. Blaise moved to approve the minutes of March 11, 2009; Mr. Loisel seconded

Voted 4-0

4. Appeals

a. The Zoning Board will hear a request to reconsider the vote on Appeal No. 2475 – A Practical Difficulty Variance Appeal by David and Linda Brookes, 26/26B Morning Street, to create a second lot with nonconforming lot sizes and frontages in the R-4 Zone

Mr. Loisel noted that at the end of the March meeting he discussed this appeal with the Board and decided that his negative vote had been wrong. He stated that he reviewed the data again and determined that the two lots had been joined together because the Zoning Ordinance required nonconforming lots to be joined; he stated that it was difficult to determine from the minutes what the previous Planning Board meant because there was no explanation for their vote and he felt he had interpreted the minutes incorrectly. Mr. Loisel stated that he referred to the Zoning Board minutes of September 13, 1995; he stated that he felt the Brookes thought there were two separate lots but they had been combined under the Zoning Ordinance. He stated that the house was never intended to be moved to the center of the lot but away from the lot line; he stated that he could not tell what the Board meant by “no further division of the land.” Citing the letter of September 14, 1995 informing Mr. Brookes of his Zoning Board approval with conditions, Mr. Loisel reiterated that the question was also one of intent. He stated that the intent was very vague but he thought it was to keep from dividing the lot so that another building could be placed on the side lot.

Mr. Loisel stated that he would like to open the issue to more discussion and noted a couple of pertinent court cases; he stated that voting in favor of this appeal would simply functionally divide the lot. He stated that this would allow the Brookes to get an assessment of the site’s worth. He reiterated that the Boards were simply trying to keep from having a third building on the property.

Mr. Maroon stated that there would be no public hearing. He stated that this was a classic example of the Saco River court case to functionally divide a lot. Mr. Maroon agreed that the previous Zoning Board did not document its logic and this Board had to assume what they meant and he agreed that they simply did not want a third house. He stated that a positive vote tonight would simply create two lots and would not change anything on the site. Mr. Grysk stated that he had no issues with the division as long as the lot was equally divided.

Mr. Loisel stated that putting a new driveway on the side lot could create a drainage issue. Mr. Maroon stated that there could be a shared driveway and there would be no changes to the site. Mr. Brookes stated that a shared driveway would be satisfactory.

Mr. Blaise moved to approve Appeal No. 2475 to divide the lot as presented on March 11, 2009 with the condition that there be a shared driveway to be recorded in the Cumberland County Registry of Deeds; Mr. Loisel seconded.

Voted 4-0

Mr. Maroon stated that the Board had overturned its previous decision and the logic was that the paperwork was reconsidered and they had discussed why they felt that way. Mr. Crockett stated that he thought the neighbor's request that her property not be impacted was addressed.

b. Appeal No. 2478 – A Special Exception Appeal by Cheri Greable, 3 Maple Avenue, Assessor's Map U47 Parcel 90, to create an accessory unit in her home in the R-2 Zone

Ms. Greable stated that she was applying for an accessory unit in her home. Ms. Greable and Mr. Maroon addressed the criteria as presented in writing as well as the Registration of Accessory Units form.

Mr. Blaise confirmed that the house was three stories. Ms. Greable stated that she lived on the first and second floors. Mr. Grysk stated that this was a straightforward appeal; he stated that the applicant had an approved counseling business in her home.

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. Loisel seconded.

Voted 4-0

c. Appeal No. 2479 – A Variance Appeal by The Dunstan Partners, 636 U. S. Route One, Assessor's Map U32 Parcel 4, to allow a small engine repair shop in an accessory structure in the TVC Zone

Mr. Harry Hughes, of Dunstan Partners, stated that the structure had been approved as a greenhouse when the zone was still the R-4 Zone; he stated that the greenhouse was not financially viable so it was now used for storage and they would like to use it for a repair shop. He stated that they did not want a high traffic use. Mr. Grysk noted that Ace Hardware had been a nonconforming use in a residential zone; he stated that there could be only one principal use on a lot but an accessory building to the main use was allowed. He stated that the new use needed approval from the Zoning Board; he noted that the TVC Zone was a transitional zone between the residential and commercial areas and allowed some commercial use.

To a question from Mr. Maroon, Mr. Hughes replied that they had started a small engine repair business inside the hardware store where there was limited space and the repairman would rent the space under the umbrella of Ace Hardware as a separate department.

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. Hughes replied that the receipts of this business could go through the hardware store. Mr. Hughes stated that they sold and rented small tools that needed to be maintained and repaired. Mr. Maroon stated that this business would augment but be minor to the main business. Mr. Grysk stated that a lot of businesses had smaller businesses within them but separate from them; he stated that there did not have to be a financial connection. To a question from Mr. Maroon, Mr. Grysk replied that this was a Variance Appeal because there were restrictions from the Zoning Board based on the R-4 Zone; he stated that there had been no parking complaints based on the number of spaces, some of which had been eliminated for construct the greenhouse.

Mr. Crockett asked about environmental impacts; Mr. Hughes replied that any gas and oil would be disposed of properly offsite. Mr. Hughes stated that they would put up a ceiling, double the greenhouse material walls and install a monitor heater; he stated that there had been no complaints about noise. Mr. Maroon confirmed that the previous restrictions for a residential use were being appealed. Mr. Grysk stated that if this were a new business it would be a permitted, nonresidential retail use.

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

Mr. Maroon stated that the zoning had been changed and the restrictions were based on the R-4 Zone and not the new TVC Zone. He stated that this use met the criteria and was consistent with the intent of the TVC Zone so the restrictions were unreasonable. Mr. Loisel stated that, based on the previous restrictions, the structure could not yield a reasonable return and the property needed to be used.

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

Voted 4-0

d. Appeal No. 2480 – A Miscellaneous Appeal by Philip and Deborah Parker, dba Higgins Beach Market, to expand the use of the existing building, to allow offsite parking and to allow a storage trailer in the R-F Zone

Mr. Maroon noted that this appeal had been tabled for more information.

Mr. Jim Fisher, of Northeast Civil Solutions, noted that the designation of this business had been changed by the Town from a farmstand to a market. He stated that the issues were parking, food preparation, hours of operation and the storage container. Mr. Fisher displayed the survey showing the 6,000 square foot lot which had been grandfathered for almost 60 years; he stated that there was a market building, a storage area, propane tanks and an ice machine on the site. He stated that their abutters were creating an easement for offsite parking. Mr. Fisher stated that the Planning Board had given a favorable opinion and the appellant would return to that Board for site plan review.

Mr. Fisher stated that parking would be expanded to the rear of where it exists; he stated that the issue was that the gravel area was not formal parking. He stated that seven spaces were required for the size of the building and they would provide nine spaces with a couple of spaces on the other side of the building for employees. He stated that they would expand the parking on the Kacere's property on the hill to the rear to deepen the spaces and to lessen the impact on the road. He stated that they would like to eliminate the planters intended to guide people into the site because they blocked the circulation. Mr. Fisher stated the depth of the parking spaces would allow people to back out into the gravel and not into the traveled road-way. He noted that there had been no crashes in the area and no public safety issues.

Mr. Fisher stated that any of the prepared foods were for people who ordered them and picked them up later so there would be no one waiting for an order on the site; he stated that lobster rolls were prepared offsite and bakery items were precooked or prepared offsite. Mr. Fisher stated that the hours of operation since 1999 were from 6:00 A. M. to 7:00 P. M. in July and August and to 6:00 P. M. during the other months; he stated that the business was seasonal from May through October. Mr. Fisher stated that they would paint the storage container in the rear to match the building.

Mr. Reinsborough stated that the appellant had answered the questions but the Zoning Board needed to address the canopy and the ice machine and other outside items; he stated that only 400 square feet of the store was previously approved for sales. To a question from Mr. Maroon, Mr. Grysk replied that other types of businesses were allowed 9 by 18 foot parking spaces but retail needed 10 by 20 foot spaces. Mr. Reinsborough stated that the smaller space would accommodate most vehicles and the two spaces for employees were satisfactory. Mr. Fisher stated that the requirement for the drive aisle was 24 feet; he stated that they did meet the 24 feet with the gravel and did not drive into the travel way. He stated that the parking spaces would be marked with curb stops. Mr. Fisher stated that circulation would not be allowed around the building.

Mr. Maroon opened the public hearing. Mr. Jesse Abbott, of 51 Pearl Street, stated that he thought the traffic solution was significantly better than it had been for the last 15 years. He stated that the appellant had done a good job and he was in support of the project; he stated that the nature of the area would be lost without this market.

Mr. Mike Vasile, of 83 Spurwink Road, stated that he still believed this was a public health and safety problem. He stated that he bought his property across the street in a residential area and thought the 6:00 A. M. opening was too early and 9:00 A. M. would be sufficient. He stated that his domestic tranquility had been shattered by noise and traffic. Mr. Vasile stated that he thought there were personal friends of the appellants on the Board and they should recuse themselves.

Ms. Pat Butner, of 50 Ocean Avenue, stated that this was a needed market and the Town had recently created a sidewalk up Ocean Avenue. She stated that it meant a lot not to have to travel to Oak Hill to buy small items; she stated that the community was upset to have lost the store on Ocean Avenue and this was now the only option. Mr. Jack Kelly, of 19 Oceanwood Drive, stated that he and the neighborhood depended on this market and he urged the Board to approve the appeal.

Ms. Diane Vasile, of 83 Spurwink Road, stated that she thought 6:00 A. M. was too early to open with cars and trucks and their backup beepers; she stated that this was a place where people congregated. She stated that they were the only people who lived next door to this business.

Ms. Susan Thompson, of 1 Ocean Avenue, stated that there was a lot of traffic on the beach with noise at 4:30 A. M. and every part of Higgins Beach had a different problem; she stated that they were delighted with the new sidewalk. She asked that the Board please approve this appeal.

Mr. Maroon noted that there were 13 e-mails in favor of the appeal. Mr. Maroon closed the public hearing.

Mr. Maroon reiterated that this was now considered a market and not a farmstand. To a question from Mr. Maroon, Mr. Reinsborough replied that it was a reasonable statement that the drive aisle would allow people to back out with out going into the travel lane. Mr. Loisel asked how people would avoid backing into the telephone pole and the planter; Mr. Fisher replied that the planter would be removed. Mr. Fisher stated that with the widening of the area they would create an area that would discourage people from backing into the pole and the newspaper box. To a question from Mr. Maroon, Mr. Grysk replied that the

number of parking spaces met the requirements but there would probably not be enough spaces during peak times. Mr. Grysk stated that a handicap space was not necessary because of the size of the building.

To a question from Mr. Crockett, Mr. Fisher replied that there would be no designated exit and entrance because there was not enough depth; he stated that the pole had been there for 50 years and they could put an obstruction around it. Mr. Loisel stated that one of his big concerns was crossing directly into this site from Spurwink Road without turning. Mr. Fisher stated that he had no solution to that and it could be more of a problem to have vehicles making U-turns to get to the site. Mr. Loisel stated that he thought that should be addressed. Mr. Maroon stated that the Planning Board would work on the traffic issues. Mr. Loisel stated that he was also concerned that vehicles entering the site would interfere with vehicles backing out of parking spaces or would wait in the intersection. He stated that this was an improvement but the concern was still there and he thought there should be a barrier around the pole which would eliminate a true parking space behind it. Mr. Maroon stated that the Board could request the Planning Board to look closely at that issue.

Mr. Maroon stated that he thought all outdoor items including the ice machine needed to be under the canopy and the canopy should remain as shown on the drawing. Mr. Maroon stated that the retail part of the building is 400 square feet, not including the canopy, and the storage area should remain storage. Mr. Loisel confirmed that there was power for lights only in the storage area. Mr. Loisel stated that what was sold at the market did matter to him and asked whether there was a definition of market. Mr. Grysk stated that a market was considered retail sales. Mr. Reinsborough stated that the license was based on a ratio of items sold and there was no limit to the type of food sold and as long as 50% of the products sold were farm produce the market would remain under an agricultural license issued by the State. To a question from Mr. Loisel, Mr. Reinsborough replied that only a new building would require restrooms.

Mr. Maroon stated that he felt there should be no food preparation in the building unless they met the other State food regulations. Mr. Reinsborough stated that if they were selling food, they still had to meet the food codes under their license; he stated that there was no difference between what this appellant would have to do and what a restaurant would have to do for safety. He stated that the site simply needed a sink to wash bowls and pots. There was lengthy discussion regarding food preparation at the site. Mr. Maroon stated that prepackaged food and an oven for prepackage pizza was okay but he did not like the fryolator. Mr. Fisher stated that they would remove the fryolator. Mr. Maroon stated that his issue was that there was a history of expansion on this site and he was trying to define this use; he stated that this was a market and should not become a sandwich shop. To a question from Mr. Crockett, Mr. Fisher replied that there were designated areas for preparation of different foods.

Mr. Blaise stated that he had no problem with food preparation and sandwiches were a big item at the market which cut down on a lot of traffic to Oak Hill; he stated that people walked to the market and returned to the beach. Mr. Reinsborough reiterated that the food codes had to be met; he stated that he thought the Board wanted to limit the volume of food being prepared onsite. He stated that under the agricultural license the appellant would have to keep the volume to 50% and the Board did not have to concern itself with what was cooked or prepared. Mr. Reinsborough stated that his earlier concern was the lack of proper water and sewer but that had been addressed. He stated that he thought the Board could achieve limiting the expansion of food sales by sticking with the agricultural license; he stated that the site was audited regularly under the license. Mr. Reinsborough stated that the proposed improvements were substantial. Mr. Maroon stated that if the Code Officers were comfortable, he was comfortable.

Mr. Maroon stated that the Planning Board would deal with the storage trailer but he thought it needed to be sided. To a question from Mr. Crockett, Mr. Reinsborough replied that there was no way to eliminate backing up of trucks on the site. Mr. Reinsborough stated that the Board should address the hours that were approved in 1998. Mr. Loisel stated that he empathized with the Vasiles and thought 6:00 A. M.

was too early to open and would like to see a 7:00 A. M. opening time. Mr. Crockett agreed. Mr. Blaise stated that there was not a mob at 6:00 A. M. but he thought trucks should not be there that early. Mr. Fisher stated that Mr. Parker would be satisfied with a 7:00 A. M. opening and would change deliveries to no earlier than 8:30 A. M. He stated that he would not need deliveries on weekends.

Mr. Blaise moved to approve the appeal with comments as listed above; Mr. Loisel seconded.

Voted 4-0

Mr. Crockett thanked the appellant for making the concessions.

5. Zoning Board Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 9:35 P. M.