

Town of Scarborough

Zoning Board of Appeals

May 13, 2009

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (April 8, 2009)
4. Appeals
 - a. Appeal No. 2481 – A Miscellaneous Appeal by Ronnie Blanchard, dba Running Hill Road Self-Storage, 34 Running Hill Road, Assessor’s Map R18 Parcel 38, for outside storage at a previously approve facility in the R-F Zone
 - b. Appeal No. 2482 – A Practical Difficulty Appeal by Michael Fresina, 1 Sea Rose Lane, Assessor’s Map U23 Parcel 49, for an extension to an approve appeal to demolish and reconstruct a home with nonconforming setbacks in the R-4A Zone
 - c. Appeal No. 2483 – A Special Exception Appeal by Erin Crommie, 6 First Street, Assessor’s Map U47 Parcel 61, to create an accessory unit in her home in the R-2 Zone
 - d. Appeal No. 2484 – A Practical Difficulty Variance Appeal by Deborah and Gregory Turner, 6 Avenue One, Assessor’s Map U22 Parcel 74, to construct a second story on an existing cottage 12 feet from Avenue One and 5 feet 6 inches from Jones Creek Drive in the R-4A Zone
 - e. Appeal No. 2485 – A Special Exception Appeal by Chris Caseiro and Kathy Mullen, 30 Tenney Lane, Assessor’s Map R96 Parcel 15, to create an accessory unit in their home in the R-F Zone
 - f. Appeal No. 2486 – A Variance Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 25 feet from the edge of the resource in the Shoreland Zone
 - g. Appeal No. 2487 – A Limited Reduction of Yard Size Appeal by Eralda Adams, 7 Virdap Street, to construct a home 20 feet from the front property line and 10 feet from the side property line in the R-4 Zone
 - h. Appeal No. 2488 – A Miscellaneous Appeal by Chris Liponis, dba Northeast Technical Institute, 4 Ginn Road, Assessor’s Map R40 Parcel 12A, to resume a nonconforming use as a trucking terminal for a driving school in the HPZ 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

May 13, 2009

MINUTES

Members Present

Staff

Mr. Blaise
Mr. Crockett
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 authorized Mr. Crockett to vote.

3. Approval of Minutes (April 8, 2009)

Mr. Blaise moved to approve the minutes of April 8, 2009; Mr. Loisel seconded.

Voted 4-0-1 – Mr. Massengill abstained.

4. Appeals

a. Appeal No. 2481 – A Miscellaneous Appeal by Ronnie Blanchard, dba Running Hill Road Self-Storage, 34 Running Hill Road, Assessor's Map R18 Parcel 38, for outside storage at a previously approve facility in the R-F Zone

Mr. Jeff Reed, of Pinkham & Greer, stated that the Planning Board had approved this self-storage facility but required the Zoning Board to address the proposed outside storage for large boats and RVs. He displayed the site with the proposed storage area to the north. Mr. Reed noted the wooded buffers and stated that there were no wetlands in that area. Mr. Grysk explained that this was an appeal to expand a non-conforming use which had been discussed by the Board at an earlier meeting; he stated that only the buildings had been approved by this Board and the Planning Board.

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

To questions from Mr. Massengill, Mr. Grysk replied that the project would be built in two phases and the detention pond would be created during Phase 1; he stated that the second phase would be construction of the rear buildings. Mr. Reed stated that the storage area was about 120 feet from the property line. Mr. Reed stated that there were wetlands at the right of the site which could not be built upon. To a question from Mr. Loisel, Mr. Reed replied that there would be raised curbing at the fence line of the 60 by 100 square foot storage area.

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. Blaise seconded.

Voted 5-0

b. Appeal No. 2482 – A Practical Difficulty Appeal by Michael Fresina, 1 Sea Rose Lane, Assessor’s Map U23 Parcel 49, for an extension to an approved appeal to demolish and reconstruct a home with nonconforming setbacks in the R-4A Zone

Joshua Letarte, who represented Mr. Fresina, stated that obtaining DEP permits took time and they were not able to start their work within the six month window and needed to be reapproved. He stated that the plans had not changed. Mr. Maroon noted that this was simply a six month approval of the previous appeal and confirmed that the Board agreed that the criteria did not need to be addressed again.

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 six month extension; Mr. Massengill seconded.

Voted 5-0

c. Appeal No. 2483 – A Special Exception Appeal by Erin Crommie, 6 First Street, Assessor’s Map U47 Parcel 61, to create an accessory unit in her home in the R-2 Zone

Ms. Crommie stated that she wanted to add an accessory unit onto her garage. Mr. Grysk stated that all the criteria had been met and the setbacks would be verified by the Code Enforcement Officers.

Mr. Maroon and Ms. Crommie addressed the Special Exception criteria, the Accessory Unit criteria and the Registration of Accessory Units form.

Mr. Massengill noted that the plan showed the proposed accessory unit larger than the maximum 750 square feet allowed; Mr. Grysk stated that he would ensure that the accessory unit met the requirements when he issued the building permit. To questions from Mr. Massengill, Ms. Crommie replied that her second egress would access the garage and there would be only one electrical meter.

Mr. Maroon opened the public hearing. To a question from Ms. Barbara Foley, of 8 First Street, Mr. Maroon replied that the Code Enforcement Officers would make sure that Ms. Crommie lived on the site and would rely on reports from the neighbors if she did not. Ms. Crommie stated that she had not lived in her house because she could not afford it. Mr. Maroon stated that the regulations prevented two-family rentals.

Mr. Mike Silvius, of 29 Maple Avenue, stated that he would welcome Ms. Crommie on the site because it would be in better condition than when it was rented. He stated that rented homes lowered his property value. To a question from Mr. Silvius, Mr. Maroon replied that if a property with an accessory unit sold, the unit had to be recertified with the Code Enforcement Office and the Registry of Deeds. To questions from Ms. Annmarie Silvius, of 29 Maple Avenue, Mr. Grysk replied that the Code Officers would inspect the property and ensure that there was only one meter box and these units were now allowed in accessory buildings as long as the structure looked like an accessory to the home. Mr. Grysk stated that 50% of the accessory structure had to be dedicated toward the accessory use, such as a garage or barn. Ms. Silvius asked about construction hours; Mr. Grysk replied that the town had no noise ordinance but the neighbors could call the Police Department. To a question from Ms. Silvius, Ms. Crommie replied that the structure would be one story.

Mr. Massengill confirmed that Ms. Crommie would live in the accessory unit full time.

Mr. Blaise moved to approve the appeal with the condition that the unit meet the 750 square foot requirement; Mr. Massengill seconded.

Voted 5-0

d. Appeal No. 2484 – A Practical Difficulty Variance Appeal by Deborah and Gregory Turner, 6 Avenue One, Assessor’s Map U22 Parcel 74, to construct a second story on an existing cottage 12 feet from Avenue One and 5 feet 6 inches from Jones Creek Drive in the R-4A Zone

Mr. William Koch, of Homesmart Development, stated that the roof on this cottage had a 2/12 pitch roof and the Turners wanted to put on a second story with shed a dormer and a cape roof to allow for the snow loads. He stated that the property consisted of a large house, a cottage and this cottage in question which was on the corner and did not meet all the setbacks. He stated that the second cottage met all the setbacks and was being renovated.

Mr. Maroon and Mr. 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 confirmed that all three structures were inhabited year round and all were rental units. To a question from Mr. Maroon, Mr. Koch replied that each of the two cottages was now about 450 square feet and would be 800 square feet when expanded. Mr. Koch stated that they were not adding any bedrooms but would move them upstairs and open up the first floor; he stated that the cottages had three foot roof overhangs and they were not building out any further.

Mr. Loisel stated that this was a difficult variance to prove because of the feasibility of other alternatives. Mr. Koch stated that alternatives did not apply because of the flat roof and they could not build up at all without this variance. He reiterated that the problem was the snow buildup and, though there was a rubber roof, it did deteriorate. To a question from Mr. Massengill, Mr. Koch replied that the fourth structure on the site was a shed. Mr. Maroon stated that he did not like this situation, but the advantage was the rehabilitation of two cottages that would not be rundown; he stated that they were existing and there would be no increase in bedrooms and those benefits were valuable to the neighborhood and the town so he was comfortable supporting this request. Mr. Loisel noted that the only alternative would be a rubber roof but that was not a good solution.

Mr. Blaise stated that this was a residential area; he stated that the previous appeal was for an accessory unit with limitations and this appeal was for three rental units on one lot. Mr. Maroon stated that the cottage could be limited to 750 square feet but he saw no benefit to that because the structures were existing. He stated that the goal of the limitations on the accessory units was to prevent the crowding of a neighborhood similar to Higgins Beach but the Board could not change the fact that the buildings were there but could help make them look better. Mr. Crockett noted that the cottages would not be much larger than 750 square feet.

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

Voted 5-0

e. Appeal No. 2485 – A Special Exception Appeal by Chris Caseiro and Kathy Mullen, 30 Tenney Lane, Assessor’s Map R96 Parcel 15, to create an accessory unit in their home in the R-F Zone

Mr. Caseiro stated that this would be an accessory unit for his mother-in-law. Mr. Grysk stated that all the criteria had been met.

Mr. Maroon and Mr. Caseiro addressed the Special Exception criteria, the Accessory Unit regulations and the Registration of Accessory Units form.

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 5-0

f. Appeal No. 2486 – A Variance Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 25 feet from the edge of the resource in the Shoreland Zone

Mr. James Fisher, of Northeast Civil Solutions, noted that these lots had been created in 1923 and had been owned by Ms. Adams’ family since the 1950s; he stated that this was a legal lot of record, most of the lots were built upon and there was no zoning at the time of purchase. Mr. Fisher stated that Ms. Adams wanted to build a small, modest house on this property away from the marsh which would reduce the front and side setbacks. He stated that the lot was free of wetlands but the DEP had denied the Permit By Rule and would reconsider it if this appeal was granted. He stated that their request was to be 25 feet from the wetland area rather than the required 75 feet, thereby minimizing the impact on the marsh.

To a question from Mr. Maroon regarding ownership of the property, Mr. Fisher replied that Ms. Phyllis Scala was the owner as part of the living trust and Ms. Adams is her daughter. Mr. Grysk noted that there were four layers to this appeal: the space and bulk setbacks, the Shoreland Zoning setback, the one foot elevation in the flood plain, and DEP approvals. He stated that, following any approval from the Zoning Board, the DEP would issue its permit.

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

Mr. Blaise confirmed that there was no cottage on the lot to the right of this property; he noted that there were many lots in the Shoreland Zone. Mr. Fisher agreed that many of the established houses were in the Shoreland Zone or violated the setback requirements. Mr. Maroon confirmed that there were no contiguous lots to this property and stated that with no structure there was no return at all. Mr. Blaise noted that there were several lots falling under the same circumstances. Mr. Fisher stated that the issue was the definition of reasonable return.

At the request of Mr. Loisel, Mr. Fisher explained that his interpretation of reasonable return was that someone would be able to utilize the property; he stated that this was a vacant, legal lot of record that had been in the same family for 50 years. He stated that no one would buy the property because nothing could be done on it and it, therefore, had no value.

Mr. Maroon opened the public hearing. Attorney John Wall, who represented Summerwind Cottage LLC, property at 9 Virdap Street which had property on both sides of the appellant, stated that his clients felt this appeal should be denied. He stated that the whole area was affected by the marsh and flooding; he distributed a photo showing water encroaching on the property. He stated that Ms. Scala, Ms. Adams’ mother, owned two other lots with a cottage 150 feet from this property. Mr. Wall distributed a court case, Timothy Toomey v. Town of Frye Island, which indicated that reasonable return did not mean maximum return and that recreational use of a lot with access to water can be a reasonable return,

especially in relation to a nearby upland lot; he stated that the appellants could, therefore, not show that there was no reasonable return on this lot. Mr. Wall stated that the other criteria could not be met because the character of the lots was very similar and this lot was not unique. He stated that they believed the hardship could not be met and the appeal should be denied.

Attorney Nathaniel Huckel-Bauer, who represented Peter and Libby Cassat, of 8 Virdap Street, stated that the appellant's deed did not provide evidence of ownership of this land. He stated that Mr. Wall had addressed the reasonable return issues and the property could be used for recreation so did provide a reasonable return as it is, especially considering what they got it for. He stated that the circumstances were the same for the other lots and the existing buildings were there prior to setback requirements. He stated that allowing this appeal would suggest that other lots of this type should be given the opportunity to be developed, which would set a precedent, and the Cassats thought this appeal should be denied.

Mr. John Stiff, Ms. Adams' husband, stated that they hoped to get these variances and be part of the revival of Higgins Beach; he stated that their house would be modest and would meet all other requirements. He stated that the other lots were under water many times and their lot was not. Ms. Adams noted that they would live on the property whereas the other homes were rented during the winter; she stated that her mother had paid property taxes for 50 years on what was deemed a buildable lot.

Mr. Maroon closed the public hearing.

Mr. Massengill asked how ownership could be proven; Mr. Fisher replied that according to the chain of title this property had been in the family since 1955. Mr. Maroon stated that the Board accepted the appellant's word that they owned the property. Mr. Maroon asked why the 25 foot setback was chosen; Mr. Grysk replied that that was as low as the DE would allow. Mr. Maroon stated that the court case cited by Mr. Wall addressed a case where the property was purchased after the rules were in place. He stated that the court indicated that the Shoreland lot had recreational capabilities and could be combined with the inland lot so the applicant could not show that there was no reasonable return. He stated that this was justification for lack of reasonable return.

Mr. Maroon called a recess at 9:05 P. M.; the meeting resumed at 9:15 P. M.

To a question from Mr. Massengill, Mr. Fisher replied that there was a previous plan for a house on this lot and any house in the flood plain had to be above the flood elevation by at least one foot. To a question from Mr. Blaise, Ms. Scala replied that she was going through the process of getting permits for this site in 1986 when her husband died and she decided not to build a house at that time. To a question from Mr. Loisel, Ms. Scala replied that the boats in the photo presented by Mr. Wall were not her boats; she stated that the only thing they did at the property was mow it and maintain it. Ms. Scala stated that she had received several offers to buy the property.

Regarding the criteria, Mr. Maroon stated that the Board had made a decision and accepted the ownership of the property as indicated by the appellant. Regarding reasonable return, Mr. Maroon stated that he felt the property had been used continuously so it was maintained and grandfathered. He stated that if a house could not be put on the property it was lack of reasonable return and recreation was not reasonable return. Regarding the cited law case, this appeal was the exact opposite of that case because it was waterfront property and the lot was bought after Shoreland Zoning was put in place; he stated that the case was complicated by the fact that it was reversed by the court. Mr. Maroon stated that reasonable return was met in practical loss not maximum loss. He stated that his argument was that the Toomeys, in the court case, were using the lot as a functional property and it was tied to another lot; he stated that he saw no relevance with the Toomey case to the appellant's case. He stated that there was no ordinance when this site was purchased and the appellants maintained the property and always intended to build upon it. Mr.

Maroon stated that he had no problem with the criteria. Mr. Grysk noted that it had to be shown that there was no feasible use for the property including not being able to sell it.

Mr. Loisel asked what the value of the lot was if it was not buildable. Mr. Grysk stated that the taxes were low because the Assessor did not consider this a buildable lot; he noted that an appeal for this lot was not approved in 1986, no building permit was issued and the rules had changed. Mr. Maroon stated that he was comfortable with this appeal because it did have a big enough envelope of dry land and the 25 foot set-back was allowed with approval. Mr. Grysk stated that the length of time the property was owned by one owner had no bearing on the issue. Mr. Maroon stated that, based on the area of town, he saw no value in the property with no house on it; he stated that no one would purchase the property if it could not be built upon so he believed it had no value as is. He stated that the lot was dry so he believed it was buildable. Mr. Grysk stated that the setback was in place to protect the resource; he stated that the DEP would allow this under the sand dune laws but not under Shoreland Zoning without a variance.

To a question from Mr. Maroon, Mr. Grysk explained that construction could take place in the back dune, in which this parcel laid; he noted that there were different departments of the DEP which addressed certain aspects of permitting. Mr. Maroon stated that the trigger for a reasonable return was the use of the variance, based on the rules that allow the Board to lower the setback to 25 feet. Mr. Grysk stated that all the criteria needed to be met. Mr. Maroon reiterated that his justification was that this was a buildable lot because it was not wet. Mr. Loisel stated that he was afraid of setting a precedent; Mr. Grysk stated he would not expect a lot of applicants for a similar situation but it would be difficult to explain why this appeal was approved. Mr. Loisel stated that he needed more information for proof of reasonable return.

Mr. Blaise stated that reasonable return was based on the original investment; he stated that Ms. Scala stated that she had many offers to sell the property so it was saleable. Mr. Blaise noted that the owners of the surrounding property would probably be willing to buy this site so he thought there was a rate of return. Mr. Massengill stated that he saw both points but if this were his lot he would feel it was buildable and if it could not be built upon it would not help the return the lot was worthy of. He stated that he thought it did not yield reasonable return without the variance. Mr. Crockett stated that that was why he asked whether the appellant was using the site for anything now; he stated that he did not know what the dollar amount of reasonable return would be.

Regarding Criteria No. 2, Mr. Maroon stated that the difficulty was with the property because of the required setbacks; the Board agreed. Mr. Maroon stated, regarding No. 3, that doing nothing would keep the property the same and a house would be the same as the existing neighborhood so the character of the neighborhood would not be affected; the Board agreed. Mr. Maroon stated that the site was mowed by the neighbors and the appellant; he stated that he thought the property had not been used and the maintenance established the fact that it had not been abandoned. He stated that if the Board did not grant this appeal the property would have no value. The Board agreed that Criteria No. 4 had been met.

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

Mr. Blaise stated that he thought there was reasonable return on this property as is; he stated that his concern was setting a precedent for everyone in the Shoreland Zone who wanted to build 50 feet closer to the wetlands; he stated that this was a big change in the setback. Mr. Maroon stated that he had no problem setting a precedent if it was reasonable; he stated that this was a lot of record that had not changed and he did not think it was right to not be able to use the property even if it did set a precedent. Mr. Loisel stated that the variance appeal was for a building on the lot not the selling of the property as it stands and the point was not to sell to the abutters. Mr. Crockett stated that he did not think the lot would be completely valueless without the variance; Mr. Loisel agreed. Mr. Maroon asked why anyone would buy the property if it could not be built upon; he reiterated that there was no comparison with other lots so Criteria No.

2 was met. To a question from Mr. Loisel, Mr. Maroon replied that if the property were purchased ten years ago it could not have been built upon because the rules were already in effect and the buyer would know it could not be built upon. Mr. Loisel noted that there were nearby buildings that were the same setback and this would be consistent.

Voted 4-1 Mr. Blaise voted against the appeal.

g. Appeal No. 2487 – A Limited Reduction of Yard Size Appeal by Eralda Adams, 7 Virdap Street, to construct a home 20 feet from the front property line and 10 feet from the side property line in the R-4 Zone

Mr. James Fisher, of Northeast Civil Solutions, noted that the lot was 50 feet wide with 15 foot side setbacks which left a 20 foot wide building envelope, which would not allow for a practical building envelope. He stated that they would like to move the house closer to the front of the lot to keep it as far as possible from the Shoreland Zone; he stated that this would be within the character of the neighborhood as most of the houses were close to the street. Mr. Fisher stated that the DEP had asked them to move the house as far from the water source as possible.

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

Mr. Maroon asked whether there was a design for the house; Mr. Fisher replied that there was nothing specific because they did not want to hire an architect prior to getting approvals from the town and the DEP. Mr. Maroon stated that, with no plans for the house, there was not enough information for the Board to vote.

Mr. Maroon moved to table the appeal for up to three months for further information; Mr. Massengill seconded.

Voted 5-0 to table

h. Appeal No. 2488 – A Miscellaneous Appeal by Chris Liponis, dba Northeast Technical Institute, 4 Ginn Road, Assessor’s Map R40 Parcel 12A, to resume a nonconforming use as a trucking terminal for a driving school in the HPZ Zone

Mr. Liponis stated that he currently used the Scarborough Downs site for driver training for his students but that was a temporary situation. He stated that the facility at 4 Ginn Road would meet their requirements with a building for record keeping and a break room. He noted that the zone had recently changed in this area and a trucking facility was now a nonconforming use. Mr. Liponis noted that there was only about 900 square feet of office space with the rest of the building being loading docks; he stated that the site was totally fenced in.

Mr. Grysk stated that this area had been in the Industrial Zone and there were several trucking terminals nearby. He stated that the Zoning Board could allow resumption of the nonconforming use but classes could not be held at this site because educational uses were not allowed in the Haigis Parkway Zone. Mr. Grysk stated that this use was primarily for the storage of trucks and there was plenty of space for backing and turning of trucks. He stated that he did not see anything that would conflict with the ordinance; he noted that the site had been vacant for a couple of years.

Mr. Maroon and Mr. Liponis addressed the Special Exception criteria. Mr. Liponis stated that hours of operation would be from 7:00 A. M. to 5:00 P. M. seven days per week.

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. Liponis replied that most of the parking lot was paved and they would clean it up by filling in the cracks and repaving where needed. Mr. Liponis stated that they would also clean up the building.

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

Voted 5-0

5. Zoning Board Comments

Mr. Grysk asked when the Board wanted to meet with the Town Attorney to go over Zoning Board procedures. Mr. Maroon asked that the Board members send him their schedules for when they could meet.

Mr. Grysk noted that Mr. Temm had resigned because of health reasons but would like to return to the Board when he was able.

6. Adjournment

The meeting was adjourned at 10:50 P. M.