

Town of Scarborough

Zoning Board of Appeals

August 12, 2009

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (July 8, 2009)
4. Appeals
 - a. Appeal No. 2487 – A Limited Reduction of Yard Size Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 20 feet from the front property line and 10 feet from the left side line in the R-4 Zone
 - b. Appeal No. 2492 – A Limited Reduction of Yard Size Appeal by Lawrence and Anne Bailey, 24 Barbara Avenue, Assessor’s Map U42 Parcel 38, to construct a front entry porch 25 feet from the front property line in the R-4 Zone
 - c. Appeal No. 2493 – A Practical Difficulty Variance Appeal by Eric Johnson, 17 Woodfield Drive, Assessor’s Map R25 Parcel 216, to relocate a garage 10 feet from the side property line in the R-F Zone
 - d. Appeal No. 2494 – A Practical Difficulty Variance Appeal by Paul and Abigail, Johnson, 65 Burnham Road, Assessor’s Map R5 Parcel 10, for an existing deck to remain 22 feet from the front property line in the R-F Zone
 - e. Appeal No. 2495 – A Practical Difficulty Variance Appeal by Mary and Martin Doherty, 21 Ocean Avenue, Assessor’s Map U2 Parcel 70, to construct a second story above the garage, a porch and a gable tip-up on the front of the house with nonconforming setbacks in the R-4 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

August 12, 2009

MINUTES

Members Present

Staff

Mr. Crockett
Mr. Loisel
Mr. Maroon
Mr. Massengill
Mr. Stark

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; Mr. Blaise, Mr. Dougherty and Mr. Stark were absent. Mr. Maroon noted that a tie vote would mean a denial.

3. Approval of Minutes (July 8, 2009)

Mr. Massengill moved to approve the minutes of July 8, 2009 with corrections; Mr. Loisel seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2487 – A Limited Reduction of Yard Size Appeal by Eralda Adams, 7 Virdap Street, Assessor’s Map U1 Parcel 51, to construct a home 20 feet from the front property line and 10 feet from the left side line in the R-4 Zone

Mr. Maroon read a letter from Attorney Huckel-Bauer, who represented two abutters, asking that his letter of July 8, 2009 urging the Board to deny this appeal be incorporated into the record.

Mr. Jim Fisher, of Northeast Civil Solutions, stated that they had attempted to get the neighbors and the appellant together to discuss the issues, as requested by the Board, but the neighbors declined. Mr. Fisher stated that this was an appeal for setback reduction to the north side and the front property lines; he stated that there was a smaller building envelope and they moved the structure to the north side at the request of the Board in order to be further from the water and from the abutting home. He stated that he had looked at 63 houses and 10% of them were greater than two stories and this layout conformed to the majority of the houses in the area. Mr. Fisher stated that the house had been reduced from 58 feet long to 42 feet long and would be further away from the Coppola property and would meet the 15 foot setback on the right side. Mr. Fisher reiterated that, through their attorney, the two abutters declined to meet with them or look at the plan and would not drop their legal action.

Mr. Grysk noted that this appeal came back to the Board so that the approved plan would be clear and on the record.

Mr. Maroon opened the public hearing. Ms. Susan Mazzoni, who represented her mother Ellen Coppolla, of 14 Kent Street, stated that they were concerned about how close this house would be to its neighbors; she stated that it was a big house and the abutters would be crowded in by it causing a fire hazard. Mr. Maroon closed the public hearing.

To a question from Mr. Maroon regarding a fire hazard, Mr. Grysk replied that the code required that there be 30 feet between structures and this unit needed 15 feet which it now has; he stated that it was the existing structure that did not meet the setback requirement. To a question from Mr. Maroon, Mr. Fisher replied that the height of the building would be 34 feet to the peak.

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

Mr. Maroon stated that this was a straightforward issue and he felt it met all requirements; he stated that he was disappointed that the neighbors would not meet with the appellant. Mr. Loisel noted that the appellant did what the Board requested. Mr. Massengill stated that the house would be further back from the house next door and met the average setback of the houses in the area and he thought this was a good position for the home on the lot. Mr. Loisel stated that the wetland lines were not something the Board could change. Mr. Grysk noted that the Shoreland Zone line could be arbitrary and had to be documented in the field; he stated that the appellant was granted the 25 foot setback from the Board and that is now the legal line. To a question from Mr. Massengill, Mr. Fisher replied that the house would be 22 feet wide.

The Board addressed the following requirements of the Limited Reduction of Yard Size appeal: 1. This is a vacant lot. 2. It is reasonably necessary to enjoy the property in the same manner as other similar properties; Mr. Massengill stated that this is one of the key rights other owners in the neighborhood have. Mr. Loisel stated that the structure would not have excessive width. 3. The reasonably sized building is good for the neighborhood and a narrow house would be unsightly. 4. This does impact the neighborhood but it is not substantially different from a house that would conform to the setbacks. 5. No construction has begun.

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

Voted 4-0

b. Appeal No. 2492 – A Limited Reduction of Yard Size Appeal by Lawrence and Anne Bailey, 24 Barbara Avenue, Assessor’s Map U42 Parcel 38, to construct a front entry porch 25 feet from the front property line in the R-4 Zone

Mr. Bailey stated that they would like to put a roof over the front porch which would be 25 feet from the front property line so that when they installed a metal roof the snow and ice would not fall directly on their entryway. Mr. Grysk noted that there was no survey but the pins were located and the setbacks verified.

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

Mr. Maroon and Mrs. Bailey addressed the criteria.

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

Voted 4-0

c. Appeal No. 2493 – A Practical Difficulty Variance Appeal by Eric Johnson, 17 Woodfield Drive, Assessor’s Map R25 Parcel 216, to relocate a garage 10 feet from the side property line in the R-F Zone

Mr. Johnson stated that their garage had been built on the neighbor’s property and needed to be moved but because of the swimming pool, a fence and trees this was the only location feasible. Mr. Grysk noted that the garage was now on a trailer waiting to be placed on the lot; he noted that this could not be a Limited Reduction of Yard Size Appeal because the house was built after 1991. He noted that apparently the wrong pins were read when the garage was built.

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

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

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

Voted 4-0

d. Appeal No. 2494 – A Practical Difficulty Variance Appeal by Paul and Abigail Johnson, 65 Burnham Road, Assessor’s Map R5 Parcel 10, for an existing deck to remain 22 feet from the front property line in the R-F Zone

Mr. Johnson stated that he had constructed a 320 square foot deck on his home without a permit because he was told by a friend that he did not need one. He stated that his property dropped off so he had no backyard and the deck would otherwise have to be located off the bedroom. He stated that he took responsibility for not applying for a permit and did not do it out of disregard for the zoning. To a question from Mr. Maroon, Mr. Johnson replied that a Code Officer had knocked on his door and asked whether he had a permit; he stated that he subsequently applied for the permit but the setbacks were not met.

Mr. Massengill noted that he did not know the appellant but had conversed with a friend of his. Mr. Grysk stated that this was an after-the-fact appeal and the question was whether the deck could remain.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal. Mr. Maroon read letters from Raymond and Elaine Michaud, of 61 Burnham Road, and Alyce-Ann Cushing, of 60 Burnham Road, in favor of the appeal. Mr. Maroon closed the public hearing.

Mr. Maroon and Mr. Johnson addressed the criteria as presented in writing. Mr. Johnson noted that this was the result of the zoning laws but if he had come in before he built the deck the need for a variance would still have existed. He stated that he contacted someone for a quote to have the deck removed but was told by the Code Officer to wait until the appeal was decided. He stated that this was the entryway to his home and was set back eight inches from the front of the house; he stated that a deck or porch was a way to enjoy the outdoors.

To a question from Mr. Maroon, Mr. Grysk replied that if the applicant had applied for a permit he would still have needed a Practical Difficulty Appeal. Mr. Maroon stated that his concern was that this was action taken by the applicant. Mr. Maroon compared the criteria of the Limited Reduction Appeal which required that no construction had begun. Mr. Loisel stated that the Board needed to judge this appeal as if the deck were not there. Mr. Maroon stated that if the deck were removed and the appellant came back to the Board, the appeal would probably be approved. Mr. Grysk noted that some after-the-fact appeals had been approved in the past.

Mr. Crockett agreed that this was action taken by the appellant but the other seven criteria were met. Mr. Massengill agreed that the issue would be there whether or not the appellant had built the deck before coming to the town. Mr. Massengill stated that there was no other feasible area to place the deck and he had no problem with it.

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

Mr. Maroon stated that there was no other place on the property to build anything and it would be silly to remove the deck and then return to the Board. He stated that Mr. Johnson made it easy because he established the fact that if he could not have this deck he could not have a deck at all.

Voted 4-0

e. Appeal No. 2495 – A Practical Difficulty Variance Appeal by Mary and Martin Doherty, 21 Ocean Avenue, Assessor’s Map U2 Parcel 70, to construct a second story above the garage, a porch and a gable tip-up on the front of the house with nonconforming setbacks in the R-4 Zone

Mr. Walter Wilson, of The Design Company, made two minor corrections of the setback figures on the right hand side. He explained that the location of the proposed second story was over the garage with a gable end on the front of the house and they wanted to extend the eave of the first floor from the present three inches to eight inches. He stated that the tip-up would be on the existing roof. Mr. Wilson displayed the plans and stated that the appellant would also like to build a front porch. He stated that the only footprint change would be the front porch; he noted that only a small piece of the rear addition needed a variance.

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

Mr. Wilson displayed a drawing showing that nearly all of the homes on Ocean Avenue had porches and the neighborhood considered them a way to socialize amongst each other; he stated that the Dohertys would like a porch so they could enjoy it in the way most of their neighbors did.

Mr. Maroon stated that he had been against the variance for the front porch but Mr. Wilson convinced him that the appellants should be able to enjoy the neighborhood as their neighbors did. The Board agreed. Mr. Wilson stated that their porch would be twice as far back from the front property line as most of the others.

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 with the corrected numbers as provided by Mr. Wilson; Mr. Maroon seconded.

Voted 4-0

5. Zoning Board Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 8:30 P. M.

