

Town of Scarborough

Zoning Board of Appeals

December 8, 2010

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (November 10, 2010)
4. Appeals
 - a. Appeal No. 2396 – A Special Exception Appeal by Adam Dixon, dba Complete Mobile Inc., 181 Payne Road, Assessor’s Map R49 Parcel 5A, to install electronic equipment in automobiles as a home occupation in the R-2 Zone
 - b. Appeal No. 2397 – A Practical Difficulty Variance Appeal by James Iannetta, 628-632 U. S. Route One, Assessor’s Map U32 Parcels 2 and 3, to split contiguous property into two parcels in the TVC Zone
 - c. Appeal No. 2398 – A Variance Appeal by Phillip and Cheryl LaRou, 37 Vesper Street, Assessor’s Map U1 Parcel 15, to construct a second story 11 feet from the front property line, 10 feet 9 inches from the left side line and 11 feet 10 inches from the right side property line 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

December 8, 2010

MINUTES

Members Present

Staff

Mr. Dillon
Mr. Loisel
Mr. Macisso
Mr. Maroon
Mr. Stark

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.

2. Roll Call

The Recording Secretary called the roll; Mr. Crockett was absent. Mr. Maroon authorized Mr. Macisso to vote.

3. Approval of Minutes (November 10, 2010)

Mr. Stark moved to approve the minutes of November 10, 2010; Mr. Macisso seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2396 – A Special Exception Appeal by Adam Dixon, dba Complete Mobile Inc., 181 Payne Road, Assessor’s Map R49 Parcel 5A, to install electronic equipment in automobiles as a home occupation in the R-2 Zone

Mr. Macisso noted that he knew both Mr. Dixon and Mr. Morowski, who had written a letter regarding this appeal. No one had a problem with Mr. Macisso hearing this appeal.

Mr. Dixon stated that he owned Complete Mobile and served a 50 mile radius of customers. He explained that most of his installations of electronic equipment were done offsite at car dealers or at customers’ homes; he stated that he did only installations and not vehicle repairs.

Mr. Maroon read a portion of the letter from Robert Morowski, owner of Dr. Stereo, Inc. who was not in favor of this business. Mr. Grysk stated that he had visited this site in the past in response to complaints, but he had never seen any activity on the site.

Mr. Maroon and Mr. Dixon addressed the Special Exception and the Home Occupation criteria. Mr. Dixon stated that he would have one employee; he stated that he would like to have a two by three foot sign and there would be no exterior display. Mr. Dixon stated that he would gravel or pave the side yard for two cars and there was a turnaround; he stated that he could take trees down for parking if necessary. Mr. Dixon explained that they would do their installations mostly offsite during decent weather. Mr. Grysk noted that he had a phone call from George Wells, of 185 Payne Road, who had no issues.

Mr. Maroon opened the public hearing. Mr. Robert Morowski, of Dr. Stereo, stated that he and Mr. Dixon were competitors and he thought it was unfair that a retail installation could be in a home and he had to abide by restrictions at his business; he stated that Mr. Dixon should have a store front and abide by the rules of every other retail business. He stated that backing into Payne Road was a nightmare. Mr. Maroon closed the public hearing.

To a question from Mr. Loisel, Mr. Dixon replied that he would have no more than four or five vehicles at one time including his employee's and his own vehicles. He stated that his driveway was 21 feet wide and 65 to 70 feet long and there was a 15 foot turnaround at the side; he stated that one could also drive around the garage. He stated that he did not schedule installations that could not be done immediately. To a question from Mr. Stark, Mr. Dixon replied that his hours of operation would be Monday through Friday from 9:00 A. M. to 5:00 P. M.; he reiterated that he preferred to go to the vehicle owner's site and rarely worked on vehicles at this site but occasionally needed to do installation jobs at home. Mr. Dixon stated that he did not have displays and sales were done on his website and no marketing was done onsite.

To a question from Mr. Macisso, Mr. Dixon replied that if his appeal were denied he would do his installations only offsite; he stated that he did have insurance and did abide by other rules. Mr. Macisso read a portion of Mr. Morowski's letter. He stated that small businesses were allowed as home occupations in Scarborough if they met all the requirements. To a question from Mr. Macisso, Mr. Dixon replied that there was no sanitary service to the garage but he used no fluids in his work. Mr. Macisso noted that the ordinance did not allow motor vehicle repairs as home occupations; he stated that he knew the noise generated by Dr. Stereo but that was in a business zone.

Mr. Maroon stated that he struggled with the motor vehicle repair issue and questioned whether installations were considered repairs. He noted the Special Exception criteria that he felt were not met: b. He stated that there would be additional traffic and the layout of the lot was not conducive to safe traffic. c. Mr. Maroon stated that if this were a commercial building there would be required fire codes. He stated that with a home occupation only 20% of the dwelling space could be used and a restroom was needed.

Mr. Grysk stated that up to 1,000 square feet in an accessory building could be used, though only 400 square feet would be allowed for retail use so the Board had to determine whether products were being sold. He stated that the 20% allowance applied within the dwelling unit itself.

To a question from Mr. Loisel, Mr. Dixon replied that he and his employee parked their vehicles on the gravel off the driveway. Mr. Loisel stated that parking needed to be on a hard surface and not on the lawn and there was not enough space in the driveway. He stated that the Board encouraged people to have turn around areas and that needed to be addressed. Mr. Loisel stated that he saw this installation as the same as adding a spoiler or trim and it had some level of maintenance as an after-market add-on product so the Board needed to think about it as maintenance; he stated that it was not retail but was close to maintenance. Mr. Dixon stated that they were not doing maintenance because they were not doing anything that was not new; he stated that he did not generate any waste because the customer took it away.

Mr. Maroon noted findings of fact on the Home Occupation criteria as follows: He stated that he had concerns as to whether this use was incidental to the home and would disturb the residential character of the neighborhood but would default to the appellant. Mr. Stark, Mr. Loisel and Mr. Maroon agreed that this site did not meet the requirements for parking especially during the winter. Mr. Maroon stated that he did not know whether this fell under retail sales but he would default to the appellant. He stated that his biggest issue was that he thought change to a vehicle was equivalent to repair.

Mr. Maroon also noted findings of fact on the Special Exception criteria as follows: He stated that the use did not add unsafe traffic but the use based on the driveway did create unsafe traffic. He stated that he

was somewhat concerned about running a vehicle without a sprinkler system. Mr. Dixon stated that he currently had alarms. Mr. Maroon stated that the intensity of use was questionable but he would default to the appellant's statement that he would use the site minimally.

Mr. Dillon stated that parking was his concern and a layout of the parking would help; he stated that he thought this was not really repair of existing equipment. Mr. Loisel stated that he would be satisfied with the parking if it were upgraded but he struggled with what was repair or not. Mr. Dixon stated that his business could be judged by reading his website. Mr. Stark stated that parking, the turnaround and usage were issues because this was work being done to a vehicle. Mr. Macisso stated that he agreed on parking and the Board should agree on a definition for vehicle repair.

Mr. Loisel stated that the safety could be corrected with changes to the driveway; he stated that, in his opinion, any home occupation changes the character of the neighborhood as soon as an additional car accessed the site. Mr. Maroon stated that he did believe this was repair and there were some fire concerns; he stated that he had a problem with the intensity of use which changed the character of the neighborhood. Mr. Maroon stated that the appellant should return to the Board with a driveway and parking plan and address any Fire Department requirements if he wanted to table the appeal.

Mr. Dixon asked to have his appeal tabled so he could provide more information. Mr. Maroon moved to table the appeal; Mr. Dillon seconded.

Voted 4-0-1 to table – Mr. Macisso abstained.

b. Appeal No. 2397 – A Practical Difficulty Variance Appeal by James Iannetta, 628-632 U. S. Route One, Assessor's Map U32 Parcels 2 and 3, to split contiguous property into two parcels in the TVC Zone

Mr. Iannetta stated that this was always two properties until the Assessor jointed them as contiguous lots and he would like to have them as two properties; he stated that they were merged prior to his purchase at auction. He stated that there were separate entrances and utilities.

Mr. Grysk stated that the Zoning Board had the ability to split the property; he stated that a functional division would make both properties nonconforming.

Mr. Maroon opened the public hearing. Ms. Martha Devoli, of 14 Orchard Street, asked about the for sale sign on the property; Mr. Iannetta stated that that sign was not on his property but on another lot. To a question from Ms. Devoli, Mr. Maroon replied that one of the lots would be nonconforming and the appellant would have to return to the Board in order to make any changes to the site; he stated that the uses were mixed uses with low impact as allowed in the TVC Zone.

Ms. Emma Dann, of 16 Orchard Street, stated that her concern was that the property next door was for sale and they could be lumped together. Mr. Iannetta stated that he had no intention of purchasing the lot next door. Mr. Maroon closed the public hearing.

Mr. Maroon and Mr. Iannetta addressed the criteria.

To a question from Mr. Loisel, Mr. Grysk replied that the lots were already functionally developed units. Mr. Maroon noted that the owner of record needed to be changed on one of the lots so they would not be merged again under one ownership.

To a question from Mr. Macisso, Mr. Grysk replied that what the Board was doing was allowing the appellant to go back to what is existing on the site; he stated that nothing physical would change.

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

Voted 5-0

c. Appeal No. 2398 – A Variance Appeal by Phillip and Cheryl LaRou, 37 Vesper Street, Assessor’s Map U1 Parcel 15, to construct a second story 11 feet from the front property line, 10 feet 9 inches from the left side line and 11 feet 10 inches from the right side property line in the R-4 Zone

Mr. Walter Wilson, of The Design Company, explained that the LaRous would like to add a second story on a one story house; he stated that there were wetlands in the rear of the lot so this did not qualify for a Practical Difficulty Variance. He stated that they would build the second story in from the front of the house which was on the property line; he noted that the two abutting houses, including their second stories were also very close to the street. Mr. Wilson read his letter explaining the changes.

Mr. Maroon confirmed that the only change to the footprint would be the relocation of the stoop from the left to the right side of the house. Mr. Wilson stated that the deck would be smaller than the existing to the rear and that would bring the setback from the wetland from the present 33 feet to 35 feet. He stated that they could not add footprint because they were now over the 25% maximum coverage so they had to build up. He stated that the second story would be placed in one foot from the first floor and would open the space between this building and the abutter. Mr. Wilson stated that the porch would be built on existing pavement and there was plenty of room for a car. Mr. Grysk stated that he had discussed this with Mr. Wilson and this was the best solution to gain some space in the house and stay within the parameters.

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

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

To a question from Mr. Maroon, Mr. Grysk replied that this could not be a Practical Difficulty Appeal because of the wetlands. Mr. Maroon noted that Criteria b, c and d were acceptable but he questioned the reasonable return criteria; he stated that this appeal could pass the Practical Difficulty Appeal criteria which he and Mr. Wilson addressed.

To a question from Mr. Loisel, Mr. Grysk replied that the building could be moved back but that would be at great expense. Mr. Loisel asked about a spiral staircase; Mr. Wilson replied that a spiral staircase would save only about two feet of space. Mr. Loisel stated that it was difficult to say that this property could not yield a reasonable return and he needed to be convinced that there was no other way to expand. Mr. Wilson replied that it would cost \$50,000 to \$60,000 to move the house and it would put the structure closer to the wetlands.

Mr. Maroon stated that the Board was caught in a technicality and it made no sense to move the house back. He noted that there were no concerns from the neighbors. To a question from Mr. Macisso, Mr. Wilson replied that most of the houses were two stories with a one story house across the street.

Mr. Dillon moved to approve the appeal as presented; Mr. Stark seconded.

Mr. Loisel stated that the only reason he would vote yes was because of the wetlands which forced this to a straight variance; he stated that he would vote based on the circumstances of the property and not the claim of great expense.

Voted 5-0

5. Zoning Board Comments

Mr. Grysk noted that there was an appellant who would be on the January agenda and it was felt that site walk would help the Board. Mr. Grysk stated that he would determine a date and time and would inform the Board.

6. Adjournment

The meeting was adjourned at 9:05 P. M.