

ZONING BOARD OF APPEALS Ipswich, Massachusetts

Special Meeting minutes

February 25, 2021

Pursuant to a written notice posted by the Town Clerk and published in the Ipswich Local News, a newspaper of general circulation; the Ipswich Zoning Board of Appeals held a meeting on Thursday February 25, 2021 at 7:00 p.m. remotely via Zoom Video Conferencing, in accordance with the Governor's 3.12.20 Order suspending provisions of the Open Meeting Law to promote public health and safety and social distancing during the public health emergency.

Members tuned in were Chair Robert Gambale, Benjamin Fierro, Lewis Vlahos, Rob Clocker and Justin Planasch Also, Administrative Assistant Marie Rodgers.

Citizen Queries: There were none.

Continued Public Hearings:

23-25 Jeffreys Neck Road, David and Patti Ganley and Ben and Meg Ganley request two Special Permits and/or Variances pursuant, but not necessarily limited to, Sections XI.J., XI.K, II.B.3. and Table of Dimensional and Density Regulations Footnote 2, to reduce the right side yard setback from the existing dwelling at 25 Jeffreys Neck Road and to reduce the left side yard setback from a proposed dwelling at 23 Jeffreys Neck Road, both from a proposed common division/property line between the dwellings and both by no more than 50% of the required.

In addition, Ben and Meg Ganley request a third Special Permit and/or Variance pursuant, but not necessarily limited to, Sections XI.J., XI.K. and Table of Dimensional and Density Regulations Footnote 2 to reduce the front yard setback from a proposed dwelling at 23 Jeffrey's Neck Road by no more than 10% of the required. Property located at Assessor's Map 31B, Lots 006 and 006C in the Rural Residential A (RRA) Zoning District.

Chairman Gambale read the legal notice and opened the public hearing at 7:06 p.m.

The Petitioners were present and represented by Larry Graham of HL Graham Associates. The Petitioners own three lots comprise of 4.5 acres, the existing dwelling is located on the middle lot. The proposal is to separate three into two lots, on which a second dwelling would be built on the second lot.

Lengthy discussion took place between Board members and Mr. Graham, concerning the non-conformity of the existing dwelling, percentage of upland available on the newly created lots. The Petitioner is aware that the proposal would require an Order of Conditions from the Conservation Commission due to the percentage of wetlands on the lots; footnote 26 of the Table of Dimension and Density regulations were cited; review of Variance criteria for the lot creation.

Mr. Graham indicated he would discuss options with the Petitioners and agreed to continue to the March 18, 2021 meeting. Carolyn Britt, 1 Shagbark Woods spoke to the letter she submitted dated 2.11.2021.

MOTION:

Mr. Gambale moved the Board continued the public hearing to the regularly scheduled meeting on March 18, 2021 at 7:00 p.m. on Zoom. Mr. Fierro seconded, the motion passed with a roll call vote.

Document submitted: Petition and associated documents. Email letter from *Document submitted:* Petition and associated documents; email letter from Carolyn Britt, 1 Shagbark Woods dated 2.11.2021.

66 Labor-In-Vain Road, Miranda M. Updike, Trustee of the Mary P. Weatherall Realty Trust requests a Variance pursuant, but not necessarily limited to, Sections XI.K and VI - Dimensional and Density Regulations for area relief to allow the creation of lot having less than the one acre minimum required per Section VI. Property located at Assessor's Map 43B, Lot 2A in the Rural Residence (RRA) Zoning District.

Chairman Gamble read the legal notice and opened the public hearing 8:02 p.m.

The Petitioners were represented by Attorney Christopher Thornton of Thornton Law Office in Rowley, Mass. He described the property comprising of 7.5.2 acres and history of the owners and existing structures on the property. He spoke to the parcel created by ANR approval by the Ipswich Planning Board, which contains a pre-existing non-conforming structure converted barn constructed in 1920, used as part of the main house and will remain in use as a single family dwelling. The adjacent house lot is currently under contract to be sold and is the reason for Variance request. The Petitioner cannot sell the adjacent main house for full fair market value, exclusive of the subject dwelling. Nor would it be able to retain this portion of property that have been in the family for over 60 years, and this is utmost importance to the Petitioner.

He reviewed relief sought will have no impact on the current conditions. The creation of new lot lines will be paper only. No new structures are proposed or sought. The variance will have no impact on the streetscape or character of surrounding neighborhood, will not affect soil conditions shape or topography effects of the land or structures thereon. No new structures proposed, no new use; just the sale of the adjacent parcel. No detriment to the public good. ANR endorsement was as a matter of right, the relief may be granted to the applicant without substantial detriment to the intent and purpose of the Ipswich Zoning bylaws.

Lengthy discussion took place concerning the structure on the lot; the proposal increasing non-conformity by creation of the 81L lot; Variance is necessary to legitimize the nonconformities that arose when the lot was created; citing a SJC case Palitz v. Zoning Board of Appeals of Tisbury 20015. A variance grant requires compliance with all five criteria.

Attorney Thornton spoke to the negotiations of the sale for much of the house lot and cottage lot to be preserved, allowing for some benefit for the lot to be divided in the future by the new owners. The Board suggested by adding more land and reducing the non-conformity, it would bring the lot further in compliance. Attorney Thornton agreed to make further modifications. Rob Clocker cited footnote 26; the first criteria is that the lot exists, in this case the lot being proposed does not meet the criteria.

Attorney Thornton requested to continue the public hearing, and allow time to work with engineers.

Chair recognized Jim Monahan, 51 Labor In Vain Road, who spoke of his work with Land Vest, for the conservation restrictions.

As there were no further comments from abutters or others, **MOTION: Mr. Gambale moved the Board continued the public hearing to the regularly scheduled meeting on March 18, 2021 at 7:00 p.m. on Zoom. Mr. Fierro seconded, the motion passed with a roll call vote.**

7 Riverside Drive, Lawrence J Savarese requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections, X.I.J, X.I.K., VI.F and Table of Dimensional and Density Regulations Footnote 2 to reduce the left side yard setback for a shed (320 S.F. in area) by no more than 50% of the required setback. Property located at Assessors Map 42B, Lot 044 in the Rural Residential A (RRA) Zoning District.

Chairman Gambale read the legal notice and opened the public hearing at 9:36 p.m.

The Petitioner was present to explain his proposal for a shed (16' X 20'). He would like to locate it 10-feet from the right side setback, to line up with his driveway; it would be 50-feet from the home; 96-feet from the rear lot line and 94-feet from the left side lot line.

He submitted pictures of three types of sheds. The shed would be constructed of pine and would be painted to match the color of his home. He told the Board that he had selected the style of shed that has a garage door, but he would eliminate the garage door.

The Board discussed the proposal. There were no objections from abutters or others. The Board reviewed the criteria.

The Board found that given the characteristics of the neighborhood and the Petitioner's lot, the proposed 320 sq. ft. shed would not create a substantially greater burden for the Town. The Board further found that the relief sought by the Petitioner is consistent with the intent of the Zoning Bylaw and will not substantially derogate from its intent and purpose and would have no negative impact on the neighborhood.

MOTION:

Mr. Fierro moved that the Board make the findings 1-6 as set forth in section XI.J for the special permit criteria. Mr. Vlahos seconded. The motion passed unanimously with a roll call vote.

MOTION: Mr. Fierro moved the Board grant the special permit as requested by the Petitioner from the provisions of Ipswich Protective Zoning Bylaw Section VI, Table of Dimensional and Density Regulations to reduce the right side setback no closer than ten feet for the purpose to construct a storage shed 320 square feet in area as discussed illustration #3. Mr. Vlahos seconded. The motion passed unanimously with a roll call vote.

Document submitted: Petition and associated documents. Email from abutters across the street Susie and Malcolm Green.

30 Plains Road, Ronald L Theokas requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections X.I.J, X.I.K., VI.F and Table of Dimensional and Density Regulations Footnote 2 to reduce the rear and side yard setback for a three season addition by no more than 50% of the required setbacks. Property located at Assessors Map 37D, Lot 27 in the Rural Residential A (RRA) Zoning District.

Chairman Gambale read the legal notice and opened the public hearing at 9:15 p.m.

The Petitioner was present with his wife, Judith Theokas, and friend Brenda Turner. The Petitioner explained that he is disabled and that the modifications to his home, including the construction of a three-season porch, were necessary for him to cope with the effects of his disability. The Petitioner submitted documentation that he is totally and permanently disabled, as well as evidence that he was awarded a Specially Adapted Housing and/or Special Home Adaption grant from the U.S. Department of Veterans Affairs. He also submitted documentation from his health care provider regarding his disability.

Given the sensitive nature of Mr. Theokas' medical condition, the Board convened into Executive Session. There is an exception to the Open Meeting Law when discussing an individual's health.

The Board discussed the lot and primary dwelling all conforming to zoning. Mr. Fierro spoke to convening in executive session and explained the process to the Petitioners. The Board would returned to open session for the vote.

MOTION: Mr. Fierro moved the Board and Petitioners convene in Executive Session pursuant to the provisions of the Open Meeting Law (G.L. c. 30A, § 21(a)(1) for the specific purpose of discussing the physical or mental health of an individual. Mr. Vlahos seconded, the motion passed with a roll call vote.

The Board reconvened in public session

There were no comments from abutters or others.

MOTION:

Mr. Fierro moved the Board find the Petitioner has qualified for "reasonable accommodation" from the provisions of the Ipswich Zoning Bylaw pursuant to the Americans with Disabilities Act and the Federal Fair Housing Amendments Act, based on information in executive session. Mr. Vlahos seconded, the motion passed with a roll call vote.

MOTION:

Mr. Fierro moved that the Board make the findings 1-6 as set forth in section XI.J for the special permit criteria. Mr. Vlahos seconded. The motion passed unanimously with a roll call vote.

Mr. Fierro reviewed the proposal would allow the Petitioner to continue to reside in the community; the proposal would increase the assessed value of the property; there is adequate parking; the proposal will have no impacts on utilities and other public services; the design of the porch is compatible with the neighborhood; proposal will have little impact on the natural environment.

MOTION:

Mr. Fierro moved the Board find the Petitioner has met criteria under sections IX.J A2. Mr. Vlahos seconded, the motion pass unanimously with a roll call vote.

MOTION:

Mr. Fierro moved the Board grant the special permit as requested by the Petitioner from the Ipswich Protective Zoning Bylaws section VI Table of Dimensional and Density Regulations to reduce the rear and side yard setback no closer than 29'7" and reduce the right side setback to 26'.5" for construction of a three-season porch addition subject to five pages of plans by Tectura Design + Build dated 1.20.2021. Mr. Clocker amended the motion to round off the rear setback to 29' and side setback to 26'. Mr. Vlahos seconded, the motion passed with a roll call vote.

Documents and exhibits used by the Appeals Board: Petition application with required submittals. Including a letter from the Veteran's Administration; a letter from Harvard Vanguard Medical Associated letter signed by James Brown, MD; Email from Jim Bone Building Inspector dated 2.25.2021.

134 Argilla Road, Lee Carson requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections XI.J, X.I.K and V. D Table of Use Regulations for a Private Guest House. Property located at Assessors Map 55, Lot 7 in the Rural Residential A (RRA) Zoning District.

Chairman Gambale read the legal notice and opened the public hearing at 9:55 p.m.

Ryan McShera, Architect with Red Barn Architecture was present representing the Petitioners, explained the proposal to renovate the existing dilapidated barn and increase the building foot print by ten feet to accommodate vehicles storage on the ground floor, art studio/guest house on the second floor.

Discussion took place regarding increase in foot print ten feet to the west (toward the dwelling) and width would remain (no change in height is proposed). Use was discussed, number of bedrooms will increase by one, for a total of three bedroom. The Petitioner has consulted with the Board of Health. The art studio will have a utility sink and workspace shelves, no cooking facilities and no kitchen cabinets are proposed. The Petitioner is required to file with the Conservation Commission.

Mr. Fierro reviewed the section under table of uses for a private guest house.

MOTION:

Mr. Fierro moved the Board find the criteria has been met under section XI.J #2. Mr. Vlahos seconded, the motion passed with a roll call vote.

MOTION:

Mr. Fierro moved the Board grant the special permit as requested by the Petitioner from the Ipswich Protective Zoning Bylaws for the construction of a guest house as shown on plans titled Guest House/Garage/Studio 18 pages of drawings and plans titled Carson Residence dated 1.26.2021.

Mr. Mac Shera agreed that after the conservation commission review, if a change was required, the Petitioner would return to the Board with a request for modification requiring a new fee, legal ad and abutters notice.

► Chair noted the next scheduled meeting of the ZBA will be March 18, 2021 this will be a regular meeting and not a special meeting for the 40B's.

► Town Farm Rd, Chuck Hulbert requested an Extension of Time on a ZBA decision granted in 2019. He does not need to ask for an extension of time now. If, needed he should come back within 45 days after the state of emergency and the Board could grant an extension then. The two years is effectively running and will expire 45 days after the Emergency Pandemic has ended.

Adjourn - It was moved, seconded and unanimously voted to adjourn at 10:20 p.m.

Respectfully submitted,

Marie Rodgers
Administrative Assistant

The Board approved these minutes on April 29, 2021

Pursuant to the 'Open Meeting Law' the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting; the members present or absent; the findings made and actions taken. Any other description of statements made by any person, or the summary of the discussion on any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.