

**TOWN OF STERLING
ZONING BOARD OF APPEALS
Minutes of Meeting**

DATE: May 13th, 2009
TIME: 6:30 pm
LOCATION: Butterick Municipal Building

Board Members Present:

Joe Curtin, Jeffrey Donaldson, William Bird, Renee Perry

Alternate Present:

David Lozier

Town Counsel:

Stanley Weinberg

Agenda:

- 6:30pm Open Meeting and Roll Call
- 6:35pm Case # 582 Edith Corbett, Barbara and Ronald Roberti, Carol and Angelo Rossi-
Administrative Appeal 55 Lakeshore Dr.

Proceedings:

- 6:30pm Mr. William Bird opened the meeting with a roll call and then opened the continuation for the meeting on 55 Lakeshore Drive.
- Mr. Bird noted that he wanted to open the floor for any new evidence and after that they would give both parties the opportunity to submit “finding of facts” by the 26th of May. After that, we would reconvene by June 16th. Mr. Bird also went through the procedure of the meeting.
- Mr. Thomas Bovenzi, representing the McNamaras, presented his argument document. Mr. Bovenzi clarified the issues at hand. He noted that the Board is there to review the Building Inspector’s interpretation of their decision. The McNamaras have met with several other town Boards and the Building Inspector has examined all of that. He added that understanding State law there is great protection from the State for non conforming structures. Sterling does follow those laws, and there is protection for non-conforming structures as long as it does not increase its non conformity. If for example the height is making it more non-conforming but it might not. Then the McNamaras came to the Board for this “modification,” and “modification” in the Sterling bylaws includes “reconstruction.” What was proposed was not substantially detrimental in the case, and the proposal was to enlarge the property and going up in height. The only condition was that the wall line be 25 feet-the as built confirms that. The sketch of plans submitted in the record for the McNamaras was not a building plan but it was used to the give the Board a rough plan for the special permit. There were no neighbors in opposition, and again Mr. Bovenzi added that he was not present at the hearing of the case but he could tell from the minutes that the Board was only concerned about whether the project would be substantially detrimental to the neighbourhood. Mr. Bovenzi presented a picture from the

lake and stated to the Board that what they envisioned was what has happened and the structure was not detrimental.

- Mr. Bovenzi added that the Rossi's in their testimony said that Mr. Rossi stands at his kitchen and sees a wall. The wall would be there in any case and it came to this elevation. The ZBA when it was granting the special permit, was concerned with the statutory law. It did not ask for architectural plans, but made a condition for the 25 foot set back at the easterly side. That was the only condition that was put on the granted special permit. The applicants went through the entire Board requirement such as the Conservation Commission. The Building Inspector was however the person who interprets the by laws and applies ZBA decision. He did not see anything that would make a difference to him. The State law allows the McNamara to do this project. Anything that they are looking at today was irrelevant. The Building Inspector did not see anything in the case and the neighbors did not attend the hearing or appeal the decision.
- Mr. Bovenzi added that his client did remedy the drainage issue but they are willing to continue. The Rossi's are not impacted at all from the 3 feet. From the picture, it is a beautiful house. There are also neighbors who are in support of the McNamaras and submitted a signed letter but them to support everything the Board has done so far.
- Mr. Bird asked if there were any further questions from the Board.
- Mr. Curtin asked that he needed a better explanation about what was submitted in the plans. The bylaws go into submittal of site plans, and how can there be changes of 3 feet to 4 feet, and how does it get from what was presented to what is built now.
- Mr. Bovenzi said that they had an issue with the grading down, and whatever was intended, the Board allowed some flexibility in the application. The Board did not put special restriction. The Building Inspector could decide this under his jurisdiction. Also, the McNamaras met with different town Boards and they all agreed.
- Mr. Curtin stated that essentially they built what was in the plan but had minor changes.
- Mr. Bovenzi assured that it was 100% of what was intended but if there were any concerns, and then there would have been in the stipulations of the special permit. The case started with a protected standard non conforming structure, and what the Board is reviewing what the Building Inspector did. They could not challenge what was granted.
- Mr. Donaldson noted that he agreed with how Mr. Bovenzi tried to frame what was the Board's decision. As part of the presentation, Mr. Bovenzi mentioned the standard that the ZBA applied to the plans. Mr. Donaldson added that he struggled with words in the application and was puzzled and wanted Mr. Bovenzi to explain the gap from the application to the permit and to address the differences especially in the language.
- Mr. Bovenzi explained that what the Board was reviewing now was the Building Inspector's interpretation of the decision. He understands that the application was not prepared by an attorney, it is a seasonal dwelling, and building a second story and increasing the foot print. Looking at the application, the Building Inspector saw that increasing the height did not increase the non-conformity, and abided by town bylaws. The application was fair and explained what they intended to do and what the Building Inspector did, did not derogate from the special permit. They listed accurately the application and it was straight forward. The record of proceedings showed no opposition and was handled quite appropriately. It was not made a condition in the special permit and he does not suggest that the Board be restrictive about what should be done, and the Board was wise not to put restriction on the height.
- Mr. Donaldson said that he looked at the plans and the application and anted to see how to tie the language of the application with the bylaws. He also asked about thee filing for the septic restriction and asked if his clients have filed to correct the special to be Title V and to match a 2 bedroom home.

- Mr. Bovenzi we could supply what was recorded initially and the corrected subsequent pages.
- Mr. Lozier asked about how it could be a full teardown from the application.
- Mr. Bovenzi noted that they were optimistic they could salvage some of the walls.
- Mr. Lozier asked about the final plans.
- Mr. Bovenzi replied that in the actual final plans they had to tear it down so they could abide by building codes.
- Mr. Lozier said that what was presented was to tear a wall and there was no opposition from the neighbors, but when they did a teardown, neighbors complained.
- Mr. Bovenzi replied that what was presented was what was intended.
- Mr. Lozier asked about how to do a construction alteration versus a modification and how that would be consistent with the Building Permit.
- Mr. Bovenzi confirmed that in the proposed bylaws on “modification” includes alteration. The work “reconstruction” could mean a teardown but not necessarily in the building code. This Board is governed by the zoning bylaws and he intends to file some documents with regard to the septic tank.
- Mr. Bird called the Building Inspector Mr. Mark Brodeur to testify.
- Mr. Bird asked Mr. Brodeur if he had conducted a side by side comparison between the submitted plans and the Building Permit Plans.
- Mr. Brodeur said that he did. He looked at the 2 plans and what was presented to the Board and what was presented to the Building Permit were substantially the same, but with some minor incidental changes. For example the significant change was in the second floor with the roof bed.
- Mr. Bird asked about the definition of a seasonal structure.
- Mr. Brodeur replied that there is no code definition for it.
- Mr. Bird asked if this would change anything according to the building codes, such as maybe in insulation.
- Mr. Brodeur replied that there might be something with regards to energy as it is addressed in the law changes, but he does not see that specifically addressed in the building code.
- Mr. Donaldson asked if an occupancy permit could be granted if there was not heat.
- Mr. Brodeur said that he would have a hard time with that for consideration on building code.
- Mr. Donaldson asked Mr. Brodeur if he saw any changes in the footprint from the submitted plans to the ZBA versus the Building Permit Plans.
- Mr. Brodeur said that he did not.
- Mr. Bird opened the floor for any new evidence.
- Mr. Tashjian said that he had a rebuttal.
- Mr. Bird asked him to wait until any new evidence is submitted.
- Mr. Daniel Klotczkowski, 55 North Cove Road, said that in July they asked if there was anything changes and he thought that there was some misrepresentation to the Board. He added that it must be the builder who did that.
- Mr. Tashjian thanked the Board for their time to and wanted to address what Mr. Bovenzi said with regards to what was submitted could be changed, and made an example of State Law on an appeal stating that they have to abide by submitted plans. He referred to book 44092 page 168.
- Mr. Bird stated that the Board was concerned with the rule but think it has been satisfied.
- Mr. Tashjian said that it has not been.
- Mr. Bird said that the Board is not experts in that but there are other town Boards who are experts in that.
- Mr. Tashjian said that the installation of a heating system does not make it a seasonal structure, and having heat does not mean it is not seasonal anymore.

- Mrs. Renee Perry noted that what was being cited in on condo and not single family home.
- Mr. Donaldson asked about why being “seasonal” matters.
- Mr. Tashjian replied that the second case being cited includes concerns about the septic system.
- Mr. Donaldson asked if there was concern over the pressure in the system.
- Mr. Tashjian said that they do not challenge that this was a basement but it is 4 feet above ground and he pointed that out on some pictures.
- Mr. Donaldson said that he was trying to avoid going back in time and look at what was detrimental.
- Mr. Tashjian stated that he was presenting this “elevation” as a material change.
- Mr. Donaldson asked if he was looking at this as a material change between the 2 plans.
- Mr. Lozier asked if he though that the McNamaras were bound by the plans.
- Mr. Tashjian replied affirmatively that there is some confusion about elevation as a substantial change. The Board of Health decision did not say they needed to change the elevation and it was not needed to comply with Title V. They did not comply.
- Mr. Bird and Mr. Donaldson asked about what Mr. Tashjian wanted to submit to avoid confusion.
- Mr. Tashjian added also that some neighbors did not sign the support.
- Mr. Bird noted that the Board will make judgment based on the merits of the case and not public approval.
- Mr. Tashjian asked about how the situation ended up like that. There was a deed restriction that was failed to be filed and the basement was raised. There was misrepresentation in the case.
- Mr. Lozier asked about when they realized that it was detrimental.
- Mr. Donaldson thought that they needed to focus on the material changes and to help the Board.
- Mr. Tashjian replied that small factors when added up become material.
- Mr. Brodeur said that if they graded the yard according, they could put a retaining wall less than 4 feet.
- Mr. Tashjian argued that this would increase the non-conformity.
- Mr. Donaldson questioned whether more people could be appealing the same case.
- Mr. Tashjian concluded that if the Board allows this to proceed then they will set a dangerous precedent in town and other abutters could appeal.
- Mr. Donaldson asked Mr. Tashjian to sum up what was the determination of “material change” from the submitted versus what was being built.
- Mr. Tashjian replied that it was the drainage, the blockage, the elevation change, and issue of demolition without notification, and the seasonal use.
- Mr. Bovenzi requested a brief recess.
- 8:55pm Mr. Bird allowed for a 10minute brief recess.
- 9:10pm Mr. Bird called the meeting to order.
- Mr. Bovenzi stated that they respect the submitted plans but they know that there are material facts. Relative to the retaining wall, there are no zoning implications. The key points to look at in deliberation that are that the facts that weren’t part of the special permit or incorporated by reference are not part of what need to be reviewed, and all the facts to be reviewed support the decision of the Building Inspector. The Building Inspector decision should be upheld.
- 9:15pm *Mr. Joseph Curtin* moved to allow the Chairman of the Board to execute a contract with the applicants to extend the time for the Board to make and file its decision for case # 582 concerning 55 Lakeshore Drive to conclude the case by June 30th, 2009. Motion seconded by *Mr. David Lozier*. Motion carries. All in Favor. Yeas: 5 (*William Bird, Joseph Curtin, Jeffrey Donaldson, Renee Perry, and David Lozier*) Nays: 0.

- Mr. Bird explained that the next meeting would be June 16th. Mr. Bird added that there will be a recess. The Board expects both sides to submit their papers by May 26th.
- 9:23pm *Mr. Jeffrey Donaldson* moved to adjourn. Motion seconded by *Mr. Joseph Curtin*. Motion carried. All in Favor. Yeas: 5 (*William Bird, Joseph Curtin, Jeffrey Donaldson, Renee Perry, and David Lozier*) Nays: 0.