

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

DATE: May 5th, 2009
TIME: 6:30 pm
LOCATION: Butterick Municipal Building

Board Members Present:

Richard Hautaniemi, 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 by doing roll call. He then read the published legal notice.
- Mr. Bird went through the process of the appeal and why it came before the Zoning Board. Mr. Bird added some explained procedural points and that the Board is going to swear people in. The Board would allow both sides to submit their case, get responses and allow Mr. Mark Brodeur to talk. Later, the Board will open the floor for any new evidence, and if they need to continue they could do it by May 14th so we could get the big meeting room. After that both sides would be allowed to present point papers or new evidence by May 27th. Mr. Bird explained that he wanted this meeting to fair and any correspondence should be made at town hall. Mr. Bird also noted that the next scheduled meeting for the Zoning Board would be May 21st and 55 Lakeshore Drive would not be on the agenda. The meeting might then continue to June 17th, and the Board could render a decision by June 30th.
- Mr. Bird asked if the respondents have any objection to the Board members.
- Attorney Luke Tashjian, representing the applicants, asked Mr. Bird about his relationship to the McNamaras.
- Mr. Bird replied that he knows Mr. McNamara from an organization in town and that he does not know his wife in any context.
- Mr. Tashjian thanked Mr. Bird.
- Mr. Tashjian said that his clients appreciate the role that Mr. Hautaniemi is playing in the Board but are concerned about that he can be unbiased in this case since he is a member of the Lakeshore Drive Association.
- Mr. Bird asked Mr. Hautaniemi his opinion.

- Mr. Hautaniemi declared that he believes he could be impartial but he prefers to recuse himself from hearing the case.
- Attorney Thomas Bovenzi, representing the McNamaras, stated that he has no objection to having Mr. Richard Hautaniemi hear the case.
- Mr. Hautaniemi recused himself and left the meeting.
- Mr. Luke Tashjian noted that it would be a good idea if testimony is under oath.
- Mr. Stan Weinberg, Town Counsel, noted some procedural issues. He noted that Mr. Bird presented the timeline and asked Mr. Tashjian if he had any objections to it especially that this would extend the time to render a decision by June 30th.
- Mr. Tashjian replied that they do not anticipate that they would take a long time but they hope it would not take that much time and maybe the Board could render a decision that night.
- Mr. Weinberg explained that due to the voluminous nature of the information and to give the opportunity for both sides to submit findings or papers, the meeting will have to be continued. In order to have an extension, there would have to be a filed memo on it with the town clerk and signed by Mr. Tashjian.
- Mr. Tashjian added that he had no objection to the presented timeline.
- Mr. Weinberg asked Mr. Bovenzi if he had an objection to the timeline.
- Mr. Bovenzi replied the he does not.
- Mr. Tashjian presented his application exhibits.
- He noted that there were some mistakes on the recorded documents for Title V with a deed restriction book 43407 p184.
- There was another deed restriction –“2 bedrooms” which is not recorded but submitted.
- Mr. Jeffrey Donaldson asked about how that was different from Exhibit AA.
- Mr. Tashjian replied there they were in essence the same.
- He submitted also pictures from the lake.
- Mr. Tashjian wanted to submit minutes from a meeting at Mrs. Corbett’s house for the Lakeshore Association.
- Mr. Weinberg asked Mr. Tashjian about how relevant those minutes were to the case.
- Mr. Tashjian replied that they might not be relevant but they did not know if that would be something that was important for the case.
- Mr. Tashjian also noted that there were 2 letters sent to the Board dating in February requesting copies of the McNamara case and they were not responded to.
- Mr. Tashjian explained on plans that show the 4feet extra height of the house and showing the septic system versus the Building Permit plan
- Copies of Minutes of Conservation Commission December 2nd, Board of Health November 13th, ZBA December 9th 2008 and January January 13th 2009. This shows the change of plans in elevation. The only plans approved by this Board were the original plans.
- Mr. Tashjian noted that the plans involving change in elevations show inconsistency. He read what was originally requested in the special permit and from the minutes of their hearing.
- Mr. Tashjian went through a chronology of events of the case. It stated when the McNamaras came to the ZBA and were granted a special permit. Mr. Tashjian added that his clients have no objection to what was applied for in the special permit. The Zoning Board granted the special permit and only Mr. Joseph Curtin had an objection to it. By May 14, they applied for a demolition permit. Mr. Tashjian said that there was not copy of an application for demolition in Mr. Mark Brodeur’s file nor a copy was supplied to his clients.
- Mr. Curtin asked about the footprint of “as-built” structure.
- Mr. Weinberg noted that the “as-built” plan might have it.

- Mr. Tashjian said there were topography changes. The septic plans show a regular basement half buried and half exposed.
- Mr. Bird asked about the significant elevations.
- Mr. Tashjian replied that they put dirt in front of the house to show that it was a 2-story house but in reality it is a 3 story house.
- Mr. Donaldson asked about if the shortest distance from the house to the property line changed.
- Mr. Tashjian said that the shortest distance remained the same.
- He added that the McNamaras misquoted the application that they are doing a modification for the existing structure, and tearing the house down is not a “modification.” Also, the house was represented as a seasonal residence, and also in the original application they stated that its size would be comparable to surrounding properties. Mr. Tashjian claimed there was a 500% increase in the size to adjacent properties. For example the Rossi’s house is 600 square feet. In the original application and the plans the McNamaras submitted, they showed that the house would be 20 feet tall. However, in the Building Permit application the house was shown as 27 feet tall, which is like a 4 story home, but it is 7 feet taller than what was requested in the special permit and represented to the Board. In addition, this has created drainage issues.
- Mr. Bird noted that some issues were not the concern of the Zoning Board and were under the expertise of the Conservation Commission and the Board of Health and other Boards.
- Mr. Tashjian replied that due to how the building was made, it has created more issues such as the drainage.
- Mr. Tashjian said that his clients again do not have any objection to the special permit but the problem was with the work done. The original special permit was just a permit to modify.
- Mr. Curtin asked Mr. Tashjian that his clients had no objection to the special permit, but asked if they have seen a plan before that.
- Mr. Bird responded that the Board does not want to go through information that was before the special permit. Things that took place prior to that are not relevant to this meeting. The Board just wanted to stay on track and focus on the current issue.
- Mr. Tashjian argued that the issue now is what was built. He quoted the term “modification” for a non conforming house from the special permit that it was used a lot in this case. Its definition in the State Law does not mean “demolition” and also adding a second story. If they needed to tear the house down then they needed a variance.
- Mr. Donaldson commended Attorney Tashjian on doing a nice presentation with chronological explanation. He added that Mr. Tashjian was appealing the decision of Mr. Mark Brodeur and asked him what relief he was seeking. It seemed that according to their application they wanted to tear down the structure.
- Mr. Tashjian replied that his clients wanted the McNamaras to have to obtain a variance and present everything on the table and see what could be done.
- Mr. Lozier asked if their remedy is to have “no structure.”
- Mr. Tashjian replied that a variance is what was required. A court could order tearing it down.
- Mr. Lozier asked Mr. Tashjian if he thought that the McNamara’s acted in bad faith.
- Mr. Tashjian replied that they do not have evidence of bad faith.
- Mr. Donaldson asked if they had any other statement that has not yet been heard by the Zoning Board.
- Mr. Tashjian said that they do not have anything else against Mr. Brodeur, the ZBA, the Board of Health or the Conservation Commission.
- Mr. Tashjian argued that the special permit granted to the McNamaras was for modification and not for demolition. He quoted minutes from January 2008 meeting and noted that there

they were not granted the permit to remove the structure and to re-build a whole new house. There was nothing in the application that indicated that this was going to happen. Mr. Tashjian added that he was not challenging the special permit. The structure was legally a non conforming structure which required a special permit. It would have also required a variance if it was abandoned.

- Mr. Lozier reiterated that what Mr. Tashjian was saying is that once the demolition happened, the McNamaras have relinquished their grandfathered rights, and that is why now they needed a variance.
- Mr. Donaldson acknowledged that the town bylaws allowed for granting the special permit for reconstruction but did not feel that demolition as a part of reconstruction did not constitute abandonment.
- Mr. Tashjian added that the special permit for modification has been recorded in the registry of deeds so it is work done right.
- Mr. Donaldson recapped what Mr. Tashjian said that because the special permit was only recorded in December 2008, then did not recording it nullify work done or make it void? He asked what would be the purpose for the recording.
- Mr. Tashjian said that recording serves the purpose of notifying people.
- Mr. Donaldson added that he would think that recording would be important for title issues and a record of the work done.
- Mr. Tashjian said that once it was recorded, you could not appeal it. Mr. Tashjian argued that one of the conditions of the special permit was that “all federal and state laws be upheld” and they have violated the permit by not following applicable laws for notifying abutters of adjacent properties about the demolition. They had to give notice, and there was not an application made for demolition. The work done exceeded the scope of what was granted in the special permit. There was no special permit for the house now. It is non compliant with zoning bylaws, illegal non conforming structure but it could become legal by a variance. Once it got demolition than the special permit does not apply and that is why they would need a variance.
- Mr. Lozier said that it is now a moot point that it is not the special permit that is being challenged but for the demolition of the structure.
- Mr. Tashjian replied that they were not challenging the special permit but to conclude, they needed to follow the by laws and enforce them. They need to obtain a variance and notify abutters.
- Mr. Donaldson just wanted to confirm with Mr. Tashjian that his position is that he would like them to get a variance since this house was considered abandoned once it was demolished.
- Mr. Tashjian explained that by being abandoned they needed a variance for a hardship.
- Mr. Weinberg asked Mr. Tashjian that since he has provided helpful reference to modification and demolition, if he had any specific case reference for “reconstruction” and what the term “reconstruction” meant. Does tearing down means “reconstruction.”
- Mr. Tashjian replied that it does not under the law.
- Mr. Weinberg also asked if it was possible to obtain a variance for a nonconforming structure with self inflicted hardship. A variance could be granted on a non-self created hardship maybe with relation to the shape or topography of the lot for example, and does he believe that the McNamaras would be entitled to a variance in this case.
- Mr. Tashjian replied that the Board would be able to make that determination.
- Mr. Weinberg asked if Mr. Tashjian could give the Board specific information about how his clients have been damaged or harmed by the construction at Lakeshore Drive and how the building was inconsistent with the special permit.
- Mr. Tashjian replied that the McNamara’s project has lowered the property value for his clients.

- Mr. Weinberg asked if Mr. Tashjian has evidence about that.
- Mr. Angelo Rossi, applicant and abutter, said that now there is a large wall outside his kitchen window. He looks and sees a wall, even though that was a very nice location. What he sees is a big concrete wall.
- 8:30pm Mr. Bird said that now there will be a 10 minute break and meeting resume after that.
- 8:44pm Meeting resumed.
- Mr. Bird called Mr. Mark Brodeur, Building Inspector, to testify under oath.
- Mr. Brodeur said that it stated when the contractor came to his office for a building permit with a certified copy of the special permit that there was not appeal. A plot plan was submitted to show the location of the foundation, signed also by concerned parties such as the Board of Health. In conjunction with this permit they got the demolition permit. What happened was that he followed the bylaw-any modification can include deconstruction.
- Mr. Bird asked if demolition was permitted.
- Mr. Brodeur stated that demolition is permitted in this case because there is no foundation. He does not know how the special permit would have been executed without that. There was no foundation, and they could not have been able to do reconstruction without the rebuilding.
- Mr. Bird asked Mr. Brodeur if there was anything in the building permit about whether the structure was a seasonal home.
- Mr. Brodeur replied that the plan he had used to issue the building permit was the same as what was available at the Town Clerk's office.
- Mr. Lozier asked about the square footage of the home, it showed that it was about 1400sqft from the application, but on the Building Permit, it is 1800sqfeet.
- Mr. Brodeur said that none of that original documentation comes to his office.
- Mr. Donaldson asked Mr. Brodeur to respond to Mr. Tashjian.
- Mr. Brodeur said that he was following protective by laws when it comes to "demolition" and notification was not required. Mr. Brodeur stated the he did not see that he was not following the by laws since he is only required to send notification of the original utilities such as power or water would be disrupted. He has asked two State Building Inspectors for their opinion on the matter and they both saw that same thing about the structure. Mr. Brodeur added that he has worked with other towns and there has never been an issue like that. He issued his building permit according to the special permit.
- Mr. Curtin asked if he gets a copy of the filed applications to the Zoning Board such as what the ZBA gets.
- Mr. Brodeur replied that he does not get them. He has worked for 12-13 years as a Building Inspector and he has never come across this as an issue. Cities of Framingham and Worcester for example have numerous cases that involved changes like this, but never an issue. He had a stipulation of 25feet and it was applied.
- Mr. Brodeur said he relied on the Board of Health to do what they need to do and to get the rest of it in the Conservation Commission.
- Mr. Brodeur added that the installation of the retaining wall was not in his jurisdiction and he tried to be proactive about it.
- Mr. Weinberg asked Mr. Brodeur how he knew about the issue of the inadequate rubble foundation and the need to make it in compliance with the building code.
- Mr. Brodeur replied that McNamara's contractor brought the issue up that there was a lack of the foundation and that it was not code.
- Mr. Weinberg asked Mr. Brodeur if he was concerned that this was not mentioned in the ZBA special permit.
- Mr. Bordeur replied that he was not-it was not an issue for him.

- Mr. Tashjian said that his submitted plans which Mr. Bordeur has shown as well, reveal that there is a basement that is almost 7 feet up-his engineer said that it was not a big deal to jack up a house and put foundation underneath it.
- Mr. Brodeur replied that it was to best of his knowledge that the foundation was dug, and he did not look at it as a big change.
- Mr. Lozier recapped that Mr. Brodeur's perspective that the modification as in the Building Permit is not an alteration.
- Attorney Thomas Bovenzi representing the McNamara argued that there were two issues in his concern, and their engineer will also testify. Mr. Bovenzi explained that what was approved was what was built. He would like to present technical information at that meeting and then be able to review it and come back on May 14th.
- Mr. Tashjian argued that Mr. Calvin Goldsmith was being presented as an engineer but he was not licensed.
- Mr. Calvin R. Goldsmith, Vice president GPR, came under oath.
- Mr. Goldsmith said that he was not a registered engineer or land surveyor but he has three engineers working for him. He added that there were architectural plans that never made to the table of discussion in this meeting. They were submitted with the application for the special permit. The plans dated February 2008 show clearly a walk out basement and these were the plans that the Board used to grant the permit.
- Mr. Tashjian rebutted that they were not submitted with the Special Permit application but to the Building Permit application.
- Mr. Bovenzi asked that Mr. Goldsmith be allowed to talk and then be questioned by Mr. Tashjian.
- Mr. Goldsmith showed on the plans that they complied with the special permit. The original plans showed the septic system and the elevation of 111. What needed to happen is to do it the way it was done with the Board of Health approval so as to be in compliance with the required set backs. Septic was redone so the grading on the front will make sense.
- Mr. Bird said that the meeting held in August of 2008 did not have 55 Lakeshore Drive on the agenda but people showed up, and the ZBA clearly said that they were no quorum and that no decision could be made. People just wanted to discuss what was going on. Mr. Bird asked two questions that night, at the end of their discussions one was if the location of building had been changed and the answer was "no"; the second question was if the elevation had been changed and the answer was "no". There was no objection to that or dispute.
- Mr. Goldsmith added that they got the approval of the Board of Health and they approved all the issues of draining along with the Conservation Commission. No zoning violation was made with regards to set backs.
- Mr. Curtin asked about the walkout basement and if it was in the submitted plans vs building permit plans. He wanted to see the timeline of events from the application to how the plans came to include a walk out basement.
- Mr. Goldsmith was not sure, but redoing the septic system came to comply with all codes.
- Mr. Tashjian rebutted the plans shown to the Board were just conceptual plans.
- Mr. Goldsmith agreed.
- Mr. Tashjian noted about the elevation or location they did not point out the enlargement on the westerly side not just the easterly side.
- Mr. Bird noted that they said that there was not change in elevation, but the drainage issues are not the jurisdiction of the ZBA.
- Mr. Tashjian said that the submitted plans showed a 108.9 elevation and the subsequent plan show it at 112.
- Mr. Bird asked if he was referring to the plans in the file.

- Mr. Bovenzi stated that it was never the intent of his clients to misrepresent anything. They complied with the special permit and with what was granted. It is a pre-existing non-conforming property and is dealt with in a locality matter and Sterling has liberal by-laws. The ZBA did correct enforcement and Mr. Brodeur worked within his jurisdiction as the Building Inspector. The as built plan is similar to the original plan and substantially conforms to it. The permit required that the McNamaras comply with all state and local by laws. The proposed modification was not detrimental to the area since any neighbors showed up at the hearing. At the end the question is whether the end product complies. The square footage complies, the location complies, the elevations materially comply, and the only difference is the elevations on the front that actually makes it aesthetically comply with Title V. His clients never meant to misrepresent any information and as a matter of fact followed all guidelines of Town Boards and their recommendation. The modification is part of the application, and with respect to State law as referenced by Mr. Tashjian was meant to help town deal with non conforming lots. The Building Inspector of the town of Sterling did his correct interpretation of the town by laws which allow change, extensions, enlargement, and modification. Elevations were materially and substantially complied with, especially that the special permit only had specific stipulations which were followed. For example the 25 feet and the footprint.
- 9:55pm Board members and Mr. Tashjian and Mr. Bovenzi discussed reconvening again on May 13th at 6:30pm.
- 10:05pm *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.