

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

DATE: September 8th, 09
TIME: 6:30 pm
LOCATION: Butterick Municipal Building

Board Members Present:

Richard Hautaniemi, Joe Curtin, Jeffrey Donaldson, William Bird, David Lozier

Agenda:

- 6:30pm Discussion of Minutes
- 6:35pm Continuation Case # 587 Atlanta H Gadoua- *Special Permit*
- 7:05pm Case #589 James and Ellen Gardner -*Variance*
- 7:35pm Case # 590 Cynthia and James Greve-*Variance*
- 8:05pm Case # 591 Cynthia and Richard Schicho-*Variance*
- 8:35pm ZBA Business
 - Discussion of 55 Lakeshore Drive Minutes

Proceedings:

- 6:30pm Mr. William Bird opened the meeting with a roll call. Mr. Bird noted that there was no quorum until Mr. Joseph Curtin arrives.
- Board members discussed ZBA business.
- Mr. Richard Hautaniemi discussed ZBA budget that there should be a system to track progress.
- Mr. Bird addressed the applicants that the Board has to have another member to make a decision. However, even if the Board has 4 members, it might not be to their advantage and they might have a better chance with a 5 member Board.
- 6:43pm Mr. Joseph Curtin arrived at the meeting.
- Board members discussed minutes from last meeting.
- 6:44pm *Mr. Joseph Curtin* moved to accept presented minutes of August 11th with editorial comments as amended. Motion seconded by *Mr. Richard Hautaniemi*. Motion carried. All in favor, Yeas: 4 (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, William Bird*) Nays: 0.

- 6:45pm Mr. William Bird opened the continuation for case #587 Atlanta Gadoua, 59 Lakeshore Drive.
- Mr. William Bird noted that the applicants have requested the withdrawal of the garage part of the project without prejudice and the Board approved.
- Mr. Dan Wolfe representing the applicants explained that the issue of the garage was withdrawn and they only have the issue of the house. They had two issues from neighbors of 57 Lakeshore Drive and drainage issues for the neighbor in 61 Lakeshore Drive.
- Mr. Wolfe presented aerial shots from the neighbor's house. The neighbor said that the view of the house was going to be affected by 10%. They have managed to move the house 10.7 feet offset from the lot line and reduced size of the 3-season porch. They are planning for an 8% view impact instead of 10%. Another issue was that they dropped down the walkway to size as layaway for better drainage so the swale will work better.

- Mr. Curtin asked about the set backs: the front was 48.3 feet and now it is 56.1, the left side is 10.7 and the right side was 19.1, the rear set back was 54.9.
- Mr. Wolfe said that he has copies of the previous plan.
- Mr. Curtin noted that the rear set back complies with the bylaws.
- Mr. Richard Hautaniemi asked about how the left and right hand side have been changed from the original structure.
- Mr. Wolfe replied that the right hand side was 18.1 feet and now it became 19.1.
- Mr. Hautaniemi asked about the size of the square footage of the original dwelling and the impervious square footage.
- Mr. Wolfe replied that the original existing house was 1121 sq. feet and the proposed structure is 2257 sq. feet with roof top and the impervious included 3 season porch.
- Mr. Bird opened questions from the floor.
- Mr. Luke Tashjian representing Mr. Tim Corbett and Mr. Beauregard, said that the lot owned by Mrs. Gadoua is a small sized lot. The footprint of the new house reflects 114% increase in the size of the proposed house. This will result in a reduction in the Lake front view for his clients. Mr. Tashjian showed some pictures for the view and stated the construction of the new house would result in the loss of view of the town beach.
- Mr. Jeffrey Donaldson asked Mr. Beauregard to confirm that from last meeting he said that his issues with the project were mainly focused on drainage.
- Mr. Beauregard agreed that they were focused on the drainage and the view.
- Mr. Donaldson said that he recalls that he mainly focused on the drainage.
- Mr. Beauregard agreed.
- Mr. Tashjian noted that he represented neighbors from the east and west of the property.
- Mr. Donaldson asked Mr. Beauregard about how he said that they are losing 30% from the view or about 10% from one side and another 10% from the other side. He noted that the applicants seem to be meeting set backs and even they shrink the size then they were ok.
- Mr. Tashjian stated that the board has to look and see if the project would have an adverse effect on the neighborhood. The Mass Board of Appeals says that this would be relevant-that the burden is on the applicant to show that the project would not be detrimental. Sterling has stricter laws and Mr. Tashjian added that by reading parts of the by laws about reasons for granting a special permit, it showed that the condition for granting lies in making sure that the project would not be detrimental to the neighborhood. Under the Sterling by laws, the ZBA has to take into consideration environmental issues and not delegate this to the Conservation Commission.
- Mr. Tashjian noted that a deviation of 101.79 would affect the neighborhood and asked why this property is being razed. There is an accessory apartment being constructed under the property and this is not allowed under the bylaws. There is a kitchen and a bathroom in the basement which makes it a complete apartment under the house.
- Mr. Donaldson asked about why the applicants would want to ask for a special permit if they were not going to use it as an accessory apartment.
- Mr. Tashjian said it might be in their intention to use it as such and the Board would grant them this ability. The issue is that the new structure is not more non-conforming and leaving this determination to the Building Inspector. Mr. Tashjian showed the Board a letter from the former Building Inspector Mr. Tony Zahariadas saying that the structure has to be not more non-conforming as a condition to be heard before the ZBA. They have issues with the view, issues with endangered species, height and drainage. The proposed project has about 3680 square feet of space. The old structures about 1215 square feet, which means about 2601 increase in square footage.
- Mr. Tashjian showed the Board a plan that was shown to the abutters.
- Mr. Donaldson asked to clarify this issue.

- Mr. Wolfe explained that it was a plan that was done during the workout period before applying to the ZBA. It was a plan that the applicants walked with and showed to the abutters.
- Mr. Bird affirmed that this was not the plan submitted to the ZBA along with the application.
- Mr. Tashjian agreed.
- Mr. Tashjian said that another issue was the "tear down" and rebuilding of the house. Section 2.2.4.3 of the by laws provide that types of changes to be considered by the ZBA. The law says that that if the property gets damaged due to floods or catastrophe then they could reconstruct the structure but with the same size. Mr. Tashjian also cited some cases.
- Mr. Donaldson said that the project includes extension, structural change and then the reconstruction.
- Mr. Tashjian replied that one of the important issues were procedural issues. The applicants had to first have a letter from the Building Inspector.
- Mr. Donaldson asked Mr. Tashjian to give the Board a copy of his outline.
- Mr. Tashjian replied that this was his outline but he could provide the Board a copy of the transcript.
- Mr. Bird asked if Mr. Tashjian is concerned about the reconstruction.
- Mr. Donaldson asked Mr. Tashjian if any of his cited cases involve a residence and not commercial.
- Mr. Tashjian replied that he was not sure, and he has to have the case in front of him and would be happy to provide them to the Board to help facilitate the determination.
- Mr. Donaldson said that he found it hard to consider the decision because they do not have the facts.
- Mr. Tashjian noted that another issue was dropping the walkway about 1 foot or two steps that require construction of a room.
- Mr. Tashjian added that other issues was the "modification", increasing the elevation, problems with side set back, and the close proximity to the waterfront, endangered species, as well as increase in the noise and light. He offered to help the Board determine if the construction of this house would be detrimental to the area.
- Mr. Bird asked for a rebuttal from Mr. Wolfe.
- Mr. Wolfe said that he did not have the time to read those notes but he could answer all the questions presented. He has done an easement but never has he heard to take shore or mileage linear feet as determining view impact. One Board issue was to bring the structure to 100 feet from the lot line. As for the endangered species issue, the current endangered species map does not include east Wachacum. The accessory apartment issue is just a matter of convenience as facilities on a house of this size. They are rebuilding the house and everything on the map is labeled what it is intended to be exactly. It is a 2 bedroom structure as they presented it to the Board of Health for the Title V septic system. The safeguard of Title V is that they divide the number of rooms by 2 and you have the room count of the house. It is clearly a 2 bedroom house as they have told the Board of Health. Section 2.2.4.3 (a) provides information about the structural changes. This was not abandonment. Another raised issue was the ramp issue which is made to accommodate handicap accessibility, and add wider doors.
- Mr. Donaldson asked him to comment on the lack of the letter from the Building Inspector.
- Mr. Wolfe replied the Building Inspector has attended the meeting and his testimony is in the public record of the ZBA. Mr. Wolfe added that they were in the proper forum.
- Mr. Daniel Klochkowski, 55 North Cove Road, showed the Board a list of special permits that were granted to Lakeshore residents by previous Board members. This project would set precedent. In the by laws section 6.4.2 allows for rebuilding a home with the same size and footprint. Reconstruction and rebuilding on the same footprint.
- Mr. Tashjian said that the neighbors did a good job showing that their view would be obstructed.

- Mr. Donaldson asked if Mr. Tashjian was implying that without the Building Inspector letter, then they should not be able to come before the Board.
- Mr. Tashjian agreed that they needed the Building Inspector letter to proceed.
- Mr. Jim Innamorati, 59 lakeshore Drive, applicant, said that they brought Mr. Robert Kody (Envision Homes) to design the house. They had the concerns of the neighbors in their mind and they were trying to do the best thing to the neighbors to lessen the impact on the area. He added that if he used the lower floor which is 1700 square feet to build on, then he would end up with a bigger house than what was being proposed. They could have had a lawyer to help them but they have certainly applied appropriately.
- Mr. Bird asked if there were any further questions.
- Mr. Wolfe added that he just wanted to make the facts known for the many issues brought up in the meeting. They were meant to confuse us on the main issue in the meeting. Under the special permit requirements, the structure cannot be substantially detrimental to the neighborhood. He does not feel that they are affecting the whole neighborhood but maybe one or two abutters.
- Mr. Richard Hautaniemi said that there were discussions on resizing the structure and asked if they took a look at that.
- Mr. Wolfe said that they did.
- 7:45pm Mr. Bird closed the public testimony on the case for discussion.
- Mr. Curtin said that he has a tough time with the preexisting non-conforming structure. He agreed that reconstruction intended a teardown or modification but he struggles with the varying set backs and moving back and forth making it more non-conforming. It is a good plan but there are problems that open up issues.
- Mr. Hautaniemi said that he does not have an issue with the walkout basement.
- Mr. Donaldson asked if the change is substantially detrimental to the neighborhood.
- Mr. Hautaniemi said that the structure stands out in comparison to other structures in the neighborhood.
- Mr. Curtin noted that it appears that at least it was detrimental to the abutters view in their opinion.
- Mr. Donaldson said it might be detrimental to the neighbors but not to the neighborhood. There is evolution in the neighborhood. The applicants certainly have tried to take neighbors interests in mind and put a well thought output.
- Mr. Curtin said the he viewed it slightly different. His problem is with moving things around. The landowner has the right to do what he wanted but he was shifting the house here and there.
- Mr. Donaldson asked Mr. Curtin if the proposal increased the distances would he mind that.
- Mr. Curtin replied that the set backs were his issue.
- 8:30 pm *Mr. Jeffrey Donaldson* moved to approve the special permit on 59 Lakeshore Drive . Motion seconded by *Mr. Richard Hautaniemi*. Motion did not carry. Yeas:1 (*Mr. Jeffrey Donaldson*), nays:3 (*Mr. William Bird, Richard Hautaniemi, Joseph Curtin*).
- Motion was not granted.
- 8:31pm Mr. Bird opened case # 589 Mr. and Mrs. Gardner.
- Mr. Gardner said that he wanted to put an addition on the back and his neighbors have no objection to the proposed project.
- Mr. Donaldson commented that the Board could not see the reason why a variance was needed.
- Mr. Gardner replied that he could show on the map what he intends to build.
- Mr. Bird asked if they have spoken with the Building Inspector.
- Mr. Gardner stated that they did and he was advised to come to the Board.
- Mr. Curtin explained that the threshold to granting a variance is higher than the special permit. They recognize the difficulty to do this but the Board needed more information

on the hardship in the Finding of Facts in the application. He suggested they continue the hearing so there will be ample time for them to completely fill out the requested application information.

- Mr. Gardner said that they could continue to the next meeting.
- Mr. Bird said the right now they do not have any information to go on with.
- 8:49pm *Mr. Richard Hautaniemi* moved to continue the hearing to the next meeting. Motion seconded by *Mr. Jeffrey Donaldson*. Motion carried. All in favor, Yeas: 4 (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, William Bird*) Nays: 0.
- 8:51pm Mr. Bird opened the hearing for case #590 Cynthia Greve and James Greve for a variance.
- Mr. Alton Stone, Alton Engineering 10 Rugg Road, representing the applicants submitted a corrected plan from the one submitted. He explained that the landscaping would help manage storm water. The only aspect that needs a variance is because of the garage which would reduce the side set back.
- Mr. Dan Ferguson, Architect, noted that the house has grandfathered is more non-conforming. The front yard set back is non-conforming. The garage would be behind the trees so it will not affect the lake and the shed.
- Mr. Stone added that they wanted to do improvements and only the garage and the screened porch might need a variance from the ZBA.
- Mr. Hautaniemi asked about the hardship.
- Mr. Stone said it was a very small lot and the garage would be put on the driveway which will not be visible from the Lake. It made sense to put the garage on the paved area. The soil and the slope steep to the Lake.
- Mr. Donaldson asked about why they came to the Board.
- Mr. Stone replied that they needed a relief from the set back-it is a residential property and these were small lots around the lake and he does not think that putting a small garage and a screened porch will make a big change on the lake. He understands that there are some abutter concerns but they would have better storm water management.
- Mr. Curtin asked if the modification would be to a non-conforming structure.
- Mr. Hautaniemi said that they had previous cases of special permit that wanted to move the house.
- Mr. Curtin said that the criteria for special permit are less than a variance.
- 9:00pm Mr. David Lozier arrived at the meeting.
- Mrs. Cynthia Greve said that she lived in Miami but hopes to make this a summer home and an all season residence. She asked if she had to come back to attend the meeting.
- Mr. Bird replied that it would be up to her to make that decision.
- Mrs. Greve said that there is no garage or a suitable septic.
- Mr. Bird agreed that they have to have a septic system.
- Mr. Stone added that in order to get a Building permit they would have to have a Title V certificate,
- Mr. Bird stated that the issues were the garage and offsets on the garage. Mr. Bird asked if the Board did not grant the variance, then what would be the hardship financially or otherwise on the applicants. Would their car degrade or their lawn equipment would be lost?
- Mrs. Gloria McNelly, 15 Hall Avenue, abutter, wanted to see how the garage would be close to her.
- Mr. Ferguson replied that the garage would be 4 feet from her lot line.
- Mr. Tim Corbett asked about the set back from the property line.
- Mrs. Pam Quincy also asked for more description of the screened porch.
- Mr. Stone replied that it would be close to 20 feet and would be below the street level.
- Mrs. Quincy noted that they would be losing their view due to the house.
- Mr. Stone explained to her that their bottom of her house would be on the top of the garage.

- Mrs. Quincy commented that the house used to be one story and they could see the Lake, and now with that project, they would lose their only view.
- Mr. Curtin said that this is a preexisting non conforming structure and they are substantially varying the set back.
- 9:30pm meeting was closed to public testimony.
- Mr. Curtin said the he needed to look at the issue of a special permit versus a variance as a procedural issue.
- Mr. Stone said they could request a continuance to the next meeting.
- Mr. Donaldson said that in general, the special permit standards were less than the variance but also a special permit could have many hurdles.
- Mr. Stone said that he felt that some members suggest that he needed a special permit.
- Mr. Donaldson rebutted that still the board has concerns about the set backs.
- Mr. Stone asked the Board to continue to the next meeting.
- 9:39pm *Mr. Joseph Curtin* moved to continue to the next meeting. Motion seconded by *Mr. Jeffrey Donaldson*. Motion carried. All in favor, Yeas: 4 (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, William Bird*) Nays: 0.
- 9:40pm Mr. William Bird opened the hearing for case # 591 Cynthia and Richard Schicho.
- Mr. Alton, Stone, Alton Engineering, representing the applicants, said that this case seems to have the same issues as the previous case. The addition will reduce the side set back on the east.
- Mr. Schicho said that they have a very small room.
- Mr. Bird asked about the hardship, financial or otherwise that applied to this case.
- Mr. Schicho said that they have bedrooms on the basement level and they also want to protect their cars and lawn equipment,.
- Mr. Stone added that this case again comes back to the set back issues.
- Mr. Donaldson asked if there were any questions from the Conservation Commission.
- Mr. Stone said that the septic passed Title V.
- Mr. Bird noted that the Board needs to know exactly what they intend to do and then it will consult with Town Counsel.
- Mr. Daniel Klochkowski asked about they would maintain a house that is 5 feet from town property.
- Mr. Stone rebutted that on behalf of the applicant, he is requesting to continue the case until next meeting.
- 10:02pm *Mr. David Lozier* moved to grant the continuance to next meeting. Motion seconded by *Mr. Joseph Curtin*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, William Bird, David Lozier*) Nays: 0.

ZBA Business

- Board members discussed differences between a special permit and a variance.
- Members discussed budget.
- 10:25pm *Mr. Joseph Curtin* moved to adjourn. Motion seconded by *Mr. Jeffrey Donaldson*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, William Bird, David Lozier*) Nays: 0.