

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

DATE: July 10th, 2012
TIME: 6:30 pm
LOCATION: Butterick Municipal Building

Board Members Present:

Bill Bird, Richard Hautaniemi, Joseph Curtin

Alternate Members Present:

Jerry Siver, Matthew Campobasso

Agenda

6:30 pm Discussion Of Minutes

6:35 pm Hearing for Atlanta Gadoua, James & Christine Innamorati- *Special Permit*

[59 Lakeshore Drive Special Permit for purposes of *reconstruction of single family home*]

7:05 pm ZBA Business

➤ Eight Point Sportsman Club Renewal (vote/discussion)

[Request for renewal of mobile home permit issued on July 6, 1982]

➤ Follow Up on Kennel issue in 30 School Street

[Also other issues to be discussed may include: Budget-Bills-Administrative Issues-Memos-Comments From the Public]

Proceedings:

- 6:35pm Mr. Bill Bird opened the meeting with a roll call attendance. Mr. Bird noted that the meeting is being recorded.
- Board members discussed the submitted draft minutes of June meeting.
- 6:37pm *Mr. Joseph Curtin* moved to approve the submitted minutes as presented. Motion seconded by *Mr. Richard Hautaniemi*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, William Bird, Jerry Siver, Matthew Campobasso*) Nays: 0.
- Mr. Bird stated that the Board of Selectmen has not yet reappointed the Board members. Mr. Bird asked if the applicants would choose to proceed or postpone the hearing, although this is allowed by state law.
- Mr. Jim Burgoyne, attorney representing the applicants, replied that they choose to proceed and go forward with the hearing.
- Mr. Bird opened the hearing for case #617 Atlanta Gadoua, Christine and Jim Innamorati for a special permit (59 Lakeshore Drive).
- Mr. Burgoyne explained that the applicants are seeking a special permit for the reconstruction of a single family home on a non conforming lot. The property has been in the ownership of the applicants for years and they have been previously before the ZBA. Mr. Burgoyne added that Mrs. Gadoua acquired the property in 1977 and has been a member of the Lakeshore community for a long time. The lot is generous in size and the current home pre-exists the zoning laws and was legally constructed at that time. Mr. Burgoyne pointed out that the Innamoratis and Mrs. Gadoua have for many years, planned to reconstruct the home to best maximize use of the lot, and conformity to the zoning bylaws. The project contemplates the construction of approximately 2500 sq. ft home on two levels. The prior permitting efforts started in 2009 with a vote that was split and a motion not approved. Mr. Burgoyne noted that the project was complicated due to many reasons

such as the presences of a similar case in the Lakeshore area that stirred controversy. Mr. Burgoyne asserted that they accepted the fact that much of the disapproval was their fault for not hearing the Board, and that is why they came back with a design that is based on a different plan. The previous plan brought the house closer to the sidelines and closer to the street. However, this new plan by Dan Wolfe, after much work, was able to accommodate many disadvantages that were in the previous plan.

- Mr. Burgoyne explained that they were bound by Section 16 which prevented them from filing repetitive petitions. The applicants have decided to withdraw their appeal to the ZBA decision and decided to come back to the Board with a new plan which incorporates the opinions of the neighbors and the Board's requests. It is a special permit application to reconstruct and rebuild a single family home on a non-conforming lot that is a right protected by the Sterling Bylaws. There are special rules that allow for the reconstruction of single family homes on non-conforming lots and even the creation of new non-conformities by the granting of a special permit. The proposed project is not substantially detrimental to the neighborhood, and Mr. Burgoyne stressed that there is a special area (Section 6 of the Zoning Act) which gives protection to single and two-family non conforming structures. In addition, the project is entitled to be granted by special permit case law. Mr. Burgoyne explained that they are not proposing changes to the lot, and the house is in an area which has many non-conforming lots. He added that there are three non conformities with the house: the lack of sufficient area (which is not being changed), the lack of sufficient frontage (which is not being changed), and the side yards and rear setbacks.
- Mr. Burgoyne showed on the plan the current house and the proposed project. He asserted that the only proposed non-conformities are to the right and left side yard setbacks. The requirement is 25 feet on either side, however, the existing home has left side set back of 17.2 feet but it is being improved to 17.8 in the proposed plan. This means that they are still creating a non-conformity and hence the need for a special permit. Mr. Burgoyne noted that the trapezoidal shape of the lot pushes the house further towards the lake. As a matter of right, the applicants could have built a house that abides by the bylaws and does not need a special permit, but they chose not to do that because the house would have been closer to the resources and would have created more view obstruction to the neighbors. Thus, the new proposed house requires the granting of a special permit. Mr. Burgoyne stated that he has asked the engineer to superimpose the design of the old house with the new proposed house so the differences could be highlighted. In order to decide whether the house is substantially detrimental to the neighborhood, Mr. Burgoyne pointed out that it is not. The only non-conformity that exists is the side yard setbacks, which is already consistent with the nature of the area and the presence of non-conforming structures. The calculation of how much of the new house would be located within the 950 sq feet open space/yard setbacks is 382 square feet which would be less than 0.04% intrusion. Thus, there is no feasible way to construct the new home with better dimensions. Mr. Burgoyne asserted that the new proposed project is not substantially detrimental to the neighborhood; the septic does not have to be disturbed.
- Mr. Joseph Curtin asked about where they can build the new house on the non-conforming lot? He asked about the approximate area of the new house versus the old house.
- Mr. Burgoyne replied that the closest point of the structure is the 17.8 side set back.
- Mr. Curtin said that after the last hearing, when they were denied, the applicants could have built another house which conforms to the Zoning laws.
- Mr. Richard Hautaniemi asked about the height of the house which is about 35feet and how is it measured.
- Mr. Burgoyne said that the height is measured from the street level.
- Mr. Hautaniemi replied that it should be above the average grade. Pointed out to Section 2.5.3.
- Mr. Bob Cody, Envision Homes, said that he based the measurements on the discussions with the Building Inspector and realized that the height is measured based on the average grade on the front of the property to the highest point. Mr. Burgoyne stated the structure would meet Bylaw

Apartments. Mr. Burgoyne interjected, they are not requesting a Special Permit for the height, the house will comply with the Zoning requirements.

- Mr. Bird asked if the Planning Board had any comments. He asked if there were any discussions from the floor.
- Mr. Ken Williams, Planning Board, said that the Planning Board has no problems with the project and no questions.
- Mr. Paul Foley, attorney, representing Mr. Tim Corbett and Mr. Jim Beauregard abutters, stated that the main concern is that the proposed house is a much larger building. He presented to the Board his brief. He stated that the main concern that they have ever since the 2009 plan is that it is a much larger building. This larger building according to the bylaws is increasing the non conformity. The bylaws requires a 2 acre lot in rural Residential areas but this one is only 12,000 sq ft. Mr. Foley noted that the house foot print is increasing from 1215sq. ft. to about 2603sq ft. He added that the Board should be concerned that there is a significant increase in impervious areas, there will be more run off, and the construction would result in diminishing the characteristic of the Lakeshore area.
- Mr. Curtin asked Mr. Foley to point out exactly where in the law it says that they cannot build a bigger house.
- Mr. Foley said that the bylaw building a bigger home increases the non-conformity of the land. This triggers the test set forth in the Sterling Bylaws for them to show that the house is non-detrimental. The size of the house poses significant impact on the environment and on the view for the lake for Mr. Beauregard. Other issue was the absence of the letter from the Building Inspector indicating whether or not this increases the non conformity of the lot and was not included in the application. Also the definition of reconstruction is only to include minor variations from the old building and that contradicts what Mr. Burgoyne is indicating. There is a good argument that after the demolishment of the house, then the non-conformity is abandoned. Questions with regards to the height are also a concern.
- Mr. Burgoyne asserted that the new construction will not have a detrimental impact on the Corbetts and Mr. Beauregard's view of the lake. Mr. Burgoyne noted that the cases mentioned in Mr. Foley's brief are superseded by other cases in which the court clearly supports the reconstruction of a larger building if it is determined that this increased non-conformity is not substantially detrimental to the neighborhood and could be granted by special permit. It is at the end left to the ZBA to make that determination. According to the Sterling bylaw, it is the Building Inspector who can make the first determination on the non-conformity. The Building Inspector has determined in 2009 and now that he has no objection to the non-conformity.
- Mr. Foley said that the lot is less than 2acres so it is already a detriment to the area. There is a significant concern that it is a bigger house in an area with much smaller homes. It is also going to be a two-bedroom home which will host the Innamoratis and Mrs. Gadoua.
- Mrs. Innamorati replied that their son is going to be moving out.
- Mr. Bird asked to explain how the vision to the Lake would be affected. Also, when they are talking about reduced space, he did not notice the drastic change.
- Mr. Burgoyne explained that anything that they do on that property would affect the view but very little of that would be impacted. The house does not create a significant impact to the view.
- Mr. Foley said that they did not have enough time to prepare a reply about the view.
- Mr. Angelo Rossi, abutter: 53 Lakeshore Drive, stated his concern that the construction would have a detrimental effect on access to the water right. He cited the previous lakeshore case in which a reconstruction of a home had significant impact on his property.
- Mr. Bird said that this is a separate case not applicable.
- Mr. Rossi said that he is concerned the view would be affected.
- Mr. Foley agreed and said that Mr. Corbett and Mr. Beauregard have the same concern on the impact on the value of their homes. There will be significant impact on view of the lake. The access and view to the lake are main determinants of the value of the home.

- Mrs. Rossi said that one of the issues is whether this property is detrimental to value of other properties. Mrs. Rossi added that there could be further detriment to the view and hence their property value.
- Mr. Tim Corbett, abutter, said that he has no problem with building on the same house size, but his issue is the effects on the landscape and the view. He commented that this special permit would have a negative impact on the town and suggested that the Board visits the area and see it in reality.
- 7:55pm Mr. Bird said that they could reconvene at 8:05pm.
- 8:05 Meeting reconvened.
- Mr. Corbett said that every other house has stayed on the foot print.
- Mr. Bird asked if there were any further questions or comments from the audience.
- 8:07pm Mr. Bird closed the hearing and opened the floor for Board deliberation.
- Mr. Hautaniemi said that he understood the concerns of the neighbors, but the height issue is more aesthetic in his opinion. He asked Mr. Cody to explain.
- Mr. Cody said that it is not aesthetic but it is at that height because there is an attic on the top.
- Mr. Burgoyne said they are not seeking relief from the height.
- Mr. Curtin said that his personal opinion is that the Board has evolved, studied and learned more on non-conforming lots/structure. Homeowners have the right to do things on their properties. Landowners with one and two family homes are granted by the bylaws the right to make changes on their non-conforming properties. Mr. Curtin noted that he does not see that the proposed project is detrimental to the area, and the setbacks are being improved. To make those applicants come back for a third time when they have re-worked their plan to accommodate the concerns, would not be right. The applicants could re-build a home that does not require a special permit but would be have a negative impact.
- Mr. Matthew Campobasso commented that he agreed with Mr. Curtin and added that he did not hear anything that is factual about the impact on the view, it is more concerns.
- 8:16pm *Mr. Joseph Curtin* moved to approve the special permit. Motion seconded by *Mr. Matthew Campobasso*.
- Mr. Bird asked if there were any other concerns that needed to be addressed.
- Mr. Hautaniemi said it is the height of the building.
- Board voted. *Mr. Joseph Curtin* moved to approve the special permit. Motion seconded by *Mr. Matthew Campobasso*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, William Bird, Matthew Campobasso, Jerry Siver*) Nays: 0.

ZBA Business

- Board members opened discussion for Eight Point Sportsmen's Club.
- Mr. Ronald Rana said that this permit has been granted since a long time with the condition to be renewed every year, than another ZBA Board decided to do the renewals every three years. He sent a letter on April 17th saying that they have made no changes to the property or the mobile home.
- Mr. Bird said that they had questions about the mobile home and concerns from the Building Inspector to have it inspected to code.
- Mr. Bird asked the ZBA if they had questions.
- Mr. Curtin commented that the ZBA does not have a copy of the old granted permit or the case itself. The only available records were the request for renewal letters and what the Board approved. Thus, the Board wanted to know more about the history of the situation so they are more comfortable to grant the renewal. He asked Mr. Rana to present to the Board some kind of proof that the trailer is being up to code.
- Mr. Rona said that the trailer had an occupancy permit in 1986 and has an approved septic and landscape.

- Mr. Bird asked that they show the Board documentation to see that they are still in compliance with the Building code. He asked if the trailer is structurally sound.
- Mr. Rana said that he is an MA licensed construction supervisor and can guarantee that the trailer is sound and is up to code. The trailer has been there since 1982 with no problems.
- Mr. Bird said that the ZBA just needed some documentation about this so it is in the file and they can grant the renewal.
- Mr. Curtin agreed. It is more of a permanent structure now, but the Board needed to keep the records. The old files were missing in the town hall.
- Mr. Rana asked if he can get a letter from the Board pointing the needed documentation.
- Mr. Hautaniemi said that this is good to keep on the records so any future Board could see the history of the case and not ask them again for more documentation.
- Another issue that the Board discussed was the Sterling Inn.
- Mr. Bird noted that the prospective owner could initiate a zoning change at the town meeting.
- Mr. Bird asked about the latest updates on Kennels.
- Board members said that the latest was the determination from the town Counsel about kennels. It is an issue that should start with Animal Control and the Building Inspector first.
- 8:45pm *Mr. Matthew Campobasso* moved to adjourn. Motion seconded by *Mr. Jerry Siver*. Motion carried. All in favor, Yeas: 5 (*Richard Hautaniemi, Joseph Curtin, William Bird, Matthew Campobasso, Jerry Siver*) Nays: 0.

List of Attachments:

- Letter from Eight Point Sportsmen's Club
- Case #617 Atlanta Gadoua, Christine and Jim Innamorati-Special permit case file.