

ZONING BOARD OF APPEALS MINUTES

DATE: May 9, 2017

TIME: 6:00 pm

LOCATION: Butterick Municipal Building, Room 205

6:03 pm – Sterling Zoning Board of Appeals was *called to order* by Acting Chairman Joseph Curtin. Roll call taken. *Sitting as a Board:* Joseph Curtin, Richard Hautaniemi, Jerry Siver, Matthew Campobasso, Patrick Fox. Chairman William Bird was absent.

6:01pm- Special Permit: McNally, John 78 Kendall Hill Road, Sterling, MA: Acting Chairman, Joseph Curtin reads first agenda item regarding an application for a Special Permit for purposes of constructing an 8' deep by 26' wide farmer's porch on the front of home at property located at 78 Kendall Hill Road, Sterling, MA, shown in Assessors Map No. 112, Lot No. 7 and asks the applicant to state full names and intentions.

The applicants' engineer, David Sadowski introduces himself and states his client would like to build a front farmers porch. The existing house does not meet the current front setback (preexisting non-conforming structure) and the proposed front porch would extend off the existing house as shown on the attached plan (Exhibit A) and would be no closer than the closest existing front setback. He states the porch is in harmony with other homes in the neighborhood.

6:04pm- Acting Chairman Joseph Curtin opens discussion to public. No discussion

6:04 pm- Acting Chairman closes public hearing

6:05pm- Motion to grant 8' x 26' wide farmer's porch was made by Patrick Fox and seconded by Jerry Siver. Vote 5-0, All in Favor, Motion Granted.

6:05pm- Review of April 18, 2017 Minutes. Motion to accept Minutes was made by Patrick Fox, Matthew Campobasso seconded. Vote 5-0 All in favor. Motion granted.

6:09pm- Discussion regarding Earth Removal Board: Board states the language in the by-laws need to be clarified and to put this discussion on the next meeting Agenda. The Board also states that any change made to any of the by-laws will need to go to Town Meeting next May.

6:15pm- Discussion regarding Tax language on future applications. The Board discussed putting language acknowledging applicant has paid taxes on all entities owned and to be signed by applicant, along with an email from Treasurer stating the applicant is up to date on taxes.

6:20pm: Motion from Patrick Fox to grant tax language stating the Zoning Board of Appeals Applicant is current with taxes paid and an email from Treasurer stating same. Matthew Campobasso seconded the Motion. Vote 5-0 All in Favor, Motion Granted.

6:22pm: Discussion regarding Chocksett Crossing Condominium Development Mitigation Funds. Joseph Curtin recuses himself from discussion due to Conflict of Interest. The Board

discusses the letter received from Winer and Bennett, LLP dated March 29, 2017. Attached here to as Exhibit B. The Board states that this issue of releasing funds should be directed towards the Board of Selectmen. The Zoning Board Of Appeals does not have the authority to release funds as such. Patrick Fox reads the stipulation from the Comprehensive Permit attached hereto as Exhibit C. The Board states that in order to release these funds a financial paper trail must be done in order to see where the funds came from and from whom the town collected from. A Town Selectperson was present during the discussion and states that the Board of Selectmen are aware of the funds being held and they are trying to track down the money (financial paper trail). The board suggests the Selectperson that this particular issue be put on their agenda for next Board of Selectmen's meeting.

The Board reviewed the language in Paragraph 25 and voted to have the Board of Selectmen clarify the financial paper trail to be put on their May 17, 2017 Agenda before the Zoning Board of Appeals makes a decision on any issue regarding this.

6:40pm: Jerry Siver made a Motion to continue discussion until next ZBA meeting. Matthew Campobasso seconded. Vote 4-0. All in favor. Motion granted.

6:41pm: Discussion regarding Stix n Pux located at 62 Chocksett Road. Joseph Curtin states that he was approached by the Building Commissioner, who is concerned that the size of the "Food Truck" is bigger than the proposed food truck and complaints have been made regarding said "Food Truck". The Board reviews the file in which they granted a Special Permit on May 17, 2016 with certain stipulations attached hereto as Exhibit D.

The Owners of Stix n Pux don't quite understand why they are back at a Zoning Board of Appeals meeting when they were approved for the "Food Truck". A concerned citizen stated that several complaints were brought to her attention and that the building looks more like a pre-fab tiny house than a "Food Truck." Also that trash was an issue, but people do see the owners cleaning up as best they can and if they are going to really open up this season??

The Owners of Stix n Pux feel as though they have improved the site where the truck is now and landscaped it to be more aesthetically inviting for customers. They will definitely be open on more set hours this year, once they get the Food Truck up and running.

The Board states they approved this Special Permit a year ago. The Special Permit will be reviewed every two (2) years and not grandfathered in to any new by-laws that may come in the future. They also state that a year has already passed, so in another year they will review said "Food Truck" Special Permit. As discussed last year during the review of two special permits on food trucks, the town, through its Board of Selectmen, need to review the issue of mobile vending and food trucks since it seems to be a reoccurring theme and the Town of Sterling by-laws and protective by-laws fail to address or even define the issue.

7:04 pm: Board discussed that elections for the ZBA Board will be put on next Agenda.

7:08 pm: Motion to Adjourn meeting made by Matthew Campobasso, Jerry Siver seconded, Vote 5-0 All in Favor. Meeting Adjourned.

ASSESSOR'S MAP 112, PARCEL 7
DEED: BOOK 55421, PAGE 238.
PB 266, PLAN 24, LOT 1

REQUIRED	PROVIDED
FRONT YARD = 40'	30.0'
LEFT SIDE YARD= 25'	95.8'
RT. SIDE YARD= 25'	41.7'
REAR YARD = 40'	262'

MINIMUM REQUIREMENTS:

BH LOT	REQUIRED	PROVIDED
FRONTAGE =	225'	200'
LOT AREA =	2 AC.	1.14 (+/-) AC

ZBA RELIEF NEEDED
SPECIAL PERMIT REQUIRED.

THE APPLICANT HAS A PRE EXISTING NON-CONFORMING DWELLING WHICH IS LOCATED 30.0' FROM THE ROADWAY (KENDALL HILL ROAD) LAYOUT. THE MINIMUM REQUIREMENT IS A 40' FRONT YARD SETBACK.

PROPOSED PORCH TO BE 26 FEET LONG BY 8' WIDE:

FRONT YARD = 40 FEET REQUIRED
PROPOSED PORCH = 32.2 FEET
RELIEF REQUIRED = 7.8 FEET

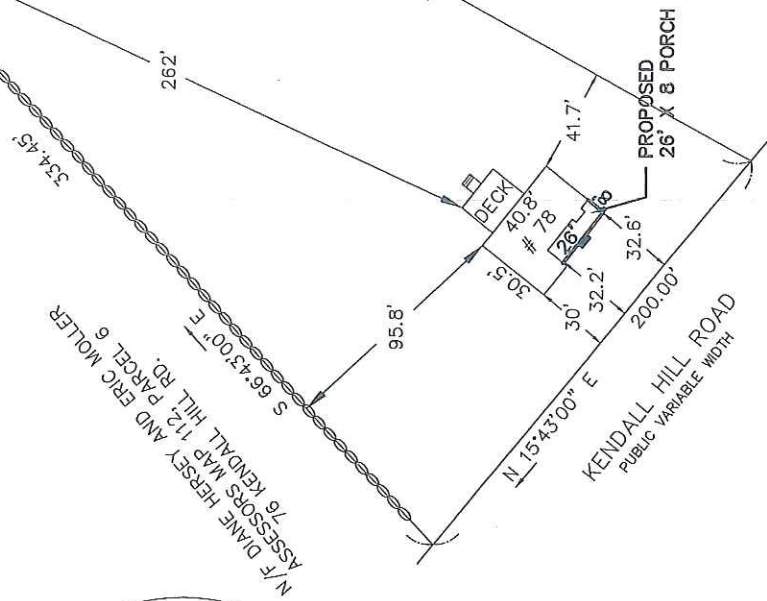
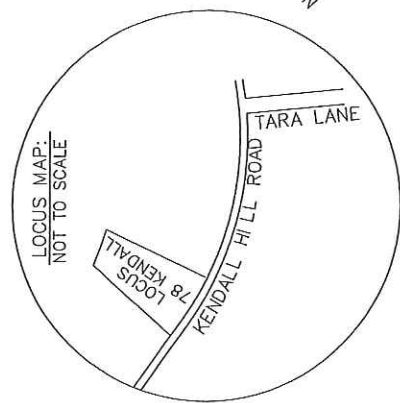
LOT AREA = 2.0 ACRES REQUIRED
1.14 + / - ACRES EXISTING
RELIEF REQUIRED = 0.86 ACRES

LOT FRONTAGE = 225 FT. REQUIRED
200 FT. EXISTING
RELIEF REQUIRED = 25 FT.

NOTES:
THERE ARE NOT ANY SEPTIC SYSTEM COMPONENTS
LOCATED WITH 25' OF THE PROPOSED PORCH ADDITION.

2. THERE ARE NOT ANY WETLANDS ON THE PROPERTY.

5. THE ABUTTER NAMES AND DEED REFERENCES SHOWN HEREON HAVE BEEN TAKEN FROM CURRENT TAX ASSESSOR RECORDS.



I CERTIFY THAT THIS PLAN REQUIRES A SPECIAL PERMIT IN ORDER TO SATISFY ALL THE ZONING REQUIREMENTS OF THIS PRE EXISTING LOT AND DWELLING.


NORMAN LIPSITZ, P.L.S. # 28,446

DATE: 10/11/2017

PROPOSED FRONT PORCH PLAN
78 KENDALL HILL
STERLING, MASSACHUSETTS

JOHN McNALLY
78 KENDALL HILL ROAD
STERLING, MA

OWNER:
JOHN McNALLY
78 KENDALL HILL ROA
STERLING, MA

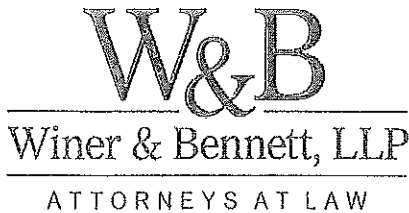


SADOWSKI ENG
Consulting Civil Engineer.
 7 CEDAR STREET
 CLINTON, MA 01510
 978-333-4340

DATE: APRIL 10, 2017

EXHIBIT A

Peter W. Bennett*
 David K. Pinsonneault
 J. Bradford Westgate*
 Peter G. Webb
 Kent M. Barker



www.winerbennett.com

APR 04 2017
 Gary M. Daddario*
 TOWN OF STERLING
 Barbara W. Halevi*

All Admitted in NH

* Admitted in NH and MA

March 29, 2017

Sterling Board of Appeals
 One Park Street
 Sterling, MA 01564

**Re: Chocksett Crossing Condominium
 Return of Stabilization Funds**

Dear Board Members:

Please note that this firm represents the Chocksett Crossing Condominium (the "Association"). Kindly direct all further correspondence regarding this matter to the undersigned at the Tyngsboro address.

A Comprehensive Permit was issued relative to the development of the Chocksett Crossing Condominium on November 9, 2004. Pursuant to Paragraph 25 thereof (a copy is attached hereto, as Exhibit "1", for your convenience), each unit at the Association was required to pay \$4,600.00 into a fund for "securing pedestrian safety at the intersection of Chocksett Road and Route 12, or for such other public purpose as may be designated by the Board."

Almost nine years later, the Association confirmed that such funds were still being held by the Town of Sterling. In the interim, it had come to pass that a study, design and reconstruction of the roadway in the area were all scheduled to be accomplished with funds, all or in large part, from the Commonwealth of Massachusetts. As a result, the Association sought the return of their funds. Attached hereto, as Exhibit "2", is a letter sent by the Association's Board. The then Town Administrator issued a response. A copy is attached hereto as Exhibit "3". In this letter, the Town Administrator confirmed that State funds were being used for roadway reconstruction in the area but that additional funds, including those taken from the Association, may be used for related projects and expenses. The letter states that determinations would be made in the coming months and appropriate action, including potential refund, would then follow.

It has been almost four additional years since the letter attached hereto as Exhibit "3" issued. The Association has determined that the funds collected from its units are still retained by the Town of Sterling.

Sterling Board of Appeals

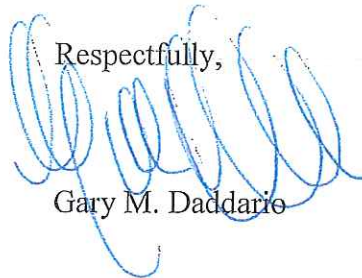
March 29, 2017

Page -2-

At this time, the Association respectfully requests that the Town refund the \$4,600.00 per unit that was taken so many years ago. While the Association understands the purpose of the collection of the funds, it appears that they were not needed by the Town. Such funds are, however, needed by the Association in their continuing efforts to maintain the property and to meet increasing expenses associated with both the market rate and the affordable units located at the condominium.

The Association appreciates your consideration and looks forward to an efficient resolution of this matter.

Respectfully,



Gary M. Daddario

encl

c: client

Sterling Town Administrator
Sterling Board of Selectmen
Sterling Town Counsel
Sterling Town Treasurer

24. All performance bonds shall contain the following provision:

~~If the Principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, agreements, terms and provisions set forth in the following:~~

a. The plan of record;

b. This Decision attached hereto as Exhibit A with all Exhibits thereto; and

then this obligation shall be void; otherwise, it shall remain in full force and effect and the aforesaid sum shall be paid to the Town of Sterling as liquidated damages.

25. The Applicant shall pay to the Town the sum of Four Thousand Six Hundred (\$4,600.00) Dollars prior to the issuance of each certificate of occupancy for a market rate dwelling unit. The payment shall be made pursuant to the provisions of G.L. c. 44, s. 53A and form of payment shall be approved by the Board's legal counsel. The funds shall be used for the purposes securing pedestrian safety at the intersection of Chocksett Road and Route 12, or for such other public purpose as may be designated by the Board.

26. The Development shall comply with the following conditions recommended by the Town's consulting engineers:

HALEY & WARD

- A. The rooftop infiltration basin locations should be shown on the drawings.
- B. A landscaping plan should be provided prior to approval of the construction plans.
- C. Walkways should be shown on the landscaping plan.
- D. Separate water services should be on the final construction drawings
- E. The fire protection capacity of the water distribution system should be evaluated prior to construction approval. This evaluation should include the following components:
 - * Fire flow demand based upon proposed construction and NFPA standards. It should be noted if sprinklers are proposed and under which NFPA standard the sprinklers will be installed.
 - * Fire flow capacity to the site through the connection to the distribution system at Leominster Road. Capacity should be based upon hydrant flow tests



Town of Sterling
Office of the Town Clerk

1 Park St, Butterick Municipal Bldg.

Sterling Massachusetts 01564

Home of 'Mary had a Little Lamb'

Tel 978 422 8111 ext 2307

Email TownClerk@Sterling-ma.gov



Bk: 56551 Pg: 168

Page: 1 of 2 12/30/2016 12:32 PM WD

ZONING BOARD OF APPEALS

(20 days have elapsed)

June 7, 2016 at 8:00am

I, **Dawn E. Michanowicz**, Town Clerk of the Town of Sterling, Massachusetts, hereby certify according to the records in our possession as follows:

1. The original petition for a **SPECIAL PERMIT** for 62 Chocksett Road (Map 70, Lot 15) from Petitioners Charles and Melissa Lowe, was filed with the Office of the Town Clerk on April 4, 2016.
2. The public hearing notification was filed in the Office of the Town Clerk on May 3, 2016.
3. The public hearing was held on May 10, 2016 at 6pm at the Mary Ellen Butterick Municipal Building, 1 Park Street.
4. On May 10, 2016 the decision by the Zoning Board of Appeals voted to **APPROVE** the request for a **SPECIAL PERMIT** with conditions. The vote was filed in the Office of the Town Clerk on May 17, 2016.
5. As of June 7, 2016 at 5:00pm twenty (20) days have elapsed since filing; and
6. No appeal therefore has been filed.

Worcester Registry of Deeds: Book: 45005 Page: 229

Witness my hand and the Town Seal of Sterling this June 7, 2016 at 8:00am.

A True Copy

Attest:

Town Clerk

TOWN SEAL

(2)



TOWN OF STERLING

BOARD OF APPEALS

Butterick Building
1 Park Street • Sterling, Massachusetts 01564

TOWN OF STERLING
TOWN CLERK

MAY 17 2016

RECEIVED

Notice is hereby given that application has been filed with the Sterling Board of Appeals by Charles and Melissa Lowe, 11 Albright Road, Sterling, Massachusetts for a Special Permit for purposes of a mobile vending truck on property located at 62 Chocksett road owned by them.

Voted: To GRANT the requested Special Permit with the following stipulations:

1. Special Permit issued will need to be renewed every two (2) years and recorded with the Worcester District Registry of Deeds.
2. Mobile Vending Truck will not be grandfathered in, it will be subject to any by-laws or ordinances the Town of Sterling produces at any such time.
3. Hours of operation to be Monday-Sunday 11 A.M. to 11 P.M.
4. Comply with all Sterling Zoning By-Laws.
5. That all Federal, State and Local laws will be upheld and all necessary permits be obtained.

Board of Appeals

By:

William A. Bird
William Bird, Chairman

IN FAVOR OF SPECIAL PERMIT

AGAINST

ABSTAIN

Joseph Curtin

None

None

Richard Hautaniemi

Jerry Siver

Matthew Campobasso

William Bird

Appeals from this decision, if any, shall be filed within twenty (20) days of filing notice of the decision with the Town Clerk and shall be governed in all respects by Section 17 of the General Laws, Chapter 17 of the General Laws, Chapter 40A as amended by the Acts of 1975, Chapter 808.

Worcester Registry of Deeds: Book 45005, Page 229

Received By Sterling Town Clerk on: May 17, 2016

Effective Date: June 7, 2016

[Signature]
Sterling Town Clerk

Attest:

A True Copy

ATTEST: WORC. Anthony J. Vigliotti, Register