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TOWN OF CARLISLE

OFFICE OF Zoning Board of Appeals

66 Westford Street
Carlisle, MA 01741
978-369-5326

Minutes: Board of Appeals, February 6, 2023 Approved April 3, 2023

Call to Order

At 7:31 pm Chair Adams opened the meeting. He informed those who were present that an audio recording was being made and asked those present if anyone else was recording. Nathalie McCarthy, reporter for the Mosquito, said she was recording the hearing.

Roll Call and Declaration of Quorum

Chair Adams recognized the required quorum of Members. Present were Members Eric Adam (Chair), Steven Hinton, Manuel Crespo and Associate Member Gretchen Anderegg via the telephone.

Statement of Compliance

The issue of compliance regarding posting of the meeting was confirmed by the Chair. According to Secretary Wang, the meeting agenda was posted in Town Hall on January 31, 2023.

Approval of Agenda and Public Comments

Chair Adams asked those present if there were any matters other than those listed on the agenda which the public would like to add to the agenda. When none were offered, the agenda was accepted.

Approval of prior minutes

Approval of the minutes of the January 3, 2023, meeting was delayed until the next meeting.

Old Business – Application 2301

Chair Eric Adams reopened the public hearing that was continued on January 3, 2023, on for the application of Timothy Downing requesting a Variance pursuant to Section 7.5 to build a pool 23 feet from the lot line where 40 feet is required under section 4.3.2. The property is located within Residence B District at 44 Canterbury Court.

Present were the Applicant, Timothy Downing, Secretary Peggy Wang, Mosquito reporter Nathalie McCarthy and members of the public. Secretary Wang reported that no correspondence had been received.

Documents considered by the Board

ZBA_2301_01 Proposed Plot Plan Prepared by Stamski & McNary Inc, dated January 19, 2023

ZBA_2301_02 Superimposed Site Development Plan by Dan Hisel Design dated July 13, 2005

ZBA_2301_03 Video showing the panoramic view of the property on a thumb drive

Applicant's testimony

The Applicant, Timothy Downing, presented the plan of what he termed a unique 5-acre property. Mr. Downing pointed out the location of the wetlands, septic, and the constraints of the south to north grading. These combined conditions prevent the location of a pool to anywhere else on the property. In addition, the Applicant pointed to an area on the property that has many trees in the wetland buffer zone that would have to be removed.

Board's comments

The Board focused on the abutter closest to the lot line at 610 Bedford Road to determine the distance between the proposed pool and the abutter's house. In reviewing an aerial view on their cell phones, the Board could see substantial distance and many trees that obstructed the view. They reviewed a possible change in the orientation of the pool but determined that the location of the well would not prevent the need for a variance. The Board noted that the 39-foot length of the pool could reduce encroachment by five feet but again, would not prevent the need for a variance. The Applicant said that the proposed length was based on the desire to swim laps in the pool.

Member Hinton informed the Applicant that by building the pool in the setback the property will become non-conforming and any future external changes to the structure will require a Special Permit from the Zoning Board.

Close the public hearing

Member Hinton moved and Member Crespo seconded the motion to close the public hearing. All voted in favor of the motion.

Deliberations

The Board discussed the impact the location of the well had on the proposed location of the pool and that by reducing the length or rotating the proposed pool the encroachment would not be eliminated. They noted that the proposed location is in an isolated spot on the property, the nearest abutter's house is over 100 feet away.

The Board realized that the public had not been asked for their comments and Member Hinton moved and Member Crespo seconded the motion to reopen the public hearing. All voted in favor of the motion.

Public comments

When asked by the Chair if any members of the public had any comments and none were offered Member Hinton moved and Member Crespo seconded the motion to close the public hearing, Adams (aye), Anderegg (aye), Hinton (aye), Crespo (aye).

Decision

Member Hinton moved and Member Crespo seconded the motion to grant the variance for application 2301 to build a pool 16 feet from the lot line as shown in the plan of record (ZBA_2301_02). The motion was approved by a vote of 4 to 0 Adams (aye), Anderegg (aye), Hinton (aye) and Crespo (aye) with the following findings.

- 1) Due to the shape and geometry of the lot there is no other viable location for the construction of the pool.
- 2) The literal enforcement of the Bylaw would thereby involve substantial hardship for the Applicant to build in any other location.
- 3) The Board found no evidence that allowing the pool at the proposed location created a substantial detriment to the public good. There was no opposition to the application, no member of the public appeared/spoke at the public hearing and nearest neighbors' house was substantially set back from the common property line.

The decision is subject to the standard conditions and one specific condition; the proposed structure shall be limited to a 16-foot encroachment of the pool bowl (the inside vertical wall edge of the pool) as depicted in the proposed plot plan.

Appeal

The Applicant was advised that the written Decision will be prepared and signed within fourteen (14) days. A copy of the decision will be mailed to the Applicant and abutters at which time the 20-day appeal period begins. At the end of the appeal period, if no appeal is filed in Court, the Applicant shall pick up the decision along with the Town Clerk's certified Grant of Special Permit which must be filed with the Register of Deeds in Lowell, Massachusetts before the permit can be considered valid.

Application 2302

Chair Eric Adams opened the public hearing for the application of Matthew and Melanie O’Hare requesting a Special Permit under Section 6.3 to build an addition on an existing non-conforming structure on a non-conforming lot. The property is located within Residence B District at 487 Beford Road.

Present were the Applicants, Matthew and Melanie O’Hare, Secretary Peggy Wang, Mosquito reporter Nathalie McCarthy and members of the public. Secretary Wang reported having receive correspondence of support from the following abutters:

Eliza and Devin McGrath	523 Bedford Road
Ben and Gretchen Herter	517 Beford Road
M.J. and Rick Cramer	100 Shady Brook Lane
Maureen and Mike Ruetters	453 Bedford Road
Bonnie and Paul Sellew	84 Shady Brook Lane

Applicant’s testimony

The Applicant, Melanie O’Hare, spoke to the Board about their plan to add 480 sq feet on the first floor and 434 sq feet on the second floor of the existing structure and convert 740 sq feet of the unheated barn into heated space to accommodate a guest bedroom and bath. She added that in 1996 the prior owners were granted a variance to increase the habitable space but not all the proposed additional living space was built.

Board’s Comments

Member Hinton noted that the information submitted was not sufficient and was ambiguous. He added that non-conforming structures may be expanded but the cumulative space added over time may not exceed 50% of the original structure. Hinton said it is not clear how much square footage was added in the 1996 expansion. There is also a lack of clarity on whether the attached barn could be included as living space for the purposes of the 50% expansion rule. Chair Adams said that if the Applicants were not planning to alter the exterior of the barn it could be converted into habitable space under the provisions of the Distinctive Structures Preservation Bylaw.

The Applicants were advised by the Board that there is no path for the current application to move forward. If the Applicants want to build the addition on the existing house a table showing the square footage of the pre-1996, the 1966 addition and the proposed addition living space on the first and second floor of the house must be provided for a hearing at another public hearing.

The Board informed the Applicants that a separate application must be submitted for the Special Permit to convert the barn into habitable space under the Distinctive Structures Preservation Bylaw.

Continuance

The Board recommended to the Applicants that they request a continuance until the next meeting to allow time to gather and submit the requested data. The Applicants requested a continuance until the next meeting.

Member Hinton moved and Member Anderegg seconded the motion to continue the public hearing for application 2302 to the next meeting.

Adjournment

Chair Adams asked those present if there were any additional issues to discuss. When none were offered the meeting adjourned at 8:35pm.

Respectfully submitted
Peggy Wang