

ZONING BOARD OF APPEALS
WEDNESDAY, DECEMBER 6, 2023
RESOURCE ROOM

Attendance: Chair Dan Heney, Vice chair Mike Fitzpatrick, Jim Palmer, Ron Forget, John Bombara (remote), Ken Frasier Building Inspector,

Dan Heney called the meeting to order at 7:00 PM.

1. (0:05 TS) 7:00 PM Public Hearing Continued: Beth Lonergan (#2023-14) 278 Northwest Main Street
Date of Application: 8/16/2023
Decision Date for Variance: 100 Days of Application (11/24/2023)
Continuance from applicant 12/6/2023
Continuance from applicant 1/3/2024

2. (0:24 TS) 7:00 PM Public Hearing Continued: Steve Flagg (#2023-17) 3 Hough Road
Date of Application: 10/10/2023
Decision Date for Special Permit: 90 days after close of Public Hearing
Brian Falk from Mirick O'Connell representing Mr. Flagg, also present is the engineer, Kevin Quinn. Attorney Falk wanted to clarify what they were seeking that they are not seeking approval for reconstruction after a fire, they are seeking reconstruction of a pre-existing non-conforming residential structure. Attorney Falk believes that this home qualifies as a residential structure per the terms used in the Zoning Bylaws. He also stated that nothing with this project would interfere with the easement rights over Old Parker Road. Attorney Falk believes that the Board could make the determination that the proposed home would not be substantially more detrimental to the neighborhood than the existing non-conforming structure, because it is also an improvement to the neighborhood. The proposal includes removing an encroachment onto Old Parker Road, improving that setback from 0 to 6 feet, they are minimally extending one non-conforming setback by just 2 feet so that it centers the home within the property. Mike Fitzpatrick stated that he is concerned about how the structure is labeled and should it be considered a residential structure. The Board asked Steve for his opinion on this, and he stated that he thinks the Boards job in this to make the finding that this is not substantially more detrimental and make sure they have site control and feels that Mr. Falk has addressed those issues in his memo. Steve stated that he reviewed the cases and feels that the citations are accurate, ultimately it is up to the Board to determine whether this is a residential structure. David Wilson 36 Main Street, South Grafton and 11 Hough Rd, Douglas, stated that the Real Estate ad that was online when the Dauplase sold this property states that it is a mobile manufactured in 1984 and stated that no one has lived in this year-round. Mr. Falk stated for the record that it is a residential structure it has heating and air conditioning and a mailbox and it can stay that way indefinitely, and that this proposal would be an improvement, and how this structure came to be is not in question rather is it eligible to this type of special permit being requested for a residential structure. Marilyn Klocek stated that she is the only abutter with the Flaggs to share a common property line has concerns about the distance on the plan of 15 feet when it

normally is 25 feet for setbacks, she also has concerns about the fence that was put up on the property line she shares with the Flaggs. She is also going to have her property surveyed professionally, she also has concerns about the proposed driveway on the plan due to runoff and her well. Mr. Quinn stated that the fence in question was surveyed and found to be right on the property line and the driveway does cross into Old Parker Road but entering a public right of way is necessary for vehicles to access. Attorney Falk stated that the deed to this property states that this property has rights to Old Parker Road along with many others. Mr. Fitzpatrick stated that the Board has no jurisdiction over Old Parker Road, and asked the engineer what he proposes for the stormwater management for the driveway that is concerning the neighboring property. Mr. Quinn stated that they could do some grading and pitch the proposed driveway to ensure the runoff is directed away from Ms. Klocek property and if the Board would like they can condition the approval that way. Ms. Wilson 36 Main St, S. Grafton and 11 Hough Rd, Douglas ask what defines a residential structure. Attorney Falk stated that he could not find the term residential structure in the town bylaws as defined. Ms. Wilson asked whose jurisdiction Old Parker Road would be under and was told it would be a civil matter because it is a private road. Mr. Quinn stated that the current structure encroaches into Old Parker Road, and this proposed plan remedies that issue, and stated that with the proposed new driveway it in no way impedes access to the right of way. Mr. Palmer stated that the Board is trying to determine whether this was a home and asked Counsel if there was anything found to contradict that it is a home and there were no cases found to the contrary. Charlene LaChapelle 56 Parker Road asked why someone can't determine whether the structure is a trailer. Mr. Fitzpatrick stated that they have determined that at some point it was a trailer, the question is whether it is considered a residential structure. Mr. Fitzpatrick stated that he is having difficulty determining whether he can consider this a residential structure. Mr. Heney is in agreement with Mr. Fitzpatrick and does not know whether he can decide on it being a residential structure. For the record the bylaw states:

'a combination of materials assembled at a fixed location to give support or shelter such as a building, framework, retaining wall, tent, reviewing stand, platform within fence, sign, flagpole, recreational tramway for radio antenna or the like'

Mr. Quinn read the bylaws for – what is a dwelling in section 10, for the closest definition he could find for a residential structure.

'a building designed and occupied as living quarters for one or more families, single two-family dwelling shall be designed for and occupied by not more than one or two families respectively a multi-family should be designed and occupied by three or more families...'

Mr. Quinn stated that foundation and method of construction is not referenced anywhere in the bylaws, and he argues that it is a home and if the special permit is not approved to improve the property and building the current structure will stay there indefinitely. Mr. Frasier stated that whether it is a trailer and modified to the point that it is at there has never been a permit pulled for anything for the property. Mr. Bombara stated that the only permit given on this property was in 1961 to build the cottage, and he can recall some approvals from the Board for a living space in an RA that was a shed with 2 windows and door that had no toilet or kitchen, and some didn't even have electricity. Mr. Heney stated that it doesn't look like they have the votes to approve this tonight and

stated that the applicant can ask for another continuance to try and convince the Board that it should be considered a residential structure. Mr. Forget does not understand why the Board doesn't want to consider this a residential structure to be able to improve the property from what it currently is. Mr. Fitzpatrick isn't arguing whether or not it will improve the neighborhood he wants to find some concrete facts that can prove to him that he can consider it a residential structure. The applicant, Mr. Flagg, stated that the structure that is currently there is falling down, and something needs to be done about it and is appealing to the Board on what he should do. The Board suggests continuing the hearing and trying to come up with convincing the Board with facts of the structure being a residential one. The applicant will ask for a continuance to the next meeting.

(1:08:25 TS) Motion to accept the request for a continuance to January 3, 2024, at 7:15 PM made by Ron Forget, 2nd Jim Palmer. The vote passed unanimously.

3. (1:11:15 TS) 7:15 PM Public Hearing: Linda Nunes (#2023-21) 41 Ledgewood Drive
Date of Application: 11/15/2023

Decision Date for Special Permit: 90 days after close of Public Hearing

The applicant is requesting a special permit in an RA district non-conforming structure to reconstruct a single-family home on a pre-existing non-conforming lot that has an existing cottage on the lot. Margaret Bacon with Allen Engineering representing Linda Nunes. Ms. Bacon showed the Board the plans and Conservation Commission and Board of Health have approved this plan and because this lot has no frontage, they realized they needed a special permit from the Zoning Board.

(1:18:25 TS) Motion to close the public hearing made by Ron Forget, 2nd by Jim Palmer. Roll call vote – Dan Heney, Mike Fitzpatrick, Jim Palmer, Ron Forget, John Bombara all in favor.

(1:19:25 TS) Motion to approve the plan as presented made by Ron Forget, 2nd by Jim Palmer. Roll call vote – Dan Heney, Mike Fitzpatrick, Jim Palmer, Ron Forget, John Bombara all in favor.

Discussion:

1. (1:22:00 TS) North Brown, LLC

Ken Frasier drove up there yesterday to take a look at the site and there a couple of storm cells mentioned in the report that are not draining well and he has not had a chance to talk to the developer about that issue yet to find out the status. He gave them a permit for the last foundation on the left side of Nautical Way and they are currently cleaning up the site on the right-hand side, he also gave 2 permits in the last 30 days for affordable units. His understanding is the only thing left available right now is the foundation hole they are digging now and one other unit with a foundation they just poured. There are still some sediment controls to be taken care of across the road. The sidewalk average is 5 ½ to 6 feet as Mr. Fitzpatrick had asked about previously.

2. (1:28:20 TS) Approve Minutes: October 4, 2023 – Possible votes

(1:30:50 TS) Motion to approve the October 4, 2023, meeting minutes as presented made by Jim Palmer, 2nd by Ron Forget. Roll call vote – Dan Heney, Mike Fitzpatrick, Jim Palmer, Ron Forget, John Bombara all in favor.

Upcoming Meetings: January 3, 2024 & February 7, 2024

(1:32:05 TS) Motion to adjourn the meeting made by Mike Fitzpatrick, 2nd by John Bombara. Roll call vote – Dan Heney, Mike Fitzpatrick, Jim Palmer, Ron Forget, John Bombara all in favor.

Respectfully submitted,

Stephenie Gosselin