

ZONING BOARD OF APPEALS
WEDNESDAY, FEBRUARY 7, 2024
RESOURCE ROOM

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

Mike Fitzpatrick called the meeting to order at 7:10 pm.

1. (0:15 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

Continuance from applicant to 2/7/2024

Attorney Brian Falk with Mirick O'Connell representing the applicant and Kevin Quinn engineer present. Attorney Falk stated that this is a special permit application to reconstruct a pre-existing non-conforming single-family home on Hough Road. They showed the Board pictures of the home and of the proposed home and went over revised changes to the plans for improvements and updates. In summary Attorney Falk stated that the special permit is under section 3.4.5 of the zoning bylaw, chapter 48 section 6, to allow the reconstruction of a pre-existing non-conforming single-family home. The case law on these types of special permits is clarified that a full reconstruction is permissible and that you may even extend certain non-conformities, which are on the plan. They have heard concerns of the Board and members of the public that this was originally a camper, and they do not dispute that, but it has since been renovated internally and externally extensively, to the point that it is now a permanent structure used for single-family residential purpose. The zoning bylaw does not define residential structure nor does chapter 48 section 6, they have found no cases stating that this type of home (the existing home) does not qualify as a residential structure for this type of a special permit. They did find a court case that holds that an uninsulated and unheated summer cottage qualified as a residential structure for purposes of a total reconstruction for a brand-new home, and they would argue that the home in question is in far better shape than an uninsulated, unheated summer cottage. Attorney Falk listed all that the current home has and that it meets the zoning bylaw definition of single-family dwelling and no longer meets the definition of a camper under the zoning bylaw. The legal standard for this type of special permit is that the new home would not be substantially more detrimental to the neighborhood than the existing non-conforming residential structure. Mr. Fitzpatrick reiterated his concerns from before that the 3-year window from when the original home burned down has lapsed and then there was a camper trailer put in its place and the fact that he still is not convinced that the current trailer even with all the renovations over the years is considered a residential dwelling. Attorney Falk argued that if it is not considered a residential structure then what it is considered if it is a permanent structure and it is assessed as a single-family residence. Attorney Falk again reiterated that this would be a substantial improvement to the community, and it would solve a number of current zoning issues and moving further away from the lake. Mr. Forget agrees that what is proposed is more presentable than the current structure and brought up the financial issue of not being able to rebuild years ago. Mr. Fitzpatrick stated that the current owner did not do any of the renovations and bought it as it so there would not be any financial hardship. The members of the Board and Attorney Falk went back and forth about the residential structure issue and the ability to rebuild it. Mr. Heney is also not convinced that this is a replacement of a single-family structure with another single-family structure; he feels that it is a travel trailer or camper being replaced with a single-family home. Mr. Bombara feels that they should be able to reconstruct a single-family

home there, there was one there at one point in time and there are single-family homes surrounding it. Mr. Bombara's opinion is that this has gone on too long and that if they deny this the town might find themselves in court over it and lose. David Wilson 11 Hough Rd stated that his opinion is that it is not a permanent residence, it does not have a foundation underneath it, and he does not think it is a full-time residence that can be lived in year round. Mr. Wilson also stated that there were no permits ever pulled for any of the work done on this structure, and the prior owners tried to rebuild several times and were not allowed over a 30-year period. Bob Lachapelle Parker Rd stated that the proposed structure is a beautiful building, but it does not fit with the surrounding buildings in the neighborhood. Dawn Wilson 11 Hough Rd, wanted to make known that this lot has never had an okay to build in the last 40 years. Marylyn Klocek the abutter to the applicant's property on the west side, stated that the Board of Health has no record of the location of the septic on her property so her concern is how close it will to her septic and well. Mr. Fitzpatrick stated that they are proposing a new well and septic so there will have to be verification of where the neighboring systems are located. Ms. Cloak asked if neighbors would be notified by the BOH, and it was stated that the BOH would notify neighbors being affected. They discussed the swale that is proposed and that it would carry water away from Ms. Klocek property towards the pond. Charlene Lachapelle 56 Parker Rd, wanted to reiterate that this property was advertised and sold as a mobile manufactured three season home and that nobody in the last 50 years has lived there year-round, and the proposed home is too big and overwhelms the neighborhood. Steve Flagg 3 Hough Rd, the applicant stated that this is a residential home on a residential lot paying residential fees as an assessed residential home and stated that if they have to go to the state for this then they will. Attorney Falk reiterated what he stated earlier about them not having anything to do with the previous fire and rebuild time that they are referring to the section 6 finding special permit eligibility and this has been for years a pre-existing non-conforming structure used for residential purposes. Attorney Falk recognized that there is no definition for a residential structure but there also is nothing in the bylaws that refutes the position that it is a residential structure, and he urges the Board to look at what your jurisdiction is and what your required finding are that the proposed structure is no substantially more detrimental to the neighborhood that the current structure.

(38:45 TS) Motion to close the public hearing made by Dan Heney, 2nd by John Bombara. Roll call vote – Dan Heney, John Bombara, Ron Forget, Jim Palmer, Mike Fitzpatrick all in favor.

(39:25 TS) Motion to approve the special permit and the presented plans for 3 Hough Road made by John Bombara, 2nd by Ron Forget. Roll call vote - Jim Palmer, Ron Forget and John Bombara are in favor, and Mike Fitzpatrick and Dan Heney are opposed.

Mike Fitzpatrick stated that there needed to be four votes in favor, so the motion did not pass. For a special permit or variance, it requires a super majority, which is 4 out of 5.

2. (43:15 TS) 7:15 PM Public Hearing: Steven Bloem (#2024-01) 4 Summer Court
Date of Application: 1/9/2024

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

This is a special permit to construct a 2-car garage on a pre-existing non-conforming lot. Margaret Bacon with Allen Engineering representing the applicant requesting a variance for a proposed 28x24 garage, they are in the process of replacing the septic and they have already been before the Conservation Commission and Board of Health for their jurisdictional work. Mr. Fitzpatrick asked Ms. Bacon if she could move the garage to make it 10 feet on the property line, the applicant stated that his concern with moving is where his well is. Mr. Heney would also like to see it moved 10 feet from the lot line and thinks there is plenty of room to be able to swing a vehicle into the garage. There was discussion back and forth about moving the garage over about 3 feet. Ms. Bacon stated she could move the garage closer to the septic and ask for a waiver from the Board of Health, and

Mr. Fitzpatrick stated that would also help with the street setback. The Board agrees they would be more comfortable with having the 10 feet.

(55:55 TS) Motion to close the public hearing made by Dan Heney, 2nd by Jim Palmer. Roll call vote – Dan Heney, John Bombara, Ron Forget, Jim Palmer, Mike Fitzpatrick all in favor.

(56:25 TS) Motion to approve the special permit request for Steven Bloem with a condition that the garage is no closer than 10 feet from the sideline with plans from Allen Engineering with engineering stamp of 10/18/23 and plan date of 10/1/23 made by Dan Heney, 2nd by John Bombara. Roll call vote – Dan Heney, John Bombara, Ron Forget, Jim Palmer, Mike Fitzpatrick all in favor.

3. (58:15 TS) 7:30 PM Public Hearing: Brad Reardon (#2024-02) 36 Birch Hill Road

Date of Application: 1/17/2024

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

Les Stevens 31 Brookside Drive representing the applicant stated that this is a single-story structure damaged due to a fire and they are requesting and proposing to replace it with a raised ranch, and proposing to remove the garage and barn area. They would be building on the existing footprint of the original house which was a roughly a 28x48 home with some irregular foundation shapes. The Board of Health has approved an updated septic system. Mr. Fitzpatrick stated that this does fall within the 3-year period of rebuild after a catastrophe.

(1:06:15 TS) Motion to close the public hearing made by Dan Heney, 2nd by Jim Palmer. Roll call vote – Dan Heney, John Bombara, Ron Forget, Jim Palmer, Mike Fitzpatrick all in favor.

(1:06:50 TS) Motion to approve the special permit for 36 Birch Hill Road as the plans drawn by Spotter Design and Data dated 10/17/23, and house plans drawn by Shane Structures dated 1/17/24 made by John Bombara, 2nd by Mr. Fitzpatrick. Roll call vote – Dan Heney, John Bombara, Ron Forget, Jim Palmer, Mike Fitzpatrick all in favor.

4. (1:08:15 TS) Meeting Minutes: The Board will table the minutes at the next meeting.

5. (1:09:15 TS) North Brown, LLC

Ken Frasier Building Commissioner received the construction report updates Monday and submitted them to the Board; there are some pictures of the site conditions and site work on Nautical Way. They are digging the last foundation hole on the left side of Nautical Way, preparing, and getting close to starting to put some foundations in on the right side of Nautical Way. They can sell 5 more market units before he has to sell another affordable unit.

(1:12:05 TS) Motion to adjourn the meeting made by Dan Heney, 2nd by Ron Forget. Roll call vote – Dan Heney, John Bombara, Ron Forget, Jim Palmer, Mike Fitzpatrick all in favor.

Respectfully submitted,

Stephenie Gosselin