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Town of North Reading
Massachusetts

Board of Appeals

MINUTES

Zoning Board of Appeals

October 13, 2022

Teleconference/Virtual Meeting

Members Present: Jennifer Platt, Bob Breen, and Maria Lockhart
Also present: Kathy Morgan, Secretary and Gerry Noel, Building Commissioner
Attendees noted: Melissa, Kevin Coiro, Rusty Howse, Joe Keyes, Jeff Miller, Phil Healy
(NORCAM) James Tryder, iPhone guest, Cindy Larose, Ruth Fierro, Amy Coiro, Christine's phone,
Maxim, Todd Johnson, Irene Sserubom Lowe, Samsung SM-G998U

Chair opened the meeting at 7:10 pm

Continued Public Hearings

142 Main Street - Special Use Permit for a Landscaping/Stone business

Due to not having a quorum for this hearing, the applicant requested a continuance.

Ms. Platt moved to continue the Public Hearing to November 10, 2022, seconded by Mr. Breen;
and voted Mr. Breen – yes, Ms. Lockhart – yes, and Ms. Platt – yes

25 Maple Road – Appeal of the Building Commissioner's decision

Chair read the notice and reopened the Public Hearing. Attorney Keyes and Mr. Smith were present. Chair gave a brief overview of the appeal so far. The appeal is brought by Smith Sons Construction and their attorney Joe Keyes for a single lot exemption. The Building Commissioner believes this lot meets the Table of Dimensional and Density regulations of the NR bylaws. Town Counsel has agreed with the Building Commissioner. Determination of Access would be required from CPC before a building permit could be issued and it is believed that this portion of Maple Rd is unacceptable. The applicant is looking to get the lot

grandfathered and exempt under 40A Section 6. Chair said grandfathering would apply if the lot was non-conforming. She said she believes once a non-conforming lot comes into conformity it can't be changed into non-conforming again. The Zoning Bylaws try to have everything comply. Attorney Keyes said the reason they are trying to get grandfathering status is because they don't know yet where the house can be located on the lot due to topography and wetlands. They believe it is a protected lot under Chapter 40A, Section 6. He said even though this lot conforms to current bylaws, he would like the grandfathering status to have flexibility for the location of the house instead of coming back to the Zoning Board if later on the location would require a variance from the setbacks outlined in the Table of Dimension and Density regulations.

Attorney Keyes said the statute has guidelines or a test that makes it a conforming lot. The lot has to be at least 5,000 s.f., have at least 50 feet of frontage on a road in existence on a plan, can't be held in common ownership with anybody else and it has to be zoned for a single family residential use or two family residential. Chair said she believes that is applied when a lot is non-conforming, and then you rely on Ch 40A, Section 6, to show that despite the current zoning bylaws you are protected. Attorney Keyes said he doesn't believe the statute makes that distinction, it just applies the test; it just applies the rules. Mr. Breen asked if the State law should just be applied and not the bylaw. Attorney Keyes said in this case, yes, because Ch 40A, Section 6 trumps zoning bylaws. Chair, reading that statute, said "but it says a zoning ordinance or bylaw shall not apply to a structure or use lawfully in existence or lawfully begun." Chair said it is a vacant lot, no use yet, a proposed use. Attorney Keyes said the use is a residential single family use. Attorney Keyes asked why this lot wouldn't be considered for grandfathering status when other vacant lots on this road have gotten it. Attorney Keyes said he has a letter from two prior Building Commissioner saying the lot is grandfathered and then one from another Building Commissioner saying it is not; he wants clarification.

Ms. Lockhart asked if Attorney Keyes could provide any case law with clarification on what "uses lawfully in existence" is. Chair, reviewing the Statute again, read "the zoning bylaws don't apply to something existing, but shall apply to a change or substantial extension to a building permit." Attorney Keyes said if the lot was an undersized lot, there would be no confirmation. He said Ch. 40A, Section 6 deals with the Table of Dimensional & Density. Bill Smith said this law protects properties for people who have held it over the years and that meet the test. He said the Town accepted the provisions. He told how he built other houses in the area and three were grandfathered. The owners of this property have owned it for 52 years.

Attorney Keyes said this property was in separate ownership since before zoning existed and is a two acre lot. He said he has a letter from KP Law from 11/19/2001 explaining how a lot is

grandfathered and how they apply the test, on that road itself. Town Council is now supporting the current Building Commissioner. Attorney Keyes said he would like to request a continuance

Mr. Breen asked for information on other properties on this road, Mr. Smith noted 20 Maple Rd and 17 Maple Road. Attorney Keyes said he will have to deal with CPC for safe and adequate access, if he gets this approved. The Town has not had any additional input from Town Council since the hearing began.

Mr. Breen moved to continue the Public Hearing to November 10, 2022, seconded by Ms. Lockhart and voted 3-0 in favor.

407 Park St. – Special Permit for chickens

Kevin Coiro was present. He is looking to get a Special Permit for chickens. The coop is a little shed, 6' x 4', so they can roost at night with a wired area made of 2 x 4's for them to run. Their backyard is mostly fenced in. A letter was received from the neighbor at 408 Park St who supports the chickens, but doesn't want roosters. A memo from CPC was read and Chair noted that they will also need to get approval from the Board of Health. A memo from the Building Commission was also read. Proof of mailing to abutters was received back, but no abutters were present.

Mr. Breen moved to close the public hearing and grant a Special Permit to raise up to but no more than six to ten chickens at 407 Park St, North Reading, Map 18, Parcel 59, subject to Board of Health regulations and all public health and building department requirements and oversight. The coop is to be no closer than 20 feet to the front lot line and no closer than 10 feet from the side and rear lot lines as shown on the plan submitted to the board. No roosters are allowed. Ms. Lockhart seconded the motion; and it was voted, Mr. Breen – yes, Ms. Lockhart – yes and Ms. Platt – yes. Ms. Platt The applicant was advised of the 20 day appeal period.

37 Southwick Rd – Home Occupation Special Permit

Chair read the hearing notice and opened the meeting. The applicant, Jeffrey Miller was present. He consults as a creative director offering services and user experience design as well as content and development in multimedia production. He is a graphic designer and illustrator of music video productions. He just works from his home office, no employees. Proof of mailing to abutters was received back, but no abutters were present. Memos from CPC and the Building Commissioner were read.

Mr. Breen moved to close the Public Hearing and moved to grant Jeffrey Miller, 37 Southwick Rd, Map 17, Parcel 73, a Home Occupation Special Permit to conduct his creative consulting and production business per Article 200-42 of the North Reading Zoning Bylaws and in accordance with the standard conditions. Ms. Lockhart seconded the motion; and it was voted: Mr. Breen – yes, Ms. Lockhart – yes, and Ms. Platt – yes. The applicant was advised that there is a 20 day appeal period.

197 Main St. – Special Use Permit for a Landscaping business

Chair read the public hearing notice and opened the meeting. Rusty Howse, the property owner was present and said that Katrina Eddy, the applicant would be joining the meeting as soon as she could. Mr. Howse explained that Ms. Eddy was working for another landscaper and was taking care of this property. She then started her own landscaping business and started her business at this site. A lease agreement to Ms. Eddy was submitted as well as a site development plan and a letter from CPC approving of a minor modification along with their decision, read by the Chair. Cindy Larose, 6 Plymouth St and Ruth Fierro, 18 Plymouth St. were present. The front of the parcel is in the HB district and the back part of the site is in an RA district. The women have concerns about noise coming from the site and feel that adding another business to the site will only make it worse. Ms. Fierro said something is always going on at the site. Chair noted that when a site straddles both an HB and an RA zone, any business can go into the RA district 30'. The plan, approved at CPC, shows spaces outlined in the RA zone where Ms. Eddy would park her two vehicles and materials, along with some of Mr. Howse's personal vehicles. The plan outlines the two zones with a yellow highlight and a red box showing the 30', where the parking would go.

Ms. Larose and Ms. Fierro mentioned a prior proposal for another business that was going to go onto the site and was denied a special permit. Mr. Howse said the dumpster business did not get approval for a special permit several years ago. Ms. Fierro said there is always trailers within that 30'. She said along the whole back of the property are 9 – 10 dumpster trucks. Mr. Howse said Katrina has one truck and one trailer. She doesn't get to the site until 7 am and leaves around 2 pm. A picture of the area showing the landscaping vehicles with a red line depicting a fence between them and Mr. Howse's snowmobile trailer and other trucks was shown. Ms. Fierro said there are 6 – 8 other vehicles being stored, not in this picture. Mr. Howse said his snowmobile trailers don't leave the site on a regular basis and he has a bobcat that he doesn't use. Ms. Eddy signed into the ZOOM meeting around 8:00 pm. Ms. Fierro said Ms. Eddy is already running her business and referred to her website. The website says her

hours of operation are M – F, 7 – 5, so, she said, it will start up at 6 am and closing the site at 6 pm. Her website says 8 – 5 on Saturday and Sunday by appointment. Ms. Fierro wanted the Board to know that they are not in favor of adding this business to the site. She said the residents abutting the property have a right to relax and not have to deal with the noise from this site.

Chair asked about all the businesses on the site. Mr. Howse said there is the pizza place up front and in his building in the back, his company, that makes digital controls, and takes up most of his building. His employees have trucks that they take home and may occasionally come back to the office to pick up materials or check on plans.

Ms. Fierro asked Ms. Eddy what she will do if her business grows. Ms. Eddy said she would have to get a second yard. Right now, her tools are all stored in her trailer. Ms. Eddy said she gets to the site about 7:45 and leaves by 2 pm and her help usually park the trucks and leave about 4 or 5 pm, 5 days a week and Saturdays usually 8 to 2 pm. Ms. Fierro asked why she stores her equipment at the site, is she going to be maintaining and fueling the vehicles up at the site? Ms. Eddy said she takes care of the property and she is leasing office space in the building. There was some discussion as to where the proposed fence would go, how many vehicles would be on each side of the fence and controlling the noise. Ms. Eddy said the trailer only goes out to cut lawns 2 times a week and the noise that came off the site from the banging was the dumpsters at Andreas. Mr. Howse spoke to them not to come so early. Chair suggested moving Ms. Eddy's vehicles to existing paved parking areas in the Commercial part of the property. Mr. Howse asked about the pallets, approved on the CPC plan, where materials would be stored. He then suggested locating those pallets, used to store leftover materials, be placed in the area on the plan where it says "employee parking". That area is currently dirt and not paved. Mr. Breen asked about the delivery of materials. Ms. Eddy said deliveries are made to the site itself and some excess material might come back to the site to be used again. She said she doesn't buy materials in bulk.

Mr. Howse said he would do his part to try and reduce the noise on the site and ask his employees to be considerate of the neighbors. He told the neighbors to come to him if they hear anything or are disturbed by anything and he will address it. Chair suggested that nothing go on the grassed area, in the RA district, and the two vehicles that are parked overnight are on the paved parking lot and where it says employee parking she could store excess material. Mr. Howse said the area where it says employee parking is not level and wouldn't be good for the vehicles. He suggested parking the two vehicles close to the tiered wall in the paved parking area. Everything would be out of the residential area. Chair said she would have rather had the

vehicles parked further away from Plymouth St., but would be ok with that area as long as there are no deliveries and the hours of operation are adhered to.

Mr. Breen moved to permit the petition of Katrina Eddy, North Shore Enhancements a special permit to run a landscaping business at 197 Main St., North Reading, Map 26, parcel 20, and also to allow the of storage of two vehicles to be located in the paved parking lot closest to the concrete wall that shields the property to Plymouth St. The limitations are for two vehicles only, there will be no delivery of goods or materials to the business at this address and that this special permit will be operated between the hours of 7:30 am to 5 pm, Monday through Friday, and no earlier than 8 am and no later than 4 pm on Saturday. Ms. Lockhart seconded the motion and it was voted Mr. Breen – yes, Ms. Lockhart – yes, and Ms. Platt – yes. Chair noted the 20 day appeal period.

58 Southwick Rd – Home Occupation Special Permit for a Construction Business

Ms. Lockhart read the hearing notice and opened the public hearing. Mr. Tryder was present. He explained that he has lived in North Reading for 40 years and has run his construction business out of his home. He has no employees, only sub-contractors. No one comes to his house. Mr. Tryder has a box truck that has his tools in it and he doesn't use that very often. There is no exposure to the neighborhood from his business. He mainly does some bookkeeping and estimating out of his house. He doesn't store materials at his house. Mr. Noel was asked if his box truck is a one ton truck which is allowable under the bylaw. Mr. Noel said yes. Proof of mailing to abutters was received back, but no abutters were present.

Ms. Lockhart moved to close the public hearing, seconded by Ms. Platt.

Mr. Breen moved to grant James Tryder, 58 Southwick Rd, North Reading, MA, a home occupation special permit for his construction business in accordance with 200-42 of the North Reading bylaws and according to the standard conditions. Ms. Lockhart seconded the motion; and it was voted, Mr. Breen – yes, Ms. Lockhart – yes, and Ms. Platt – yes. Chair noted the 20 day appeal period

33 Lakeside Blvd – Variance for a landing and stairs

Ms. Lockhart read the hearing notice and opened the public hearing. Mr. Milovanov was present. He showed the board pictures of his existing stairs and the space between the back of his house up to a small fence off the pond. He had originally proposed an 8' x 10' deck off the back of the house, but according to the plot plan that he recently had done would put him over

his lot line and was denied by the Building Dept. His proposal now is to extend the existing land back toward the pond and add stairs behind the house. This proposal would touch the property line but on the plot plan he shows 18' from his deck to the water's edge. He also showed the plot plan that was given to him when he bought the house and this most recent one and the measurements were not the same. The newer one was reduced in a few areas. He also showed a picture of his existing steps which is right beside his walkway to get to the back yard and when you go past the stairs the deck protrudes out so that you can walk right into it. Chair said typically properties adjacent to water go to the water's edge, but this property ends short of that, which is shown on his plot plan. Mr. Breen said it could have been left for a conservation buffer. Mr. Breen said Conservation would have to approve the project also. Mr. Milovanov said that he already got approval from Conservation, he spoke with someone there. Chair said he would still have to get formal approval from them.

He also noted his neighbor to his right and their deck and its closeness to the pond. The new house built at the property next door was made less non-conforming by moving it further away from the pond. His house is only 3.3' from his lot line. Community Planning submitted a memo saying; 1) they can't see how this can be built without going over the lot line and 2) allowing construction so close to the lot line or the lake would set a poor precedent. Mr. Milovanov said his hardship is that they can't sit on the existing deck and can't go into the backyard without almost hitting their head on the existing deck that protrudes out into the walkway to the backyard. Mr. Breen said he can understand his inconvenience but convenience is not the same as hardship. Ms. Lockhart asked how long the grass has been in place. Mr. Milovanov said when he moved in there was dirt. He spoke with Conservation and they told him to plant grass. Ms. Lockhart mentioned that he might have a case for adverse possession. Chair said practically, it seems like the deck would be fine but legally, on paper, the Board has never given a variance for that close to a lot line. Members suggested he look into who owns that space between him and the lake or see if he can acquire the land through legal means. Members and Mr. Milovanov discussed what his options were at this point, have the Board decide, withdraw the application or continue the hearing to try and find out more information or get another survey done. Mr. Milovanov decided to request a continuance.

Mr. Breen moved to continue the Public Hearing to November 10, 2022, seconded by Ms. Lockhart, and it was voted; Mr. Breen – yes, Ms. Lockhart – yes, and Ms. Platt – yes.

110 Main St. – Appeal of the Building Commissioner's Decision

Mr. Breen moved to continue the hearing to November 10, 2022.

Minutes

Mr. Breen moved to approve the Minutes of 9/15/22 as submitted, seconded by Ms. Lockhart and voted; Mr. Breen – yes, Ms. Lockhart – yes and Ms. Platt – yes.

Mr. Breen moved to adjourn, seconded by Mr. Breen, and it was voted unanimously in favor.

Approved DocuSigned by:
Jennifer Platt
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