

TOWN OF HINGHAM

Board of Appeals



MEETING MINUTES

DATE: 1/20/16

PLACE: Central South Meeting Room, Town Hall

MEMBERS PRESENT:

Fisher, Freeman, McGrath

The Chair called the duly noticed meeting to order at 8:10 pm. Regular Members Joseph M. Fisher, Chair, Joseph W. Freeman, Vice-Chair and W. Tod McGrath, Clerk, were in attendance. Senior Planner/Zoning Administrator, Emily Wentworth, was also in attendance.

8:13 p.m. Cont. of Hearing: 5 Martins Cove Lane

For the Applicant: Christina Farren

The Chair reopened the hearing on an application from Christina & Thomas Farren for a Special Permit A2 under § V-C of the Zoning By-Law to allow the removal of earth material from 5 Martins Cove Lane in Residence District C. Ms. Farren addressed the Board. She reviewed a revised truck route for the removal. The Board expressed concern about the proposed route, particularly because of the residential of several streets. Instead, the Board suggested that the trucks take Summer Street and Rte. 228 to the final destination on Oak Street.

The Board then reviewed the approval criteria, making the following findings:

1. In accordance with Section V-C, 1.b., the Board finds that the operations conducted under this Special Permit, subject to the conditions imposed herein, will not be contrary to the best interests of the Town.
2. The Board finds that the project complies with the relevant approval criteria specified in Section I-F, 2. Specifically, the Board finds that:
 - a. the proposed use of the site following removal of earth material, which includes allowed accessory uses to the principal residential use, is in harmony with the general purpose and intent of the By-Law;
 - b. the submitted application complies with the submittal standards specified in the Earth Removal Regulations;
 - c. the proposed earth removal and use of the area post-construction for accessory uses is compatible with the characteristics of surrounding area;
 - d. impacts associated with the earth removal operation will temporary and mitigated by compliance with the conditions of this permit;
 - e. there will be no hazard to vehicles or pedestrians resulting from the proposed removal route as modified during the hearing;
 - f. the earth removal and subsequent regrading project will be properly conducted; and

- g. the proposal meets accepted design standards for stormwater management and site construction.
- 3. The Board finds that a bond or other security to ensure compliance with conditions contained herein is not warranted based on the scope of the project and residential nature of the proposed earth removal. There is no public interest and enforcement proceedings would be more

Upon a motion made by T. McGrath and seconded by J. Freeman, the Board then unanimously voted to grant the requested permit subject to the following conditions:

- 1. The Project shall be completed in accordance with the approved plan referenced herein and the representations made to the Board by the Applicant.
- 2. No blasting shall be permitted during the project.
- 3. Earth removal operations shall be limited to the following: weekdays from 8:00 AM to 5:00 PM. No construction vehicles shall idle on site outside of these hours.
- 4. A gravel construction entrance, 50' in length, shall be installed.
- 5. Roadways shall be cleaned at the end of each work day.
- 6. The Applicant shall notify the Engineering Department 10-days before the removal project commences.
- 7. Removal of earth material from the subject property shall be limited to the hours between 9:30 AM and 1:30 PM to avoid conflicts with school bus routes.
- 8. The Applicant shall complete the earth removal and related landscaping project within two years.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

8:34 p.m. Cont. of Hearing: 11 Bank Avenue

The Chair reopened the hearing on an application filed by Attorney Robert Devin on behalf of Gerard Rankin for a Use Variance from § III-A, 1.1 and § III-G, 4. of the Zoning By-Law and such other relief as necessary to build a single-family dwelling at 11 Bank Avenue in Business District A and the Downtown Hingham Overlay District. He noted that the Attorney for the Applicant submitted a written request to withdraw the application without prejudice.

Upon a motion made by T. McGrath and seconded by J. Freeman, the Board then voted unanimously to grant the requested withdrawal without prejudice.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

8:35 p.m. Cont. of Hearing: 9 Fontainebleau Drive

For the Applicant: Brendan Sullivan, Cavanaro Consulting

The Chair opened the hearing on an application from Michael and Catherine Devlin for a Special Permit A1 under § III-C of the Zoning By-Law and such other relief as necessary to construct an in ground pool and patio partially within the Flood Plain and Watershed Protection District at 9 Fontainebleau Drive in Residence District A.

Mr. Sullivan addressed the Board. He then described the subject property. It is located at the end of Fontainebleau Drive, off of Union Street. The lot consists of approximately a half acre improved by a single-family dwelling. A significant portion of the property is located with FEMA Flood Zone AE (el. 26).

The proposed plan locates an 18'x36' in-ground pool (el. 24) and to the rear of the existing dwelling in the southwesterly portion of the lot. The majority of the proposed pool and an associated patio area would be located within the flood zone, resulting in a net loss of approx. 290 cubic feet of flood storage; however, compensatory storage (460 cubic feet) would be created in the southeasterly portion of the lot.

Mr. Sullivan then confirmed that the mechanized pool equipment will be located in conformance with the By-Law, either within a permitted accessory structure or relocated outside of the setback.

Board members reviewed the By-Law. Section III-C, 8. of the By-Law requires that the Board refer each application for such a permit to the Planning Board, Conservation Commission, and Board of Health for comment before acting on the application. The Planning Board provided favorable comments. The Commission issued an Order of Conditions approving the project in December. The Board of Health asked that the septic reserve area be depicted on the proposed plan before issuing a recommendation to the Zoning Board. Cavanaro submitted an updated plan, which demonstrates that the proposed pool would not preclude two different septic reserve area options. Executive Health Director confirmed that he is satisfied by the revised plan by email on January 20, 2016.

The Board then reviewed requisite approval criteria, making the following findings in accordance with Section III-C, 8. and Section I-F, 2.:

1. The use of the site is in harmony with the general purpose and intent of the Zoning By-Law. The current use of the Premises is residential, and the proposed work includes uses accessory to the existing single-family dwelling, namely an in ground pool area and associated patio.
2. The proposed use complies with the purposes and standards of the relevant sections of the Zoning By-Law. The land is not unsuitable for the proposed use; the proposed use will not interfere with the general purposes of the Floodplain District; and the proposed use will not be detrimental to the public health, safety and/or welfare.
3. The site is an appropriate location for the proposed project and is compatible with the characteristics of the surrounding residential neighborhood.
4. The use as developed and operated will create positive impacts and potential adverse impacts will be mitigated. Compensatory flood storage will be created in the southeast portion of the lot.
5. The proposed project will have no impact on vehicles or pedestrians.

6. Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed patio and pool. No mechanical equipment will be installed within building setbacks.
7. The project meets accepted design standards and criteria for functional design.

Upon a motion made by T. McGrath and seconded by J. Freeman, the Board voted unanimously to grant the requested special permit on the condition that the work is completed in accordance with the approved plan, with the exception of the depicted pool equipment shown within the building setback, and representations made to the Board. A revised plan shall be submitted to the Zoning Administrator and the Building Commissioner showing that all setbacks have been met.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

8:46 p.m. Hearing: 11 Garrison Road

For the Applicant: Liz Marcks

The Chair opened the hearing on an application from Kent & Anne Marcks for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to construct a 16'x20' detached garage where a 14'x20' garage was allowed within the side and rear yard setbacks at 11 Garrison Road in Residence District A.

Ms. Marcks introduced herself as the daughter of the applicant. She is representing the application since her parents are out of town. She reviewed the application, noting that the Board had approved a slightly smaller reconstruction project in October 2015. The approved plan called for a 14'x20' detached, single-car garage that would maintain the existing structure's nonconforming dimensions (1.6' rear setback and 2.6' side setback). Due to an unusual lot shape, the incursion decreases for the approved structure along the westerly rear and southerly side elevations to 5.8' and 3.9' respectively.

The Applicants subsequently reevaluated the scale of the project. For the estimated cost, they now hope to gain slightly more space and propose extending the width of the approved structure 2' into the center of the lot, resulting in a 16'x20' single-car garage. While a portion of the expanded footprint would increase the incursion into the rear yard setback by approximately 16 - 18 SF, all of this area would conform to the required side yard setback.

The Board discussed the revised plan, noting that the request is de minimis. Members then made the following findings:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The lot is unusually shaped - greater in depth, particularly on the westerly side, than width. The rear portion of the lot is occupied by the existing cesspool. These circumstances in combination especially affect the subject property and not generally the zoning district.

The Board reviewed the By-Law. Section III-A, 1.2 allows the alteration and conversion of a single-family dwelling existing as of March 1941 and consisting of at least six rooms, exclusive of hall and baths, to a two-family dwelling by special permit. The existing dwelling dates to 1880. It presently consists of 8 rooms, but previously consisted of 6 rooms before construction on the addition was completed this fall. The Board determined that there is sufficient parking on site.

Mr. Quirk also noted that there are a number of other two-family or multi-family dwellings located within the neighborhood, so he believes the proposed use is consistent with others in the area.

The Board reviewed the requisite findings as follows:

1. Use of the property as a two-family dwelling is in harmony with the general purpose and intent of the Zoning By-Law because this is a residential use in a residential district. The proposed secondary unit will not affect the public health, safety, or welfare.
2. The proposed use complies with the purposes and standards of the relevant sections of the By-Law. The existing single-family dwelling dates in part to 1880 and consists of more than six rooms exclusive of halls and bathrooms as required by § III-A, 1.2. The addition of a kitchen within existing space will not alter the character of the principal structure from that of a single-family dwelling.
3. The location is an appropriate for the proposed use. The exterior appearance of the structure will maintain the appearance of a single-family, consistent with others in the neighborhood.
4. There will be no adverse impacts associated with the proposed use of the property as a two-family dwelling. Additional housing will be created with no impact on the neighborhood.
5. There will be no hazard to vehicles or pedestrians created by the conversion since there is a large driveway and detached garage on the property that provides adequate parking for both units.
6. Adequate facilities exist to support the use. The bedroom addition was previously approved by the Board of Health and other town offices. Adequate facilities exist for wastewater disposal, water, and parking.
7. The proposal meets accepted design standards for the two-family residential use. The space is existing and adequate for the proposed work.

Upon a motion made by T. McGrath and seconded by J. Freeman, the Board then voted unanimously to grant the requested special permit to allow the conversion of a single-family to a two-family on the condition that the work is completed in accordance with the approved plan.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

9:04 p.m.

Hearing:

7 Howland Lane

For the Applicant:

Patrick Blair

The Chair opened the hearing on an application from Patrick Blair (Petitioner) for a Finding under M.G.L. Ch. 40A § 6 that the proposed addition of a covered terrace connecting the existing single-family dwelling to the existing nonconforming detached garage at 7 Howland Lane in Residence District B is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

Mr. Blair introduced himself to the Board as the contractual buyer of the property. He said that the property consists of approximately 29,190 SF improved by a single-family dwelling and detached accessory structure. This accessory structure, or garage, is located 15.9' from the easterly side property line where 20' is required in Residence District B. The Applicants propose to attach the garage to the existing dwelling by way of a covered deck or breezeway. All new construction will conform to the dimensional requirements of the Zoning By-Law.

The Applicant confirmed that the detached garage was constructed in 1952. At the time, the minimum side yard setback in residential districts was 5-feet. Thus, when the Town subsequently amended the Zoning By-Law to require a 20-foot side yard setback, the garage became a preexisting nonconforming structure. Since the garage on the lot was originally built in accordance with the then effective zoning, it is covered by the protections of M.G.L. c. 40A, § 6, first paragraph, which states (in part):

... a zoning ordinance or by-law...shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure ... to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner... Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority . . . that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

When read together, these portions of the statute provide that changes to nonconforming structures may be permitted if (1) the extensions or changes themselves comply with the by-law and (2) the structures as extended or changed are found to be not substantially more detrimental to the neighborhood than the preexisting nonconforming structure.

There would be no increase in the extent of the nonconforming use of the structure resulting from the proposed project. The portion of the detached garage located within the side yard setback will continue to serve as a garage, though the "use" of the structure as defined in the Zoning By-Law will technically change from "Accessory Building" to a "Single Family Dwelling" since it will be attached to the existing house by way of the proposed construction. And as noted above, the proposed new construction will conform to the dimensional requirements of the Zoning By-Law. The change in use

from Accessory Building to Single Family Dwelling resulting from the proposed extension to the preexisting nonconforming garage would not adversely impact or be a detriment to the neighborhood.

Upon a motion made by T. McGrath and seconded by J. Freeman, the Board then voted unanimously to make the following finding pursuant to MGL c. 40A, § 6:

1. The construction will not be substantially more detrimental than the existing nonconforming use to the neighborhood, provided that such work proceeds in accordance with the plans and representations made by the Applicant to the Board.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

9:09 p.m. Hearing: 17 Surry Road

For the Applicant: Janice McPhillips, Brian McPhillips, and Al Kearney

The Chair opened the hearing on an application from Janice Brown & Brian Hugh McPhillips filed an application for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to 1.) replace an existing detached garage with an attached garage with living space above, reducing the existing nonconformity from approximately 10' to 11.85' where a 20' rear yard is required, and 2.) extend an existing covered porch located 13' from the front property line where a 50' front yard setback is required at 17 Surry Road in Residence District C.

The Chair disclosed that he knows the applicants, but has no financial interest in the application and has not discussed the matter with the petitioners.

Ms. McPhillips addressed the Board. She described the existing conditions. The subject property consists of approximately 11,746 SF located on the south side of Surry Road. The lot is improved by a single-family residence, circa 1952, and a detached garage. The existing garage maintains a 10' rear yard setback where 20' is required. The proposed plan calls for demolition of this structure and construction of a addition, including an attached two car garage, and living space to the rear of the house on the second floor. This addition would reduce the existing rear yard nonconformity associated with the detached garage, but would still be located within the setback (11.85'). The project also includes construction of a covered porch along the front elevation and wrapping around to the westerly side facade, extending the existing 13.05' front yard setback where 50' is required.

The Applicant confirmed that use of the space above the garage would be limited to storage. She also clarified that the existing front porch, which is located within the front setback, is not covered. She reviewed the proposed elevation plans as compared to the existing home. She believes that the covered porch in particular will improve the appearance of the home.

The Board discussed a variance from 1988, which permitted the deck to be located within the front yard setback. A condition of this permit reads, "The porch shall be constructed with an open decorative railing and shall never be roofed or otherwise enclosed." The background discussion implies that the Board was primarily concerned with massing associated with enclosed porches; however, the wording of the condition seems to limit the proposed addition of a roof above the structure. A member indicated that the proposed plan is consistent with the intent.

Members reviewed the plan. They agreed that there is no other location on the property to locate the garage. It is modest in size because it is only 21'x21'. Members agreed that the improvements in the rear are acceptable.

The Board then discussion the potential location of HVAC units on the property.

During the hearing, the Applicant submitted letters of support for the project from four abutters.

The Chair opened the hearing for public comment:

Attorney Jeffrey Tocchio said that the change would be cleaner in terms of design because the addition is tucked behind the house. The proposed plan in his opinion would improve the streetscape.

The Board then reviewed the required findings as follows:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The property is affected by large areas of ledge, particularly on the westerly side. Additionally, the onsite topography varies significantly from front (el. 88) to back (el. 99). These features, in combination with the existing improvements and onsite wastewater disposal system, especially affect the subject property and not more generally the zoning district.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** Literal enforcement would require the Applicant to remove significant areas of ledge or relocate the existing septic system, either of which would be uneconomic. Absent relief the Applicant would not be able to improve the property in a manner consistent with others in the neighborhood, negatively affecting the overall use and enjoyment of the property.
3. **A Variance may be granted without substantial detriment to the public good.** The project will improve the appearance of the dwelling, in a manner consistent with others in the neighborhood. There will be no adverse effect on the neighborhood and there will be no harm to the public good resulting from the proposed structure.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The proposed plan modestly improves an existing rear yard nonconformity and extends, but does not increase, a permitted front yard nonconformity. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

Upon a motion made by T. McGrath and seconded by J. Freeman, the Board then voted unanimously to grant the requested Variance from § IV-A of the Zoning By-Law to 1.) replace an existing detached garage with an attached garage, reducing the existing nonconformity from approximately 10' to 11.85' where a 20' rear yard is required, and 2.) to add a cover to and extend an existing porch located 13' from the front property line where a 50' front yard setback is required at 17 Surry Road, subject to the following condition:

1. The construction shall be completed in accordance with the above-referenced plans, and representations made during the public hearing.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

9:45 p.m.

Hearing:

306 Whiting Street

For the Applicant: Jeffrey Tocchio, Will O'Connell (Bristol partner Range)

The Chair opened the hearing on an application from James E. Bristol, III and David B. Bristol, Trustees of the Old Derby Nominee Trust, for a Special Permit A1 under § V-B of the Zoning by-Law and such other relief as necessary to install two ground signs at 306 Whiting Street in the Office Park and South Hingham Development Overlay District.

J. Freeman disclosed that he no longer works for a company that may or may not be working with the Applicant; therefore, he has no financial interest in the outcome of the application.

Attorney Tocchio addressed the Board. He said that the Petitioners seek approval to install 1.) an illuminated ground sign, conforming to all setback, height and area requirements, advertising both "The Range Bar & Grille" and "Weathervane Golf Academy," and 2.) an illuminated sign (13 SF) affixed to a ledge outcropping.

Attorney Tocchio then reviewed the location and the proposed plan. The subject property maintains approximately 1,160 linear feet of frontage on the west side of Whiting Street/Rt. 53. Properties within the Office Park are able to install multiple ground signs of up to 50 SF/200' of frontage upon issuance of a special permit. In the present case, the Applicant would be eligible for a special permit to install ground signs totaling approximately 290 SF; however, the Applicant has only requested approval to install the two signs described above, which conservatively total approximately 74 SF. If the dimensions of the lettering, as opposed to the entire sign panel, are measured, the signs would collectively amount to approximately 44 SF.

He then confirmed that the boulder sign would be externally lit and not halo lit as shown on the plan. The Board confirmed that the copper material would be oxidized, not reflective.

The Board reviewed the requisite findings as follows:

1. The proposed use will be in harmony with the general purpose and intent of the By-Law.

The proposed signage promotes allowed uses on the site, consistent with prior permitting decisions of the Board.

2. The proposed use complies with the purposes and standards of the relevant specific sections of the By-Law. The proposed signage complies with the parameters specified in Section V-B. Namely, the proposed signage meets all setback, area and height limitations, and incorporates permitted methods of illumination.
3. The specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area. The proposed is located in the Office Park and South Hingham Development Overlay District. The proposed signage promotes permitted businesses on the property. The signage also incorporates materials, such as granite, which are native to the area.
4. The use as developed and operated will create positive impacts or potential adverse impacts will be mitigated. No adverse impacts will be created by installation of the proposed signage.
5. There will be no nuisance or serious hazard to vehicles or pedestrians. The signage is designed to promote and allow the safe and efficient identification of the property by customers travelling in motor vehicles at higher traffic speeds. No glare from the proposed materials confirmed.
6. Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use. The proposed signs will be adequately supported and/or affixed.
7. The proposal meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction.

Upon a motion made by T. McGrath, seconded by J. Freeman, the Board voted unanimously to grant the requested special permit on the condition that the installed copper backing be dulled, by advance weathering, oxidization or other chemical process, to remove any shiny, reflective properties that may cause an unsafe reflection of vehicle headlights.

During the course of discussion and consideration of this application, plan(s), supporting material(s), department comments, peer review report(s), and other related documents, all as filed with the zoning department as part of this application and all of which are available in the zoning department, were considered.

Meeting adjourned at 10:55 p.m.

Respectfully submitted,

Emily Wentworth