

TOWN OF HINGHAM

Board of Appeals



MEETING MINUTES

DATE: 6/15/16 PLACE: East Hearing Room, Town Hall

MEMBERS PRESENT: Fisher, Freeman, Blakey, Maguire

The Chair called the duly noticed meeting to order at 7:08 pm. Regular Members Joseph M. Fisher, Chair, and Joseph W. Freeman, and associate member Jim Blakey were in attendance. Regular member Robyn Maguire replaced Jim Blakey on the panel following conclusion of 207 Lincoln Street hearing. Senior Planner/Zoning Administrator, Emily Wentworth, was also in attendance.

7:06 p.m. Hearing: 207 Lincoln Street

For the Applicant: Ed Spinney, Sign Art
Matt Comella

The Chair reopened the continued public hearing on an application from Comella's Restaurant for a Special Permit A1 under § V-B of the Zoning By-Law to install a 48 SF parallel building sign at 207 Lincoln Street in Business District B.

The Applicant addressed the Board. He noted that he had provided the Board with a revised submittal earlier in the day via email and in hard copy this evening. The Chair expressed concern that members of both the Board and the public had limited opportunity to review the new lighting specification and other information in advance of the hearing. Mr. Spinney apologized, explaining that he had a difficult time measuring other area signs.

He reviewed the revised lighting plan for the principal building sign. It consists of the light bar that would face up and away from area residents. He then reviewed other area signage to help the Board compare the proposed to both the previous restaurant's signage and other businesses in the area.

The Chair asked whether a smaller sign would be visible from Route 3A. The applicant said at certain times of the day the signage would be visible simply because motorists are stuck in traffic. At other time, motorists travel at such a speed that it would be difficult to see a smaller sign. A member agreed that it can be more difficult to see signage on buildings that are closer to the road. Visibility of signage is important for safety reasons. Prominent signs help motorists identify the restaurant before the entrance to the shopping center.

A member asked about the proposed red LED light strip. Discussion about the illumination lighting. Footnote 5 requires white light that is directed solely at the sign.

The Chair opened the hearing for public comment.

Tony Marcinkiewicz, 3 Bulow Road, pointed out that a nearby pizzeria has a by-right sign and operates a successful business. He does not believe the proposed 47 SF sign is necessary. He also questioned the accuracy of the submitted measurements as well and explained how he had measured the Planet Fitness sign on his own from photographs.

Joseph McCracken, 8 Bulow Road, stated that the other restaurant sign on the directory ground sign is sufficient to identify the business even when driving at 55 mph. In response, Mr. Spinney suggested that the ground sign actually obscures the view of the building itself.

A discussion followed about the timing of the revised submittal and whether the neighbors had sufficient time to review the material. The Applicant asked why the neighbors were concerned with the sign. A member noted that the comparison to Crown Point Pizzeria was valid in some respects, but in other ways the pizzeria would not have the opportunity to install a larger sign since the building facade has a large Palladian window.

A discussion about potential negative impacts followed. The Applicant explained that the brick wall will minimize light reflection. Members discussed hours of operation and lighting shut off time. The Applicant offered to turn off the signage lighting by 11pm daily. Additionally, the red LED light will be removed from the secondary sign since the By-Law only permits white lighting. A member noted that the By-Law specifically allows these types of signs and the applicant is not requesting any relief.

The Board then reviewed the requisite findings as follows:

- a. **The proposed use will be in harmony with the general purpose and intent of the Zoning By-Law, for the following reasons:** The restaurant use and building signage will be in harmony with the general purpose of the By-Law. The front wall sign is allowed by special permit and will adequately identify for potential customers of the allowed restaurant use within a business district.
- b. **The proposed use complies with the purposes and standards of the relevant specific sections of this By-Law, for the following reasons:** The front wall sign complies with the maximum size, height, and location requirements specified in § V-B of the By-Law.
- c. **The specific site is an appropriate location for such use, structure, or condition, compatible with the characteristics of the surrounding area, for the following reasons:** The front wall sign is appropriately scaled to the building facade and the design is compatible with the surrounding businesses.
- d. **The use as developed and operated will create positive impacts or potential adverse impacts will be mitigated, for the following reasons:** Positive impacts include increased visibility from the applicant's perspective, but potentially negative from residents. There will be no adverse impact associated with the proposed signs as modified to be externally illuminated.

- e. **There will be no nuisance or serious hazard to vehicles or pedestrians, for the following reasons:** The building signs will improve business visibility for customers of the allowed restaurant use.
- f. **Adequate and appropriate facilities exist or will be provided for the proper operation of the proposed use, for the following reasons:** The wall signs were properly mounted to the building facade.
- g. **The proposed Project meets accepted design standards and criteria for the functional design of facilities, structures, stormwater management, and site construction, for the following reasons:** Not applicable.

J. Freeman made a motion to grant the requested special permit, seconded by J. Blakey, subject to the condition that the sign is maintained in accordance with the approved plans and representations made at the hearing, and on the condition that all signage lighting is turned off at 11 pm daily. The motion passed unanimously.

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.

7:55 p.m. Hearing: 54 Wompatuck Road

For the Applicant: Lauren Stevens

The Chair read the legal ad for a continued hearing on an application from Lauren Stevens for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to construct a garage addition with living space above within the required 25' front yard setback in Residence District A.

The Applicant introduced herself to the Board. She summarized the prior hearing and then updated the Board on the status of the Conservation Commission reviewed the modified plan. The Commission had reviewed the revised request and issued an Amended Order of Conditions on June 7, 2016. The Order requires 2:1 mitigation plans for the addition 115 SF of impervious surface on site.

The Applicant apologized for the quality of the plans submitted. She stated that her builder had drawn the proposed addition on the plan and she was comfortable assuming the risk of proceeding with the plans submitted. A member reviewed his impressions of the property. The house is set back 66' - 42' from the paved portion of Wompatuck before intersecting with the Applicant's property. The rear portion of the property is severely limited by a wetland resource area as well as FEMA flood zone AE.

The Board discussed a condition that would enable the applicant to submit revised plans to the ZA to determine compliance with representations made, namely relocation of garage doors from the front to the side facade.

The Board reviewed the requisite findings:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The property is affected by wetlands and floodplain to the rear of the existing dwelling. The curvature of the paved portion of Wompatuck Road is sufficiently far from the subject property to create the appearance of a setback that would exceed that required by the By-Law.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** The onsite wetland resource and floodplain area create physical and regulatory barriers to by-right construction on the property. Absent relief, the Applicant would be prohibited from improving the existing 2-bedroom house in a manner consistent with others in the neighborhood.
3. **A Variance may be granted without substantial detriment to the public good.** The design of the proposed construction is consistent with others in the neighborhood. There will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed construction.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** Due to the width of the right-of-way and the location of the paved portion of Wompatuck Road, the addition will appear to conform to the front setback requirement. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

J. Freeman then made a motion to grant the variance subject to the condition that a full set of plans be submitted to the Zoning Administrator for review for consistency with approved plans and representations (door relocated from front to side facade) made to the Board prior to application for building permit. R. Maguire seconded. Motion passed unanimously.

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.

8:11 pm Cont. of Hearing: 11 Burditt Avenue

For the Applicant: Attorney Stephen McLaughlin
 Steven and Carolyn Young

The Chair reopened the hearing on an application from Steven Young for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to construct a (26'-6.5"x 19'-5") two-car garage located 8.5' from the side property line and 4.2' from the rear property line where 15' setbacks are required at 11 Burditt Avenue in Residence District A.

Attorney McLaughlin addressed the Board. He provided revised building section, elevations, and floor plan to the Board, dated June 15, 2016. He then explained that there had been a nonconforming detached garage previously located on the property (8.5' from the side and 4.2' from the rear property line). The Applicant sought a permit to replace the structure's foundation last year; unfortunately, the

garage was razed during installation of the foundation. The Applicant represented that the demolition was caused by the structure's deteriorated state.

Atty. McLaughlin noted that an abutter had retained counsel and in response the applicant wished to minimize the project to avoid potential litigation. He said that the applicant would withdraw his variance request and instead reconstruct the garage by right under Section III-I, 1.B. of the Zoning by-Law since the demolition was caused by casualty. He asked the Board to make a determination that this would be permissible. A discussion followed about the application process. The Chair indicated that the Board did not make determinations, but could vote on the variance or an eventual appeal of the Building Commissioner's action on a building permit application. It would be up to the Building Commissioner to initially determine whether the exemption under Section III-I, 1.B. would apply in this case.

The Chair opened the hearing for public comment. Attorney Joe Bierworth, 36 Parkview Drive, representing Ms. Carr, a direct abutter, addressed the Board. He agreed with the Chair's analysis that the Building Commissioner would need to review the restoration after catastrophe.

The Applicant decided to keep the variance application in place, as opposed to withdrawing, in order to seek a permit or determination from the Building Commissioner in advance of a continued hearing date. J. Freeman made motion, seconded R. Maguire, to continue the hearing to July 20, 2016 at 7pm. Motion passed unanimously.

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.

8:45 p.m. Cont. of Hearing: 51-55 South Street

The Chair reopened the hearing on an application from RSL Realty, LLC for a Special Permit A2 under § III-G, 6. and § I-F of the Zoning By-Law and such other relief as necessary to construct a 3-story Commercial/Residential Building, similar in footprint to the previously demolished "Lincoln Building," at 51-55 South Street. He then noted that the Applicant had submitted a written request to continue the hearing to August 17, 2016 and extend the time for the Board to act on the application to September 17, 2016. R. Maguire made a motion, seconded by J. Freeman, to grant the requested continuance. Motion passed unanimously.

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.

8:49 pm Hearing: 14 Thayer Street

For the Applicant: Robert Shepard, General Contractor
Tucker Radebaugh

The Chair opened the hearing on an application from Tucker and Julie Radebaugh for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to construct a detached accessory

structure, consisting of an exercise and playroom, within the footprint of an existing barn and porch, which is located approximately 2.5' from the side property line and 16.5' from the rear property line where 15' and 25' setbacks are respectively required 14 Thayer Street in Residence District A.

Mr. Sheppard reviewed the proposed plan for the Board. He noted that he had filed the application with the Historical Commission and received approval.

The Chair opened the hearing for public comment. No one appeared. Staff noted that four letters of support from abutters were filed at the outset of the hearing.

The Board discussed the proposed use of the structure. There would be a bathroom, but the structure would be used for exercise primarily. The structure would not be used for living space.

The Board then reviewed the following findings:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The property is narrow in width, with 45' of frontage on both Thayer Street and Central Street. The lot was also previously improved by a centrally-located single family dwelling and nonconforming accessory structure that requires replacement. These circumstances in combination do not generally affect the neighborhood.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** The lot shape and existing improvements on the lot limit by-right location of an accessory structure. Absent relief, the Applicant would be prevented from reconstructing an existing detached accessory structure that is in poor condition.
3. **A Variance may be granted without substantial detriment to the public good.** The project will improve upon the condition of the existing barn and the design of the proposed accessory structure is consistent with others in the neighborhood. There will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed accessory structure.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The resulting structure will maintain the nonconforming setbacks associated with the existing barn and continue to be used as an accessory structure. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

J. Freeman then made a motion, seconded by R. Maguire, to grant the requested Variance from § IV-A of the Zoning By-Law to construct a detached accessory structure, consisting of an exercise and playroom, within the footprint of an existing barn and porch, which is located approximately 2.5' from the side property line and 16.5' from the rear property line where 15' and 25' setbacks are respectively required 14 Thayer Street in Residence District A, subject to a condition that the construction proceed in a manner consistent with the approved plans and representations made by the Applicant and that no shower or kitchen be installed in the accessory structure. The motion passed unanimously.

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.

9:00 pm Hearing: 13, 15, 17 Elm Street

For the Applicant: Bruce Issadore, Esq.
 Architect Can Tiryaki
 Matt Falconeiri, Falconeiri Construction

The Chair opened a hearing on an application from Elm Street Development, LLC for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to replace an existing nonconforming single-car garage with a three-car garage located 2.5' and 4.2' respectively from the side and rear property lines where 15' is required at 13, 15, 17 Elm Street in Residence District A.

Attorney Issadore introduced himself and the project team to the Board. He reviewed the existing use of the property. The property is improved by a three-family dwelling and a detached single car garage. He added that ledge exists in the basement of the existing dwelling structure and that circumstance carries throughout the center of the lot. Elevations vary as well (el. 113 in southeast corner, 121 in northeast corner).

The project architect described the project, which involves replacement of the existing single-car garage with a new three-car garage. The proposed structure would improve the current nonconformities associated with the existing accessory structure, but increase the area of incursion. The slightly greater width results from the addition of separation walls between bays for privacy and security of resident storage. The proposed garage includes some articulation so that it would essentially read like a two-car garage with the third bay located in a stepped back dormered addition. The building would be approximately 18' in height, with a low overall massing. He explained how the architectural details would be consistent with other development in the area.

Members recalled that the proposed garage is slightly larger than other, primarily two-car garages recently approved by the Board.

The Chair opened the hearing for public comment:

Jim Blakey, 29 Elm Street, said that the variance should be denied. He indicated that the existing building is one of the largest in the neighborhood and the only used as a three-family. He said that relief would triple the size of the existing nonconforming garage. He does not believe that the lot can accommodate the existing development, never mind the proposed. He stated that every property on Elm Street is affected by ledge and varying grades, so these circumstances do not distinguish the subject property. There is only one other three car garage on Elm, which is on his property, and it fully conforms to the setback requirements. He feels that the lot is simply too small to support the garage. It would be detrimental to the neighborhood because it is out of character. He suggested that the grant of this variance would tell everyone in Hingham that setbacks don't really matter.

Tom Patch, Ship Street, asked whether this property was a former school building. Attorney Issadore believes that it was formerly a school. Mr. Patch said that the building was never really intended to serve as a residence, similar to the former Light Plant building.

Attorney Issadore then stated that a three-car garage could be built by-right on the lot, but it would be a substantial hardship, requiring significant removal of ledge and construction of retaining walls. It would also be more detrimental to the neighborhood in terms of appearance and reduction of surface parking.

A member suggested an independent site visit. The Applicant agreed to allow members to walk on the site. One suggested that this was a significant intensification of the nonconformity. Attorney Issadore said that there are three units in the structure, so three garage bays would be appropriate. J. Freeman made a motion, seconded by R. Maguire to continue the hearing to July 20, 2016 at 7pm. Motion passed unanimously.

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.

9:31 p.m. Hearing: 3 Foley Court

For the Applicant: Ronald Crombie

The Chair opened a hearing on an application from P. Crombie for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to construct a (15.5'x21.5') detached garage in the same approximate footprint as a former (12.5'x19.5') garage destroyed by heavy snow loads and located 3' from the rear property line where a 15' rear yard setback is required at 3 Foley Court in Residence District A.

Mr. Crombie introduced himself to the Board. He said he received a permit to demolish his garage after it was damaged by heavy snow loads in winter 2015. He would like to rebuild a slightly larger and higher (2') garage than he previously had to increase its functionality. He said that he had filed an Administrative Review Application with the Conservation Office for the proposed work. The Conservation Officer approved the plan last month. He added that the lot is unusually shaped, greater in length than depth. Additionally, one-third of the property is affected by wetlands.

The Chair opened the hearing for public comment. No one appeared.

The Board then reviewed the following findings:

1. **Circumstances related to soil, shape, or topography especially affect the land or structures in question:** The property is affected by an onsite wetland resource area in the western portion of the lot. Additionally, the lot is unusually shaped greater in length than depth. These circumstances in combination do not more generally affect the district.
2. **The literal enforcement of the By-Laws would involve substantial hardship financial or otherwise.** The lot shape and onsite wetland resource create physical and regulatory

barriers to by-right construction on the property. Absent relief, the Applicant would be prohibited from improving upon the former undersized garage in a manner consistent with others in the neighborhood.

3. **A Variance may be granted without substantial detriment to the public good.** The design of the proposed structure is consistent with others in the neighborhood and will provide storage of equipment presently stored outside. There will be no adverse effects on the neighborhood and there will be no harm to the public good resulting from the proposed accessory structure.
4. **A Variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The requested relief is modest in nature. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

J. Freeman then made a motion, seconded by R. Maguire, to grant the requested Variance from § IV-A of the Zoning By-Law to construct a (15.5'x21.5') detached garage in the same approximate footprint as a former (12.5'x19.5') garage destroyed by heavy snow loads and located 3' from the rear property line where a 15' rear yard setback is required at 3 Foley Court in Residence District A, on the condition that the construction be completed in accordance with the approved plan and representations made during the public hearing. The motion passed unanimously.

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.

9:40 p.m.	Hearing:	44 Gilford Road
	For the Applicant:	Peter Hoyt, Surveyor Michelle Glover, Builder

The Chair opened a hearing on an application from Marc & Carla Poulson for a Variance from § IV-A of the Zoning By-Law and such other relief as necessary to reconstruct single family dwelling resulting in a 23.3' front yard setback where 50' is required and locate a (16'x12') shed with a (16'x4') porch within 7.5' of the side and rear property lines where a 20' setback is required at 44 Gilford Road in Residence District C.

Mr. Hoyt addressed the Board. He described the proposed project, which includes reconstruction of the existing dwelling and addition of a covered front porch and construction of a shed in the northwesterly corner of the lot. Where the front porch extended the full length of the previously approved structure, the current plan proposes some living space in that area. The Applicant also seeks to replace an existing nonconforming shed with a larger structure that would be located within both side and rear yard setbacks. He noted that the Board had issued similar relief to the previous owner in 2015; however, the permit had lapsed.

The Chair opened the hearing for public comment. Bill Conway, 37 Lyndon Road, said he had some concern about the proposed porch on the shed. The builder representative said that the applicant required storage because there would be no basement in the house. Conversely, the previous owner

had planned to use the accessory structure as a gathering space with a porch. A discussion followed about the shed impacts, which may be greater if the structure included a porch. The abutter and applicant compromised on elimination of the porch but expansion of the shed by 2' resulting in a 16' x 14' accessory structure. Mr. Hoyt marked up a plan to depict the revised footprint and submitted it into the record.

The Board reviewed the following findings, which had been made during the previous proceedings related to the property:

1. **There are circumstances relating to soil conditions, shape or topography especially affecting the land but not affecting generally the zoning district.** The property is affected by large areas of ledge as well as a significant grade changes. The only available location for the new septic system is to the rear of the dwelling, where a nonconforming accessory structure is presently located, due to the presence of ledge and absence of adequate soils elsewhere on the lot. Finally, there is variation in the shape of the lot such that the side meet the front property line at a slight angle. These conditions are not generally found in the zoning district.
2. **The literal enforcement of the Bylaws would involve substantial hardship financial or otherwise.** The applicant is not able to maintain the existing detached accessory structure, which is required for storage, in its current location because this is the only area available on the lot for the new septic system. Other properties in the neighborhood include similar porches to the proposed. If relief is not granted, the applicant would not have the same enjoyment of the property as others.
3. **A variance may be granted without substantial detriment to the public good.** The proposed project will not create any noise, traffic or result in other similar negative impacts. The proposed shed will provide the same utility as the existing detached accessory structure, while improving its appearance. There will be no adverse effects on the neighborhood and there will be no harm to the public good; and
4. **A variance may be granted without nullifying or substantially derogating from the intent or purposes of the By-Law.** The proposed shed relocates the existing shed's nonconforming setbacks from one side of the lot to the other, but does not substantially intensify these noncompliant dimensions. The proposed increase in the size of the shed is modest. The requested incursion into the front yard setback for the covered porch is relatively small. Both improvements will conform to the character of the neighborhood. The granting of a dimensional variance in this instance is consistent with the purposes of the By-Law.

J. Freeman then made a motion, seconded by R. Maguire, to grant the requested relief to reconstruct a single family dwelling resulting in a 23.3' front yard setback where 50' is required and locate a (16'x14') shed within 7.5' of the side and rear property lines where a 20' setback is required at 44 Gilford Road in Residence District C. The relief is conditioned as follows:

1. The rights authorized by this Variance shall expire one year from the date this Decision is filed with the Town Clerk, unless exercised or extended in accordance with the terms of M.G.L. c. 40A, § 10.

2. The Applicant shall construct the Project in a manner consistent with the approved plans and the representations made at the hearings before the Board
3. The shed ridge shall not be more than 16' above the lowest point of the existing grade that will serve as the foundation of the structure.
4. The Applicant shall install a vegetative buffer of not less than 6' in height along the shared property line with 37 Lyndon Road. Plantings shall be installed prior to issuance of an occupancy permit for the dwelling.
5. The Applicant shall submit an updated plan to reflect revised shed footprint to the Zoning Administrator prior to application for a Building Permit.

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.

Other Business:

1. Review/approval of meeting minutes

The Board deferred review of minutes from 3/16/16 and 4/20/16 to a future meeting.

2. Annual Board Reorganization

R. Maguire made a motion seconded by J. Freeman to reorganize as follows: J. Freeman, Chairman, R. Maguire, Vice-Chair, and J. Fisher, Clerk. The motion passed unanimously.

Meeting adjourned at 10:15 p.m.

Respectfully submitted,

Emily Wentworth