



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

Foxborough Zoning Board of Appeals Minutes
April 19, 2012

Members present: Chairman Erik McKenzie, Members Neil Forster and Barney Ovrut, Alternates Kevin Penders and Kim Mellen.

The Chairman opened the meeting at 7:00 p.m.

7:00 p.m. Continued Public Hearing of Kurt Yeghian who requests a finding pursuant to Foxborough Zoning By-Laws, Section 5.4.4, to extend a pre-existing nonconforming structure into the required side yard setback where 7 feet is provided and 15 feet is required. The proposed addition will further extend the nonconforming structure by 7.9 feet. The property at 31 West Street is located in an R-40 Zoning District and a Zone II Water Resource Protection District. Mr. Yeghian was present and explained that he has reduced the proposed garage from a three-car to a two-car which will move the side yard setback line back to 7.9 feet. He will be using the old footprint for the garage and it will be attached to the house. There will be a separate entrance for the room above the garage; it will have electricity and plumbing. The addition will be 700 square feet; the current house is 3500 square feet. Mr. Yeghian stated that the exterior will match the existing house.

There were no abutters present.

A motion to close the Public Hearing was made by Mr. Ovrut and seconded by Mr. Forster. The motion carried 3-0-0.

A motion to approve the requested finding for a 1400 square foot garage/great room with electricity and conditions that the new structure not further encroach the side yard setback and the exterior will match the existing house was made by Mr. Ovrut and seconded by Mr. Forster. The motion carried 3-0-0.

7:10 p.m. Modification of Comprehensive Permit for Nadia Estates. Mohammad Itani was present as well as abutter Gene Harris.

Mr. McKenzie stated that Mr. Itani had called him, but the call was not returned and there were no discussions.

The regulations from the DHCD state that if there is a modification; the ZBA has 20 days to decide if the change is substantial or insubstantial. There was no decision in 20 days; therefore, this is to be considered an insubstantial change.

Mr. Ovrut has prepared an amendment to encompass the terms and conditions of the settlement agreement. He sent this draft to Mr. Itani and Mr. Harris; both are in

agreement with these changes.

A letter, dated April 19, 2012, has been received from Engineer James Pavlik certifying that the 100 year storm design has not changed.

A motion to approve the modification/amendment for Nadia Estates was made by Mr. Forster and seconded by Mr. Ovrut. The motion carried 3-0-0.

7:20 p.m. Carla Carey requests a Special Permit pursuant to Foxborough Zoning By-Law Table of Use, Section 3-1.E.7 - Non-exempt Educational Use, to allow the Hunakai Art Studio to locate at 263 Central Street. The property is located in a Limited Industrial Zoning District and is not located in any restrictive overlay districts. Ms. Carey was present and represented herself. Ms. Mellon noted that her children do attend Ms. Carey's art classes. Ms. Carey would like to move her art studio, Hunakai Studio of Fine Arts to 263 Central Street, she is presently located at Chestnut Green and before that was on Mechanic Street. She has been in business for eight years and will be renting at the new location. The landlord is renovating the building to make it handicap accessible. There will be no structural changes to the building. The 2' x 3' sign presently at Chestnut Green will be moved to the new location. The hours of operation will be from 9 am – 9 pm Mon – Thurs and 9am – 5:30 pm Fri – Sat, closed on Sunday. She currently has one other employee. There are 1-4 classes going on at any one time with a maximum of 8 students. She occasionally has Artist Receptions with 50-60 people attending on a Sunday afternoon. There will be on-site parking with 32 spaces. Most children are dropped off for their lessons so there will not be that many cars.

She does have adult classes, usually with 10-12 students. She has been told that additional vehicles can be parked in the nearby field if necessary. There will be no cars allowed to park on the street.

The sign will be uplit on a timer from dusk to close.

There were no abutters present.

A motion to close the Public Hearing was made by Mr. Penders and seconded by Mr. McKenzie. The motion carried 3-0-0.

The Board would like paperwork from the applicant confirming that the corporation is in good standing.

The parking can be worked out through an administrative review with the Building Commissioner, the building owner, Mr. Bartuca, and Ms. Carey.

A motion to approve the Special Permit with the conditions that the previously approved sign be uplit and on a timer for dusk through close was made by Mr. Penders and seconded by Mr. Ovrut. The motion carried 3-0-0.

7:30 p.m. William Wigmore requests a variance pursuant to Foxborough Zoning By-Law, Section 4.2.2 to allow a constructed in-ground swimming pool to be within 1' of the side yard property line, when measured from the pool apron,

where 15 feet is required. The property located at 3 Barton Road is located in an R-40 Zoning District and is not located in any restrictive overlay districts.

Mr. Wigmore came before the Board for a variance for a swimming pool that was constructed in 2007 but only recently found to be encroaching on his neighbor's property. The pool was constructed from a mortgage survey plan which showed an existing fence that was used by the pool company to locate the pool. After the inground pool was installed, the home next door at 7 Barton Road was sold and the new owner, Bill Panasuik, had his lot surveyed and it was discovered that the fence was actually located on his property. The fence was relocated and now the pool is within 1' of the side yard setback.

Both of the homeowner's mortgage holders would not allow a landswap to correct the nonconformity. Mr. Panasuik was also present and has no objections to the granting of a variance.

A motion to close the Public Hearing was made by Mr. Foster and seconded by Mr. Ovrut. The motion carried 3-0-0.

A variance can be granted if there is a hardship in regards to the soil, shape or topography of the lot. Mr. Wigmore is on a corner lot with two front yards, which means the pool could not be located anywhere else on the lot. It would also cause a financial hardship on Mr. Wigmore if he had to remove the pool.

A motion to grant the Variance with no conditions was made by Mr. Ovrut and seconded by Mr. Foster. The motion carried 3-0-0.

GENERAL BUSINESS

A motion to approve the minutes of March 15, 2012 was made by Mr. Penders and seconded by Mr. Ovrut. The motion carried 5-0-0.

Mr. Penders noted that he and Ms. Mellon had recently attended the Citizen's Planner's Training and there was a session on the Open Meeting Law. He discovered that the Board commenting and editing a decision by email is a violation of the Open Meeting Law and should be discontinued. The Board discussed how to remedy this situation.

Decisions will be edited during open meetings and a separate signature page will be created so they can still be signed that evening even if there are comments or corrections to be incorporated.

The meeting was adjourned at 9:15 p.m.

Respectfully Submitted,

Diana Gray