



BOARD OF APPEALS
TOWN OF FOXBOROUGH
40 SOUTH STREET
MASSACHUSETTS
02035

**Foxborough Zoning Board of Appeals Minutes
July 25, 2013**

Members present: Chairman Neil Forster, Members Barney Ovrut and Kim Mellen, Alternate Kevin Penders

Chairman Forster opened the meeting at 7:00 p.m. at the McGinty Room at the Public Safety Building at 8 Chestnut Street.

7:00 p.m. Continued Public Hearing of Gregory Beinars who requests a Special Permit pursuant to Foxborough Zoning By-Laws, Section 5.3 to alter a pre-existing non-conforming lot with 111.83 feet of frontage where 200 feet is required and a minimum lot width of 111.83 feet where 134 feet is required and a Variance pursuant to Section 4.1.1 to allow a lot with 30,029 square feet of area where 40,000 square feet of area is required. The subject property, located at 216 East Street is located in an R-40 Residential Zoning District and is not located in any restrictive overlay districts. Atty. Frank Spillane represented Mr. Beinars who was also present. Atty. Spillane explained that Mr. Beinars lives at 216 East Street and bought the property at 214 East Street in 2006. He tore down the existing house that was on that property soon after purchase.

The lot was originally developed in 1949 and a home built there in 1956. The size of the original lot was reduced in 1958 by the layout of East Street.

In 2000 a horse stable was built in the property in the rear. In 2004 an abutter at 218 East Street started bringing fill onto their property which led to flooding on the rear of the property near the stable as the wetlands drainage was blocked by the regrading of the neighbor's property. A Cease and Desist Order was issued to the neighbors in 2005 and they were ordered to restore the property but that was never done. In 2007 Mr. Beinars constructed a berm along the property line to help with the flooding.

After Mr. Beinars purchased the property, a property line agreement was drawn up between 216 and 218 East Street which increased the frontage to 111.83 feet and lot width to 117.6 feet; 200 feet of frontage and a minimum 134 foot lot width is needed in this zone. The current lot size is 47,475 sq. ft.

Atty. Spillane submitted a petition of support signed by neighbors.

Atty. Spillane explained that Mr. Beinars would like to divide this property into Lot 1 and Parcel A in the rear. Parcel A would become part of his property at 216 and he would like to build a house for his parents on Lot 1 with the intention that this lot would eventually be sold. The size of Lot 1 would decrease to 30,029 sq. ft. as Parcel A is 17,446 sq. ft.; 40,000 sq. ft. is required in this zone.

Mr. Beinars showed pictures of the property and states that he still has problems with flooding in the area that he would like to make Parcel A.

Lot 1 would become a non-conforming buildable lot as Parcel A would reduce the size of the lot and a variance is required. Atty. Spillane argued that a variance should be granted based on the soil and topography of the lot; there is a 40 foot elevation difference in the area. All the water in the area flows to the proposed Parcel A since the neighbor changed the topography in 2004. By separating this area from Lot 1, the hardship will be transferred to 216 East Street and Lot 1 will be unaffected by flooding. Atty. Spillane noted that there are other small house lots in the area.

Mr. Ovrut noted that the Board should be looking at Section 5.4 of the bylaws and not Section 5.3 for the findings as that section deals with structures that are not single or two-family residences.

There were no abutters present either for or against the petition.

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

The Board immediately moved into deliberations. The criteria for a variance requires a hardship be found in regards to the soil, shape or topography of the land. The Board feels that the applicant did not prove that a hardship exists that warrants the granting of a variance to create an undersized lot.

A motion to deny the petition for a variance at 216 East Street was made by Mr. Ovrut and seconded by Ms. Mellen. The motion carried 3-0-0.

7:10 p.m. Continued Public Hearing of Foxboro Realty Associates LLC for a Special Use Permit pursuant to Foxborough General By-Laws Section 15(B) III.B.1 to allow a digital freestanding general advertising sign and a variance from Section 15(B)V.A to allow a billboard with two (2) faces having an area of 672 square feet each and more specifically, a request for a variance from Section 15(B)V.A.4.a, Section 15(B)VI.A, and Table 15-1 to allow a freestanding sign with 2 faces of 672 square feet each where a maximum of 100 square feet in area and 26 feet in height is allowed. The subject property on Route 1/ Washington Street is known on Assessors Map 40 as Parcel 695 and is located in the S-1 Special Use District and Zone II Water Resource Protection Overlay District. A letter has been received from the applicant requesting that the application either be amended from a digital billboard to a static billboard and that the hearing be continued to the Board's August meeting or the application be withdrawn without prejudice.

This is in reaction to a letter that was received from the Planning Board expressing their disinterest in digital billboards and to give the applicant time to prepare for a static billboard.

The Board discussed whether this will end up being a rezoning issue as the property is located in the S-1 district. The applicant noted that the size and the location of the billboard will remain the same.

A motion to not grant a continuance and to allow the applicant to withdraw the application without prejudice was made by Mr. Ovrut and seconded by Mr. Penders. The motion carried 3-0-0.

7:20 p.m. Carlbrooke Construction requests a Special Permit pursuant to Foxborough Zoning By-Laws, Section 3.0, Table of Use 3-1.L.5 to construct a detached residential garage with a footprint in excess of 625 square feet. The request is to construct a 1 1/2 story garage with a footprint of 1178 square feet. The subject property at 54 Shoreline Drive is located in an R-40 Residential Zoning District and a Zone II Water Resource Protection Overlay District. Scott Martyniak of Carlbrooke Construction represented the applicant Steve Gringeri of 54 Shoreline Drive who was not present. The applicant would like to construct a detached garage that would have landscape beds and trees to screen it. He would like this garage for his collection of collectible classic cars. The current home on the property is approximately 3,500 sq. ft with a 900 sq. ft. garage and the proposed new garage will be 1,178 sq. ft. Mr. Gringeri does not work on the cars in the garage it would be more to display them to car clubs and the like.

The proposed garage will be constructed of the same materials as the house and the driveway will be stamped concrete to match the existing driveway. He would like to have electricity and water in the garage.

The Board noted that they have concerns with a garage turning into a living area if water and plumbing is allowed in it.

There were no abutters for or against the petition.

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

The Board members have no problem with the size or location of the proposed garage, but are concerned that it could be turned into something else in the future.

A motion to approve the Special Permit for a detached residential garage with a footprint in excess of 625 square feet at 54 Shoreline Drive with conditions that the exterior materials be the same as the existing house, the garage is used only to store collectible motor vehicles and not used for any residential or commercial purposes, no water utility lines be allowed, no storage of gas, oil or other hazardous materials be allowed in the area was made by Mr. Ovrut and seconded by Ms. Mellen. The motion carried 3-0-0.

7:30 p.m. Pet Memorial Park requests a modification of Board of Appeals Case No. 73-24 to eliminate the last sentence of said decision which states that "The Board grants this specific use permit solely and exclusively to Mr. Selnick and it may not be sold, transferred, assigned or in any other way become the property of any other party. The applicant also requests confirmation that the Special Use Permit is not limited to only two (2) acres and if necessary, eliminate the condition that the pet cemetery is limited to 2 acres. The subject property at 400 South Street is located in an R-40 Zoning District and is not located in any

restrictive overlay districts. Mitchell and Ellen Selnick were present and represented by Atty. Frank Spillane. Atty. Spillane explained that they are requesting a modification to ZBA decision 73-24 which restricted the sale of the Pet Cemetery business as Mr. Selnick would like to retire and sell the business. The original permit was granted to Mr. Selnick's father Murray with seven conditions including "The Board grants this specific use permit solely and exclusively to Mr. Selnick and it may not be sold, transferred, assigned or in any other way become the property of any other party." This condition was revised in 1973 to read "The Board grants this specific use permit solely and exclusively to Mr. Murray Selnick, his wife, their immediate offspring, or any corporation in which they jointly or severally hold controlling interest and it may not be sold, transferred, or assigned, or in any way become the property of another party."

Mitchell Selnick is now 65 and would like to retire. He has been in the business since 1978. He has no children to pass the business too. He has one brother who has three children, but they do not live in the state and have no interest in the business. He would like to see the business continue with new owners.

Atty. Spillane noted that they have had no issues with the town, are good neighbors and provide a service to pet owners. There is no noise, fumes, or unusual traffic at the site. Atty. Spillane spoke to Atty. John Michelmores who was involved in the original case and he stated the condition restricting the sale was included at the time as the Board thought the property was to be sold to another corporation.

Building Commissioner Bill Casbarra stated that he has no problem with allowing a transfer of the property.

Another issue Atty. Spillane would like address is to ask the Board to confirm that the 1973 decision does not restrict the area to be used as a cemetery to two acres. The entire property is 17 acres. There are wetlands on the property and they are not allowed to go within fifty feet of the wetlands.

Nick Beinars of 390 South Street was concerned that the use could be changed or the land subdivided. This land is in a residential zone so only uses allowed in that district would be allowed on the property.

Joanne Fraser of 406 South Street was concerned with how much of the property will be used for burials. The Selnick's stated that they do mostly cremations now and that is in a location off of the property.

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

Mr. Ovrut feels that the note about the two acres in the original decision is not a condition but would like to keep the condition that no burials be within 50 feet of the property lines.

A motion to confirm that decision 73-24 does not limit the burial area to two acres, to not allow burials within fifty feet of the lot lines, to delete the last sentence in condition 73-24 which restricted the business to Mr. Selnick and his immediate family, and that all other

prior conditions not addressed in this decision remain in effect was made by Ms. Mellen and seconded by Mr. Ovrut. The motion carried 3-0-0.

7:40 p.m. Foxstar Corp. requests a Special Use Permit pursuant to Foxborough General By-Laws Section 15(B) III.B.1 to allow a digital freestanding general advertising sign and variances from Section 15(B).VI.-Dimensional Regulations, Table 15-1 to allow a digital freestanding billboard sign with an area of 672 square feet where a maximum of 100 square feet is allow and a sign height of 35 feet where a maximum of 26 feet is allowed. The subject property at 91 Washington Street is located in a S-1 Special Use Zoning District and Economic Development Area Overlay District. Mike Siegh was present and requested that the variance portion of the application asking for a digital freestanding billboard sign be withdrawn and he would just like to have a static freestanding general advertising billboard with the same dimensions. He would also like to request a continuance to the August meeting.

The Board noted that a letter has been sent to the Board of Selectmen asking for their input on possible rezoning in the area.

The Board will allow the applicant to continue the hearing but the notice will need to be republished as this is a change to the application.

The meeting was adjourned at 9:05 p.m.

Respectfully Submitted,

Diana Gray