



Town of Rowley
Massachusetts

ZONING BOARD OF APPEALS

39 Central Street, PO Box 275, Rowley, MA 01969
Phone 978.948.2657 Email zoning@townofrowley.org

March 16th, 2015 Meeting Minutes

Those present: Chairman Donald Thurston, Thomas Heidgerd, Nathaniel Dummer, Dave Levesque, Town Counsel Attorney Steve Fletcher and administrative assistant Lisa Lozzi. Robert Clewell, Peter Carpentier, and Philip Cressey are not in attendance.

I. Call to Order

Chairman Thurston calls the meeting to order at 7:10 pm.

II. Miscellaneous Business

Clerk Heidgerd asks to make a comment as a matter of record the Board wishes to note that while Robert Clewell, Peter Carpentier and Philip Cressey were not at the last meeting and are not at tonight's meeting, that given the absence of other cases on the docket, and given the historical fact that it is only the four (4) members here this evening who are able to actively participate on this case, the absent members were given the opportunity to be excused because it wasn't necessary for them to attend. They each exercised that option which was fine with the Board.

- 7:15 pm: Approval of Minutes – February 19th, 2015

Chairman Thurston asks for a motion to accept the minutes as submitted. Heidgerd so moves. Dummer seconds. All in favor. The ayes have it.

III. Cont'd Public Hearing(s)

- 7:10 pm: Case #A10.06 – Marion Way

(Board Members acting on case: Chairman Thurston, Clerk Heidgerd, Member Dummer and Member Levesque) Board Members view and discuss the plans Mr. Decoulos delivered last week as was requested by the Chairman at last month's meeting. Mr. Decoulos says they are a fresh copy and the only change he made was to put a March 3rd date on them.

There is discussion and questions asked among Board Members such as leaching field, driveways, open lawn, proposed septic areas, houses closer to the street, some sidewalks, etc. Member Levesque mentions the original plan had houses further back.

Chairman Thurston asks about the lot size and Mr. Decoulos says the average lot size is close to 20,000 sq ft and each two story unit will be 1400 sq ft (28 x 50) with a few attics and one unit having a garage. And He says he will be building a wall fifteen feet in from the edge of the pavement where the large 'mound' is located.

Heidgerd says the ZBA has to focus on assessing some of the ZBA's original concerns about density. The question becomes relative as Edy (consultant) has asked the ZBA on a number of occasions, is it a realistic and proper development as it's currently constructed for the town. The other factor overriding this is we're five years into this and the whole issue of urgency is a bit of a moot point. Frankly, if the ZBA move to approve this, there's concern the public will be looking at that curve/lot empty for another 2-3 years. Some of the avenues that the ZBA are looking at such as building single family units and dramatically altering from 20 units to 12-15 units not only introduces elements of safety but continuity of the development in the area. This is a bit different in the content of the character. Mr. Decoulos has also indicated this is probably going to be a gateway to the back of the property.

Chairman Thurston states the ZBA has to look at this as a gateway to a development that will probably have at least 50 to 60 more homes in that back land which is going to triple the amount of traffic going down the presently proposed road. Heidgerd says which will be an extremely different kind of living environment for those people who chose to invest in this project.

Chairman Thurston says his concern from the beginning has been with this project is a duplex on 20,000 sq ft lot so there's only 10 sq feet per unit. That's a violation of the ZBA zoning. Levesque says it's congested and it doesn't keep up with the neighborhood. Want to see single homes there which is what the ZBA talked about in the first place but Decoulos said it wasn't feasible money wise.

Decoulos says he tried to design the street very similar to what the state did in Topsfield at the intersection of Ipswich Road and Route 97. Levesque says that's just Ipswich Road – it's not coming out of a development and what he worries about is school buses and children boarding them, and the traffic. All the kids are at the end of the street waiting for the school bus because the bus can't come in to turn around-someone's coming down that hill- it's icy. They'd go right into the bus. It's a dangerous curve no matter how you look at it. Coming around from the factory and there's a building blocking the view. Concerns about kids safety and kids always end up playing where you don't intend them to.

Lévesque asks Mr. Decoulos if there's no way this project can be reduced and Decoulos says they've tried and it just doesn't work out.

Board Members continue viewing the plans.

There is discussion between Board Members and Mr. Decoulos regarding the 'dates' on the submitted plans. The pages have multiple dates with the most current date of March 3rd, 2015. (not as a 'revised' date) Chairman Thurston questions Decoulos on why the new dates and Decoulos says the plans have not changed and that all he's done is added the March 3rd date to them. Thurston states the plans are all new based on the date which suggests these plans exist only on this date. The plans look like they exist as of today. Decoulos says the original existing conditions still exist.

Heidgerd asks Fletcher if there's concern as far as the date on the plans and Fletcher says yes and asks Decoulos why he would enter a new date on them and Decoulos says that he understood that's what the Board Members wanted (requested) at the last

meeting. Levesque states the ZBA wanted a new complete set of plans-not dates. Decoulos says that's not the way he understood it.

Fletcher asks Decoulos if he's saying all of the sheets 1 thru 9 are the same as those originally prepared and Decoulos says no because he's gone through a number of changes. He says they are the most recent plans that he's submitted and the plans here are the same.

Fletcher asks Decoulos if he can say what was the date of the most recent plans and Decoulos says he can't but that those are the same plans. He says he just put a different date on them and thought at the last meeting that's what the Board Members wanted.

Heidgerd says the things Chairman Thurston has pointed out such as do we want to approve a plan where there is such a divergence from the lot size; do we want to approve a plan where it's certainly arguable where the density of the plan is far greater than what the ZBA sees elsewhere in town; do we want to approve a plan where the applicant has indicated openly that there's a desire to extend this roadway into another development at some point in the future where the amount of traffic would dramatically increase at some point in time. The ZBA has a breakout of all the documents, and let's face it, the Board Members sit through the average case and get maybe ten pieces of documents for the case application that we have to consider. Lisa compiled a list of documents for the Board with approximately two hundred line items. It's almost difficult to wrap your head around.

Attorney Fletcher asks if the consultant had given a breakdown of the decision-making process for the Board Members to go through and Heidgerd answers the ZBA was right at that phase and then the consultant dropped us. I don't mean that negatively but we were waiting for that. Fletcher says it would be helpful whereas the regulations got amended a couple of years ago and are really detailed and they superimpose with the housing appeal rules and the way they have to proceed. There are Board regulations and state regulations and if not consistent you have to follow state regulations. It might be helpful when the ZBA start the deliberations and once the hearing is closed which I assume you may be doing tonight, you have 40 days after close of hearing to 'render' your decision which means take a vote. You've got jurisdictional requirements to make findings on. My intent would be like a working document to fill in the blanks. If I give you the framework I think it will help.

Hedged says he doesn't think the ZBA should close the hearing tonight and Board Members continue discussing the closing of the hearing such as time frame, dates, and voting.

Decoulos says it was his understanding that the ZBA was going to close the hearing tonight. Heidgerd says if the ZBA closes the hearing tonight it forces its hand on drafting a decision more than anything else and would be hard pressed to think the ZBA was ready to draft a decision within the next 40 days. Heidgerd says he's concerned because the ZBA just lost its consultant and Town Counsel has only been with the ZBA a short period of time and after five years the ZBA shouldn't be pushed to just get it done.

Decoulos says he has a problem because the Trust hasn't advised him to continue and says the Trust was under the impression the hearing was going to be closed tonight.

Dummer says they didn't get that idea from the ZBA. They weren't at the meeting and asks Decoulos how would they know. Decoulos doesn't answer.

Heidgerd asks Fletcher for some direction on the Boards ability to continue the hearing without the approval of the applicant and Fletcher says it could be an issue in view of the length this case has been going on. Heidgerd says as far as he is concerned, he doesn't think Mr. Decoulos should misunderstand the Boards desire to complete. The ZBA did try to close it last august.

Fletcher reads from the ZBA regulations for the record stating *-the hearing closes when the Board says it closes* unless there's something in the state regulations that trumps the local regulations.

Chairman Thurston asks Mr. Decoulos if he's under the impression that the ZBA has approved all of the waivers and Mr. Decoulos answers 'no'. Decoulos says he believes the ZBA received a letter from the Board of Selectmen to not approve them. (waivers)

Attorney Fletcher asks Decoulos has he submitted everything he wanted to submit and Decoulos shakes his head yes.

Chairman Thurston says one of the things that has bothered him right along is the non-negotiating between developers and the Board which is frequently done during the 40B process and that is one area that the ZBA has not received from Mr. Decoulos. Thurston says Mr. Decoulos hasn't been willing to negotiate with anything. Mr. Decoulos agreed and said the reason is because it's a narrow piece of land bounded by wetlands. Mr. Decoulos says he doesn't have any wiggle room and the entrance to the property is difficult. Chairman Thurston says you've pretty much said there's not enough land and Mr. Decoulos shakes his head yes.

Fletcher finds and reads the state regulations which has identical wording as the ZBA regulations with an additional sentence regarding the applicant submitting the 'final' requested documentation as grounds for the hearing to close. The purpose of the law, the cases will tell you this, is supposed to be an expedited process to get affordable housing. This project can hardly be called expedited but nevertheless that's the policy underlying all these rules. 40 days is almost 6 weeks but you can go ahead and continue the public hearing.

Fletcher says the ZBA should assume, to be on the safe side, that the clock starts ticking tonight if Decoulos's client doesn't consent to a continuance. That's a decision they'll have to make whether or not it's to their benefit. There is a practical deadline here with Dummer leaving. (upcoming retirement)

Chairman Thurston asks Decoulos to call his client and Decoulos says there's a problem. Decoulos says there are two parties involved, Bruce and his sister and his sister is in Florida. Thurston says the sister isn't in Florida because he saw her yesterday. Decoulos apologizes and says he'll consult with his client and send the ZBA a letter.

Attorney Fletcher says he'll do his best to get his list (Decision template) to the ZBA.

Board Members discuss time frames and/of future absences.

Heidgerd says he will begin to create a template that the ZBA could plug data into as well as needing to grasp some things and point to certain things and know what things to point to. He's not sure the ZBA can afford not to continue the hearing only because there wouldn't be enough members to vote on it in the next 30 days.

Chairman Thurston asks Decoulos how far from the street to the lot line are the houses and Decoulos says 30 feet. Thurston reminds Decoulos that that's one of the waivers he (Decoulos) has requested. Levesque states the ZBA is at 50 feet and Decoulos responds I know.

Chairman Thurston tells Decoulos whether the ZBA approves or disapproves the project, there's going to be contention and asks him if he understands what he's saying. Decoulos says he doesn't think he understands and says he assumes if you approve the project that means you approve the waiver of the 50 feet. Thurston tells Decoulos the ZBA would approve with conditions and one of the conditions would be to comply with the 50 feet setback meaning he would have to move all the houses back resulting in changing the plans. Decoulos says he couldn't do that and Thurston says there would be contention either way. Thurston tells Decoulos that one of the steps in the 40B's process is frequently negotiating with developers and Decoulos wouldn't even talk about it. And that's one of the things that is problematic with his plan. Just one.

Fletcher states he wants to be clear - the statute does make it clear *if the decision isn't rendered within the time allowed, unless the time has been extended by mutual agreement, the application shall be deemed to have been allowed and the comprehensive permit approval shall forthwith issue*. Fletcher says the ZBA better start the clock ticking tonight and he will do his best to get the 'framework' of a decision to the ZBA as soon as possible so that it can be distributed.

Fletcher states he's counseling the Board to do something in the next 40 days.

Levesque asks Attorney Fletcher- if before the ZBA goes forward, could the ZBA ask for their decision (to continue) first and Fletcher says this meeting is going to adjourn tonight in some form or fashion but you can do as suggested – go ahead and vote to continue the hearing as though they're going to submit their written agreement for a continuance. If they don't, then your next meeting is just that many days into the 40 day clock.

Fletcher says the ZBA is dealing with the unknown. The rule of decision making he likes to follow is - on which side would he like to be wrong and He'd rather be wrong and assume that the 40 day clock starts ticking. We avoid litigation and if there's a way we can do that, let's do it.

Fletcher says he will send the ZBA a 'draft' instructional plan for Decisions.

Board Members decide to continue the hearing and ask Decoulos to ask the Marion Way Trustees for a 'continuance' letter.

Chairman Thurston asks for a motion to continue the hearing to April 16th, 2015. Levesque makes a motion to continue the hearing to April 16th, 2015. Heidgerd seconds. All in favor. The ayes have it.

IV. Adjournment

Chairman Thurston asks for a motion to adjourn the meeting. Levesque motions to adjourn the meeting. Heidgerd seconds. All in favor. Meeting adjourns at 8:55 pm.

Minutes accepted at the __April 16, 2015_____ meeting.

Documents provided at the meeting and are available in the ZBA office:

Minutes of February 19th, 2015
ZBA Documents Inventory Regarding Marion Way
Decoulos's List of Documents sent to the ZBA
Decoulos's Current Plans of Marion Way

Pursuant to the 'Open Meeting Law,' G.L. 39, S.23B, the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.]