

Topsfield Zoning Board of Appeals

July 28, 2015

Chairman Moriarty called the meeting to order at 8:10 PM at the Town Library. Board members present were Robert Moriarty, Jody Clineff, David Merrill, David Moniz and Gregor Smith. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

Visitors: Selectman Martha Morrison; Barbara Pratt, Jud Pratt, Mark Bernhardt, Allan Grenier, Steven Hall, Gary Tallaksen, Foti Qirjazi, Richard Crosson, Russel Brickett, Patricia Brickett and Sean Ward.

27R East Street: At 8:10PM, Chairman Moriarty called to order the public hearing to consider the application of Judson & Barbara Pratt, for premises located at 27R East Street requesting a finding pursuant to Article III, Section 3.05 of the Topsfield Zoning By-Law relative to the construction of a detached garage on a non-conforming lot.

The Applicant Jud Pratt explained to the Board that he would like to build a detached garage on his non-conforming lot due to lack of frontage. As an accessory structure the garage would meet the set back requirements for the lot. The members then reviewed the submitted plan.

The Board made the appropriate findings relative to the required zoning relief. Member Jody Clineff made the motion that pursuant to Topsfield Zoning By-law Section 3.05, the Board grant a finding to allow the construction of a detached garage at 27R East Street; seconded by Member David Moniz; so voted 5-0.

374 Boston Street: At 8:15PM, Chairman Moriarty called to order the public hearing to consider pursuant to M.G.L. 40A, §15 the application of Mark Bernhardt for premises located at 374 Boston Street to appeal the Inspector of Building's decision to issue a Notice of Violation dated May 7, 2015 ordering the applicant to immediately cease & desist the illegal use of a commercial kennel operation at said premises.

Attorney Alan Grenier, representing the Applicant Mark Bernhardt, acknowledged the zoning violation; and further, informed the Board that his client has complied with the Inspector of Buildings Notice of Violation and has closed the commercial kennel/daycare operation at 374 Boston Street.

Chairman Moriarty made the motion that the Board would affirm the decision of the Inspector of Buildings to issue a Notice of Violation dated May 7, 2015; seconded by Member David Moniz; so voted 5-0.

Chairman Moriarty then invited Attorney Grenier to explain the future use of the premises by Mr. Bernhardt. Mr. Grenier noted that the Bernhardt's intend to operate a charitable animal shelter at that location. The shelter will be known as the Topsfield Animal Shelter Inc. whose paperwork has been filed with the Secretary of State. April Bernhardt will be president and Mr. Grenier noted that he would be on the Board of Directors.

Attorney Grenier further stated that the facility would operate under Chapter 140, Section 136A as a domestic charitable corporation kennel which would be covered under the Dover Amendment for non-profit entities and educational institutions. The dogs owned by Mr. Bernhardt would be registered where they are domiciled.

Reorganization of the Board:

Member David Moniz nominated Robert Moriarty to continue as chairman; seconded by Member Jody Clineff; so voted 4-0-0.

Chairman Robert Moriarty then nominated David Merrill as Clerk; seconded by Member Gregor Smith; so voted 4-0-0.

Minutes:

Chairman Moriarty made the motion to approve the May 14, 2014 minutes as written; so moved 5-0.

Chairman Moriarty made the motion to approve the September 23, 2014 minutes as written; so moved 5-0.

Chairman Moriarty made the motion to approve the February 3, 2015 minutes as amended; so moved 4-0-0. Clerk David Merrill abstained.

Chairman Moriarty made the motion to approve the Joint February 3, 2015 minutes as written; so moved 4-0-0. Clerk David Merrill abstained.

Chairman Moriarty made the motion to approve the March 16, 2015 minutes as written; so moved 5-0.

53 Main Street: At 8:45PM, Chairman Moriarty called to order the public hearing to consider the application of Foti Qirjazi for premises located at 53 Main Street requesting a finding pursuant to Article III, Section 3.05 of the Zoning By-Law for the alteration to increase the height of the roof line by six feet on the rear building on the non-conforming lot.

The Applicant Foti Qirjazi explained to the Board that the rear building housing the cleaners required remodeling, and last winter a new ceiling for the first floor and a new floor were installed. The second step is to fix the roof by raising the whole cap up 6 feet to a height of 30 feet. He noted that the cleaners needed more space for storage.

At this time, contractor Gary Tallaksen addressed the Board and reviewed the building plan including the installation of the windows.

Chairman Moriarty noted that he had no problem with the use of the second floor as dead storage for the first floor business.

Member Gregor Smith noted as habitable space, the installation of windows is good, and that he had no issue with the dry cleaner using the space.

A discussion on the window lights followed and conditions for the finding were reviewed.

The Board made the appropriate findings relative to the required zoning relief. Member Gregor Smith made the motion that pursuant to Topsfield Zoning By-law Section 3.05, the Board grant a finding to allow the alteration of the roof line on the rear building at 53 Main Street subject to the following conditions as part of the Board's Finding of no substantial detriment to the neighborhood:

1. The second floor space will only be used as an accessory use for the first floor business. No occupancy as a residence shall be permitted.
2. The second floor space will only be used for storage or back office operation for the first floor business; and further, there will be no public and/or customer access.
3. The window lights on the front and side windows will be true divided lights.
4. The replacement and new siding must match the remainder of the building.

Seconded by Member David Moniz; so voted 5-0.

29 Wilmor Road: At 9:00PM, Chairman Moriarty called to order the public hearing to consider the application of Richard Crosson, for premises located at 29 Wilmor Road requesting a finding pursuant to Article III, Section 3.05 of the Topsfield Zoning By-Law relative to the construction of a single story rear-right addition within the side setback of a non-conforming lot.

The Applicant Richard Crosson reviewed his plan to construct a rear addition to his home for a music room. The addition would be equivalent in size to the opposite existing rear addition. The lot is non-conforming since the house as originally sited and built on the lot is within the ORA side set back.

Ms. Knight reminded the Board members that based on recent case law, a finding is now required instead of a variance for non-conforming alterations to single and two-family homes.

The Board made the appropriate findings relative to the required zoning relief. Member David Moniz made the motion that pursuant to Topsfield Zoning By-law Section 3.05, the Board grants a finding to allow the construction of a rear addition at 290 Wilmor Road; seconded by Member Gregor Smith; so voted 5-0.

116 Boston Street Permit Update: Sean Ward, the owner of 116 Boston Street, which is an historic property, came before the Board to present a status update on change of use relative to the function and event special permit that was issued in February of 2014. Mr. Ward noted that the focus was to first clean up the grounds and update the landscape. He has been working with the Inspector of Buildings Glenn Clohecy with the assistance of an architect and engineer to convert the residential use of the property to the public use as a function and event facility. The Building Inspector had requested that a code study be performed which has taken place. The main objective is preserving the historical appearance of the historic structure while addressing the required code requirements. He noted that he has worked out code requirements with the fire department for the main house; however the accessibility ramp is still an issue under the building code. The Building Inspector is requiring 3 ramps which would literally rap around the structure. Mr. Ward noted that he has hired an attorney to represent him before the Massachusetts Architectural Board for a ruling and waiver.

Mr. Ward requested an opinion from the Board as to the expiration of the special permit. Chairman Moriarty responded that the Building Inspector as the Town's enforcement officer would make that determination; however, obtaining a building permit would show an exercise of the special permit for the change of use. Only if the Building Inspector made an adverse ruling would an appeal be filed with the Zoning Board.

Mr. Ward then reviewed the two easement conditions of the special permit: the historic preservation easement and the conservation restriction. He noted that he has filed with the local Historical Commission for significant structure permits relative to exterior projects for the main house and the barn renovations. He has researched preservation easements and has updated the state record for status which is the basis for federal status and has contacted organizations concerning the easement. However, easements on property are considered takings and reduce the valuation of the property. At this time, Mr. Ward explained the he needs to borrow money in order to accomplish the mission of the preservation of the property. He needs to keep equity in the property until the required repairs are funded and completed. There is a sequencing of events since he needs a functioning facility to acquire revenue to support the preservation. He cannot devalue his property at this time, but does intend to file a preservation restriction in due time. He also informed the Board that he has investigated the process for a conservation and/or agricultural easement for the field. However, at this time, the field is valued at \$200K and he cannot devalue the property for financial concerns.

Members Jody Clineff, David Moniz, Gregor Smith and Chairman Moriarty respectively noted that they wanted the project to succeed and did not foresee the financial implications of placing restrictions on the property. Also the Board noted that it understood the banker's point of view and believed that Mr. Ward was moving in the right direction.

Mr. Ward then proceeded to review the plans for the barn's renovation for public use as a conference and event facility. The capacity of the barn is 150 people. Mr. Ward noted that he has an agreement in place with Double Tree for additional parking. He is moving toward event functions since there is little interest in a 40 person training center in the main house. The main house can be used for small training sessions, small weddings or events; and is currently housing 8 staff members from Syllogistics utilizing the bedrooms as offices.

At this time, Russell and Patricia Brickett of 11 Garden Street noted their objections to the Board relative to the use of the barn and property as a wedding event center. They noted the noise factor of a function event center would "completely destroy the use of our property"... due to the noise level (music) that would emanate from a function facility. Mr. Brickett noted that his house is approximately 180 feet from the barn and approximately 20 feet from the swimming pool. Mr. Brickett stated that he had no problem with the original stated use as software training conference center; however, this change in the business plan has been just brought to his attention and he objects to this use.

Mr. Ward responded that he plans to insulate the barn and this would reduce the noise factor by approximately 50%. An extensive discussion followed between the parties concerning the conversion of the barn into an event center.

Chairman Moriarty informed Mr. and Mrs. Brickett that the Board had no authority to rescind the special permit. Complaints would need to be filed with the Building Inspector concerning this matter. The members encouraged the two parties to open lines of communication and work together to resolve the issues.

The meeting was adjourned at 10:15 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator

Per the Open Meeting Law, the documents that were either distributed to the Zoning Board of Appeals before the meeting in a packet, or at the meeting were:

1. Agenda
2. Applications and legal notices for the public hearings

Approved as written at the _____ 2015 Zoning Board of Appeals meeting.

Pursuant to the 'Open Meeting Law,' G.L. 39, § 23B, the approval of these minutes by the Committee 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 Committee as to the completeness or accuracy of such statements.