

Topsfield Zoning Board of Appeals

July 31, 2012

Chairman Moriarty called the meeting to order at 8:00 PM at the Town Library. Board members present were Robert Moriarty, Kristin Palace, Jody Clineff, David Merrill and David Moniz. 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: Selectmen Dick Gandt and Martha Morrison; Larry Beals, Glen Gollrad, Dan Philpot, Scott Butler, Charles Itz Gretchen Rehak, Walter Rehak

Reorganization:

Member David Moniz made the motion to nominate Robert Moriarty as Chairman; seconded by Member Jody Clineff; so voted 5-0.

Member David Moniz made the motion to nominate David Merrill as Clerk; seconded by Member Jody Clineff; so voted 5-0.

78 Alderbrook Drive Continued Hearing: At 8:06PM, Chairman Moriarty called to order the continued public hearing to consider the application J & J Realty LLC by John Masterson for premises located at 78 Alderbrook Drive requesting a variance pursuant to Article IV, Section 4.07J (1) of the Topsfield Zoning By-law to use for access, egress and utilities a grandfathered non-conforming common driveway easement shared by 4 other lots for said purposes.

Mr. Larry Beals of Beals Associates representing the Applicant referred to the letter forwarded to the Board by Attorney Nancy McCann, McCann & McCann PC, of Danvers MA which was entered into the record for discussion. Chairman Moriarty noted that Attorney McCann summarized the history of the lots and cited M.G.L. Chapter 40A, Section 6 and Section 3.05 of the Topsfield Zoning By-law both of which provide grandfathering protection. Attorney McCann's opinion asserted that since the common driveway has served the five (5) lots continuously since prior to the adoption of the common driveway regulations under the Topsfield Zoning By-law it is therefore a grandfathered use and may continue without action by the Board of Appeals. Chairman Moriarty then noted that this legal opinion is based on the presumption that the pre-existing non-conforming common driveway was legal. Common driveways were not permitted prior to 1994.

Mr. Beals responded that all five lots had rights to use the easement since 1977 and that the benefit of access with the property has been continuous.

Chairman Moriarty stated that the four other lots (A, B, C, & D) have benefited from continuous use since approximately 1980 since each lot required access over the frontage to the street. The 1977 easement plan shows the easement for access from the public way for the four developed lots; however, the common driveway was not legal at that time, and in fact, common driveways were not legal in Topsfield until 1994. Further, Chairman Moriarty noted that 78 Alderbrook does not have the same protections under Sections 6 and 7 of Chapter 40A since it has remained a vacant lot for additional land. The owner can build another driveway from the street for access.

Chairman Moriarty noted that the question before the Board is whether the existing common drive is adequate for current use and second would the addition of a new driveway with a right angle turn create additional safety concerns due to the narrowness of the drive (14 feet). The width of the drive is affected by snow, ice and flooding. The addition of the new residential unit would also increase the volume of traffic by approximately 20%. The members discussed these parameters and agreed that a viable solution would be to stabilize the road with a pavement width at 14 feet and shoulders on both sides with 2 feet of gravel to the end of the property line. The common drive running within the easement at 78 Alderbrook Drive is approximately 350 feet long. Mr. Beals noted that he has measured the pavement width along the drive in six different places and all were consistent at 14 feet.

At this time Mr. Scott Butler of 78D Alderbrook Drive read a statement against the use of the common drive by the Applicant and entered the written statement and provided pictures of the easement within 78 Alderbrook for the record.

Mr. Beals stated that he would meet with both Chiefs and engineer a plan to meet the Board's conditions.

Chairman Moriarty raised the question to the members as to whether they were comfortable to grant a variance based on the statutory requirements for said grant. Question of whether it is a hardship to require a separate driveway. In response, Member Kristin Palace noted that two drives would affect the value of the lot.

The Board requested that a plan be developed for the common drive with input from the Chiefs to include:

- Pavement width at 14' on approximately the 350' of the common drive located at 78 Alderbrook Drive
- Stabilization of shoulders with 2 feet of gravel on both sides
- Inclusion of turn-offs for passing traffic
- Widening of individual driveway for turning of delivery trucks
- Snow Management
- Plan to include more details and dimensions

Although improvements to the cul-de-sac were discussed, its improvements were not made a condition since the safety issues concerned the other four lots.

The public hearing was continued to 8:00PM at the August 28, 2012 meeting.

20 Central Street: At 9:36PM, Chairman Moriarty called to order the public hearing to consider the application of Walter Rehak by Blue Goose Architecture for premises located at 20 Central Street, a non-conforming lot, requesting a variance from the required setback pursuant to Article IV, Section 4.02 to demolish the existing non-conforming one-story garage and replace with a non-conforming two story structure and connecting breezeway within the side setback.

Architect Glen Gollrad made the presentation to the Board. He reviewed the plans noting that the intent of the Applicant is to demolish the existing 1-story garage structure and dilapidated foundation and replace with a new 2-story structure and breezeway connector to the existing home. The connector would house an entry, bathroom and laundry area. The second story would house a studio/family room. The septic system is deed restricted to three (3) bedrooms. Mr. Gollrad further noted that the existing lot size, frontage and setbacks are all non-conforming as is typical of this portion of the Central Residential district and also typical of the Central Street neighborhood. Currently, the existing garage is 7.2 feet from the side lot line and the proposed structure would be 5.4 feet from the side lot line. The proposed addition was moved forward by ten feet since it is boxed in by the shape of the lot and septic tank placement. As a result, the proposed addition is situated closer to the side lot line.

A letter of support from direct side abutters John and Kathy Lindsey of 20 Central Street who would be directly impacted by the proposed addition was entered into the record. A letter from Marie Marshall of 21 Central Street was also added to the record.

The Board reviewed the plans. It was the consensus of the Board that the project did not meet the statutory standards for a variance; however, if the addition could be reduced to meet the existing structure's 7.2 foot side setback, the Board felt it could act on a finding which would require a lesser standard for approval. It was agreed to continue the public hearing to 8:30PM at the August 28, 2012 meeting.

The meeting was adjourned at 10:16 PM

Respectively submitted,

Roberta M. Knight
Community Development Coordinator