



Town of Abington
ZONING BOARD OF APPEALS
500 GLINIEWICZ WAY
ABINGTON, MASS. 02351

Minutes
March 11, 2010

Members Present: Ed Mulligan, James Counter, Lisa Bezanson, James Haney, William Mullen, Paul Spiro, Building Inspector/Zoning Enforcement Officer

7:00 p.m. Old and new business.

7:05 p.m. Continued hearing, petition of Shawn P. Reilly, Atty. for Zebs Realty Trust, 500 Washington Street, Abington, for: a special permit per 175-24D(1)(k) & 24D(3), special permit per 175-24D(2), special permit per 175-35, variance per 175-37C(2)(a), variance per 175-24D(1)(e), and variance per 175-43A to perform environmental clean-up of former oil tank property and then build a two story residential building with ten 2-bedroom units at 351 Summer Street in the FPWPD. The property is located on Assessors Plan 17, Lot 25, in the TOD District.

Letter received from Atty. Reilly requesting a continuation to the May 13, 2010 meeting and to appoint PMP Associates as the ZBA consulting hydro geologists and to ask that PMP be requested to submit an invoice for estimating consulting services to Atty. Reilly.

Motion to appoint PMP Assoc. LLC as the ZBA consulting hydro geologist and to submit an invoice for estimating consulting services to Atty. Reilly as requested in the applicant's letter made by Mr. Counter, seconded by Mrs. Bezanson, unanimous. Motion to continue to May 13 at 7 p.m. made by Mr. Counter, seconded by Mrs. Bezanson, unanimous.

7:10 p.m. Continued hearing, petition of David Murphy, 65 Rosemont Road, Weymouth, and James Murphy, 40 Stockbridge Road, Bridgewater, for: a variance to make dwelling a legal two family at 71 Centre Avenue, under AZBL Sec. 175-21-A-2. The property is located on Assessors Plan 23, Lot 142, in the R-30 Zone. Voting members: Mr. Mulligan, Mr. Counter, Mrs. Bezanson.

Petition of David Murphy, 65 Rosemont Road, Weymouth, and James Murphy, 40 Stockbridge Road, Bridgewater, for: a finding for lot size, variance for number of parking spaces, and lot coverage variance in addition to previously requested variance to make dwelling a legal two family at 71 Centre Avenue, under AZBL Sec. 175-21-A-2, Sec. 175-29, Sec. 175-52-G and MGL Ch. 40A, Sec. 6. The property is located on Assessors Plan 23, Lot 142, in the R-30 Zone. Voting members: Mr. Mulligan, Mr. Counter, Mrs. Bezanson.

Sewer advisory – addition of plumbing fixtures will require permission from Sewer Commissioners. Letter received and read from Witsop Legal Advisory Group, Atty. Thomas Callahan, representing Sandra Bumpus – in opposition (letter attached).

David Murphy and James Murphy gave a history of property. They researched, but were never able to find out when it was converted to a two-family. It was used as two-family back to at least 1995, but probably long before that. The Coughlan family owned it, and used it as a law office and their home for many years in the 1940's. From inside, the structure looks like it has been used as a two family for many years. Mr. Murphy looked, but didn't see that anyone had applied for a variance on this property in 140 years to make it a two-family. Someone in 1984 backed out of a real estate deal when he found it wasn't a legal two-family, but never applied for a variance. They are the first ones in the history of this house to come forward and try to do the right thing and make it legal.

Property is surrounded by multi-family homes. Lot size is small, but they aren't asking for anything other people don't have. Won't pave lot, so there won't be a sea of asphalt. They won't alter it as a two family. It had been abandoned for a couple of years. Didn't think this would impact the neighborhood. Parking is a premium on other lots in the neighborhood as well. Relief of one parking space (guest) would allow plenty of parking for both tenants. They are requesting option #3 in their submission for relief of one parking space.

Mr. Haney – asked about notations on Assessor's field card. It was not done by the applicants. Asked if their title attorney found anything where in 1984 someone found it wasn't a legal two family and backed out of deal, and no one filed for a variance. They asked their attorney who handled the closing, and he never got back to them. Mr. Haney asked who discovered the 1984 question. Mr. Murphy found that in a Building Department file. Sheila Trainor, 77 Centre Avenue, stated it has been a two-family for as long as she's been there for 22 years.

Opened to floor: Atty. Don Hart for Atty. Callahan. Submitted a series of photos showing parking, different views of property, with cars parked on the street, which was a concern. Felt Atty. Callahan's letter clearly stated their position. There was letter from Atty. Reilly in 2004 indicating that they were aware that it was not a two-family, indicating that the owner at that time would be converting it back to a one-family. Feels parking would be a detriment to neighbors even if it isn't paved. Will be detrimental to neighborhood and affect property values. Opposed to this petition.

David Murphy – they want to get parking off the street, but it is legal to park on street other than between November 15-April 15 from 1 a.m.-6 a.m. Part of the right of way is paved up to the gate. They are asking for relief of one parking space.

Abutting neighbor – question on right of way that is owned by condo, if cars would be using that right of way for going back and forth. Yes, but they can't block it. Mr. Murphy – the right of way has been in existence since 1921. The Murphys want to work with neighbors. They wouldn't be using the right of way in the summer – only for overnight parking in the winter months. Mr. Murphy – the condos next door are all asphalt in the front of the lot.

Mr. Counter had concerns, it was a very tight lot.

Sandra Bumpus, 20 Walnut Street – where the condos are used to be a huge apartment building. The condos were a compromise for what was there originally. She felt parking on Centre Avenue was a safety issue. Feels there were other issues years ago with this property, and there still are.

Sheila Trainor – parking is legal on street. She doesn't have a problem backing out of her own driveway and she lives on Centre Avenue. Feels the Murphys' request is very reasonable.

Mr. Counter - it has been a two family for years. The Board has required paving of spaces in the past. Sec. 175-48 was referred to – the Board can waive paving. Mrs. Bezanson pointed out that the Board could require a permeable paver so it wouldn't require asphalt. They aren't asking to alter interior or exterior and didn't see a problem. Mr. Mulligan – with the size of the lot, he didn't think you would want to pave it.

Motion by Mrs. Bezanson to approve second petition of David Murphy and James Murphy for a finding for lot size, variance for number of parking spaces and lot coverage variance, as per plan Exhibit I, seconded by Mr. Counter, unanimous.

Motion by Mrs. Bezanson to approve the petition of David Murphy and James Murphy, for a variance to legalize two family at 71 Center Avenue under AZBL Sec. 175-21-A-2 as per plans submitted, seconded by Mr. Counter, unanimous.

7:15 p.m. Petition of Steven and Nancy Mullen, 400 Walnut Street, Abington, for: a finding to construct a 24' x 24' attached garage to south side of existing dwelling at 400 Walnut Street, enlarging the structure on a non-conforming lot, under MGL Ch. 40A, Sec. 6. The property is located on Assessors Plan 10, Lot 83, in the R-30 Zone. Voting members: Mrs. Bezanson, Mr. Haney, Mr. Mullen. Mrs. Bezanson disclosed that she, her husband, family and husband's company have done business with the Russell Wheatley Co. in the past, but have no financial interest in the hearing before the board. Mr. Mullen disclosed that there was no connection with the applicant despite the same last name.

Russ Wheatley and Steven Mullen gave presentation. Mr. Mullen wishes to construct an addition onto house, 24' x 24', and will conform to setbacks. The only reason to be here is lot is undersized. Proposed addition conforms in all respects. Sewer advisory – will require permission from Sewer Commissioners if plumbing fixtures are to be added. Garage will be single story. Opened to flood, no comments and back to table.

Motion by Mr. Haney to approve the petition as per plans submitted, seconded by Mrs. Bezanson, unanimous.

7:20 p.m. Petition of Paul Crowley for Focus Investment Realty Trust, 544 Linwood Street, Abington, for: a special permit to construct a duplex residential dwelling at 607 Brockton Avenue, under AZBL Sec. 175-21-A-2. The property is located on Assessors Plan 8, Lot 16, in the Highway Commercial Zone. Voting members: Mr. Counter, Mr. Haney, Mr. Mullen.

Sewer advisory – has been approved for allocation of 125 gal. per day per unit. Mrs. Bezanson disclosed her family has done business with the Crowleys in the past, but have no financial interest in this project.

Mr. Crowley explained the property has not been before this board before. This is the lot beside the beauty salon. Board did not have a problem with the proposal. Opened to floor, no comments, back to table.

Motion by Mr. Mullen to approve the petition as per plans submitted, seconded by Mr. Haney, unanimous.

7:25 p.m. Petition of Anthony Sulmonte, 137 Woodlands Way, Abington, for: a finding and special permit to finish upstairs portion of the garage to be used as an in-law unit at 104 Hancock Street, under AZBL Sec. 175-32-I and MGL Ch. 40A Sec. 6. The property is located on Assessors Plan 29, Lot 66, in the R-40 Zone. Voting members: Mr. Mulligan, Mr. Counter, Mr. Haney.

Sewer advisory - will require approval of Sewer Commissioners for addition of plumbing fixtures. Mr. Sulmonte explained they will turn second floor over garage into an in-law with utility kitchen, one bath, for him and his wife. Approximately 700 s.f. Barn is situated next to house. Per Building Inspector, it does not need to be attached. It is existing structure. They are not changing exterior. Opened to floor.

Bob Brainerd, 154 Hancock Street - welcomed him to neighborhood.
Marie Archy, 103 Hancock Street - lives directly across. Mr. Sulmonte's daughter and son-in-law have improved the property; would be an asset.

Closed to the floor and back to the table. Motion by Mr. Haney to approve as per plans submitted, seconded by Mr. Counter, unanimous.

Meeting adjourned at 8:00 p.m.

Respectively submitted,


Nancy Hurst



March 3, 2010

Abington Zoning Board of Appeals
500 Gliniewicz Way
Abington, MA 02351

Re: Variance Application for 71 Centre Avenue

Dear Members of the Board:

As you are aware, this office represents Ms. Sandra Bumpus of 20 Walnut Street, an abutter. My client opposes the grant of this variance. I will not be able to personally be in attendance at the next hearing in this matter on March 11 (although another attorney will be there in my place), but I wish to further memorialize my client's objections for the record.

We understand that the applicants are requesting further variances as to lot size, coverage and parking. These additional requests simply amplify the many problems with granting any of the relief requested, and demonstrate a) why this property is zoned a single-family, b) why attempts to make it a two-family in the past have been officially rejected, and c) why creating a two-family residence on this site is so inappropriate. If parking on the street were allowed as a substitute for parking requirements, a very dangerous precedent available to anyone unhappy with off-street parking requirements would be set. As stated in my earlier letter, the alternative of turning the backyard into a sea of asphalt has a detrimental affect on the neighborhood and especially my client's property, its views and its property value.

Following on my earlier letter of 1/7/10 regarding the failure of this application to meet the standards for grant of a variance, I must raise a concern that arose at the hearings on 1/14/10. In an unrelated case, a member of the Board made a passing remark about financial hardship that concerned me that there may be a misunderstanding as to what financial hardship means with respect to the grant of a variance. That application had no opponents and so no one countered the remark.

Very simply, a variance cannot be available in this situation in any way, shape or form based on financial hardship. First, one must question if there is any "hardship" at all. There is a preference for two units and the income they would bring rather than one, but neither a preference nor an expectation is a hardship. If the applicants were the victims of misrepresentations by the prior owner or the realtor as to the status of the property, then, as I suggested earlier, they either must accept the rule of "caveat emptor" ("buyer beware") or will have recourse against whomever made the misrepresentation.

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Financial hardship in this context requires that a hardship a) arise out of the size, shape and topography of the lot, which in turn b) causes financial hardship if the bylaw were to be complied with, as opposed to no hardship if the relief were granted. A classic example is a property with a severe slope, where compliance with a setback requires expensive alteration of the slope, whereas simply shifting the structure over into another setback causes no financial issue and so a variance could be allowed (as long as also not substantially more detrimental to the neighborhood). The small size of this lot is not making compliance with the bylaw more expensive, nor is it compelling a doubling of unit density. This is just a financial preference, or if any hardship is involved, a hardship of the applicant's own doing or the result of wrongful misrepresentation. Respectfully, a variance cannot legally be granted on such grounds.

Thus, again, my client urges your rejection of the petition with prejudice.

Thank you.

Sincerely,



Thomas J. Callahan, Esq.

cc: Ms. Sandra Bumpus