

Town of Scarborough

Zoning Board of Appeals

November 9, 2011

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (September 14, 2011 and October 12, 2011)
4. Appeals
 - a. Appeal No. 2438 – A Miscellaneous Appeal by Peter and Nicholas Truman, dba The Lighthouse Inn, 376 Pine Point Road, Assessor’s Map U22 Parcel 108, to convert their inn from one nonconforming use to another in the R-4A Zone
 - b. Appeal No. 2439 – A Miscellaneous Appeal by Peter and Nicholas Truman, dba The Lighthouse Inn, 376 Pine Point Road, Assessor’s Map U22 Parcel 108, to expand their nonconforming structure in the R-4A Zone
 - c. Appeal No. 2440 – A Special Exception Appeal by Stan and Lilly Pauwels, 11 Ole Ironside Lane, Assessor’s Map U4 Parcel 104, to create an accessory unit above their garage in the R-2 Zone
 - d. Appeal No. 2441 – A Special Exception Appeal by Beverly Hachey, 1A Pleasant Ridge Road, Assessor’s Map R79 Parcel 20B, to create an accessory unit in her basement in the R-2 Zone
 - e. Appeal No. 2442 – A Variance Appeal by Edward and Robin McCarthy, 10 Shipwreck Road, Assessor’s Map U1 Parcel 54, to amend a previously approved appeal to rebuild a house 9 feet from the right side property line and 4 feet from the left side property line in the R-4 Zone
5. Zoning Board Comments
6. Adjournment

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November 9, 2011

MINUTES

Members Present

Staff

Mr. Crockett
Mr. Dillon
Mr. Macisso
Mr. Maroon

Mr. Grysk, Code Enforcement Officer
Ms. Logan, Recording Secretary

1. Call to Order

Mr. Maroon called the meeting to order at 7:00 P. M.

2. Roll Call

The Recording Secretary called the roll; Messrs. Loisel and Stark were absent. Mr. Maroon authorized Mr. Macisso to vote.

3. Approval of Minutes (September 14, 2011 and October 12, 2011)

Mr. Crockett moved to approve the minutes of September 14 and October 12, 2011 as written: Mr. Dillon seconded.

Voted 4-0

4. Appeals

a. Appeal No. 2438 – A Miscellaneous Appeal by Peter and Nicholas Truman, dba The Lighthouse Inn, 376 Pine Point Road, Assessor’s Map U22 Parcel 108, to convert their inn from one nonconforming use to another in the R-4A Zone

Mr. Maroon stated that appeals 2438 and 2439 would be voted on separately.

Mr. Gene Libby, Attorney for the appellants, stated that there were two separate requests, one to convert one nonconforming use to another nonconforming use and the other to expand the nonconforming use by adding a third story. He stated that the majority of the Planning Board members thought this was a good proposal. Mr. Libby stated that they had reduced the number of units from 12 to 10, with 9 in the main building and one in the current office; he stated that the end units would be doubled up. He stated that the Planning Board and letters from the public supported the project but the issue was density and parking and the Trumans made changes based on those concerns. He stated that reducing the density would allow six parking spaces not allocated to a particular unit. He stated that no setback reductions were required and this would be residential condominiums in a residential area; he stated that there were precedents with other motels that had become condominiums.

Mr. Libby stated that in 2005 the appellants made a similar proposal but things have changed and this site is now not divided by a Town road; he stated that there was a right of way to the beach and an attractive park and all traffic had been taken into consideration so the area was a safe and attractive setting. He stated that the abutting Beachwalk Subdivision had been completed with 3,500 square foot homes. He stated that the motel was dwarfed by the surrounding homes and the third story would be less than the heights of the adjacent buildings. Mr. Libby showed the conceptual drawing of the building with cedar

shingles and a drawing of the rear of the proposed building with windows and dormers. He stated that the rear abutter wanted the back to be more attractive and they would do so. Mr. Libby also showed the roof with the third floor stepped in to meet the setback requirements as well as a concept of the structure with the abutting home drawn from the beach. He stated that none of the construction would be done during the summer season. Mr. Libby stated that he also submitted a schematic of the height of the building which would be 26 feet as measured by the Ordinance requirements.

Mr. Libby stated that it was now up to the Zoning Board to determine whether the proposal to convert to 10 units could be approved under the codes if the impact was not substantially different or greater than the existing nonconforming use. He stated that the Planning Board minutes showed that most of the public and the Board members thought the impact of 10 units would be significantly less than 22 motel units. Mr. Libby stated that they thought there would be substantially decreased use as measured by the Zoning Ordinance standards. He read the Special Exception standards as presented in writing and stated that this project met all of them.

Mr. Maroon agreed that the Board had the authority to approve an expansion under Section III. F. of the Zoning Ordinance. Mr. Grysk stated that the appellants were going through the proper steps to request this change of use. Mr. Maroon stated that the Practical Difficulty Appeal was no longer relevant because the setbacks would be met.

Mr. Macisso asked about the density; Mr. Libby explained the existing use was 22 units and they proposed reducing to 10 units so they were reducing the number of units to less than half; he stated that the units in the middle would be about 1,000 square feet and three units would be equal to one home at Beachwalk.

Mr. Maroon opened the public hearing. Mr. Robert Rovner, of 4 King Street, stated that their front door was directly across the street from this motel and they would be the most affected by this change. He stated that with earlier proposals the Town stipulated that the office building would be taken down when the motel closed and he hoped that would continue to be honored. Mr. Rovner noted that Mr. Libby indicated that this was in line with residential use but residential zoning requires 10,000 square feet for one home and this lot had less than one acre. He stated that these standards would allow two dwelling units so this would be a density of six times that allowed. Mr. Rovner stated that another concern was the parking and with the density of units it was more likely that all the units would be rented year round and not six months of the year. He stated that there were often six to eight cars in a driveway at Beachwalk with 14 to 20 people in a rented house and there could be 60 cars for these units. He stated that no parking was allowed on narrow King Street where there were bike lanes and pedestrians. Mr. Rovner stated that the increase in density would be an increase in traffic with a greater number of transients and this area would be changed forever. He stated that this presentation created more questions than answers and a compromise should be reached.

Ms. Kerry Corthell, a Planning Board member, stated that she believed the opinion of the Planning Board had been misrepresented and she hoped the Zoning Board would address their comments. Ms. Judy Shirk, of 6 Avenue Three, stated that she knew of four letters and wanted to make sure they were all read. Ms. Shirk read her letter in opposition to the appeal.

Ms. Susan Hamel, of 2 Bay Street, noted that the previous proposal in 2005 had garages on the first floor. Mr. Maroon stated that the parking would be along the front of the building and there would be no garages. Ms. Hamel stated that she was in favor of changing the use but not for 10 units and not even six units; she stated that this was a major change from the current use and she hoped this didn't fall into the trap of going from 22 to 10 units because it was far too dense for the area. She stated that it would still be

10 units on a space that would allow two units and needed to be smaller. Ms. Hamel stated that driving down the road, one would see a huge structure with a third story and 10 units.

Ms. Mo Erickson, of Pine Point, asked whether any Board members had visited the area to imagine how it would look; she stated that it was absurd to think that there would be 10 crowded units and it was a horror show on Saturdays. She stated that there would be enough parking for only three cars but there was no one to regulate that. She stated that there would not be 10 responsible owners to monitor the shenanigans of the renters and no one to monitor the noise or amount of people.

Ms. Pam Rovner, of 4 King Street, stated that the number of people in one house noted by Mr. Rovner was true; she stated that earlier this summer she was told by someone who was renting 6 Claudia Way (at Beachwalk) that there were 21 people staying at the house. She stated that she wanted the motel to change and she knew the Trumans would do a good job but there had to be some kind of control.

Mr. Joe Tedeski, owner of the Sand Dollar Motel at 372 Pine Point Road, stated that he was in favor of the change but one of the main topics was the Practical Difficulty Appeal the applicants had to address and he would like to know the difference this time. Mr. Tedeski stated that there was no building at Pine Point that had a continuous roofline like this and he did not know how the roof would be conforming with the setbacks. He stated that last summer he had a problem with cars parking in his lot and they were coming from Beachwalk where there was a limit of four cars per house. He stated that if Beachwalk had too many cars, these condominiums would have extra cars and that would put a hardship on him if they parked in his lot. He reiterated that the office building was not to be used for living quarters and should be used only as a common building.

Mr. Grysk stated that this was not a Practical Difficulty Appeal because it was a brand new appeal and no setbacks would be encroached. He stated that the Miscellaneous Appeal allowed conversion and the appellant chose to work within the footprint of the setbacks. He stated that this was actually a 2½ story structure where 35 feet or 3 stories were allowed; he stated that all the zoning requirements were met and it was up to the Zoning Board to make sure those requirements were met.

Mr. John Fox, of 14 Pillsbury Drive, stated that he was aware of many motels that had been converted to condominiums; he stated that this was an existing structure which could accommodate nine 1,000 square foot units which was a reasonable size compared to the nearby 3,500 square foot homes. He stated that this would be aesthetically pleasing and he was very supportive of it. Mr. John Wiggin, owner of two units at Beachwalk and President of the homeowners' association, stated that they did control parking and rentals and the appellants can do the same. He stated that they did have rental issues but the association took action and had a limit of 12 people and four cars per home. He stated that every homeowner at Beachwalk approved of this project.

Mr. Larry Forcier, the abutter at 5 King Street, stated that their property was 20 feet from the current office building and agreed with the Town that a residential use was a step in the right direction. He stated that the appellants had compromised but could do a little more. He stated that the height of the structure was important because it would create a barrier to their sunlight. Mr. Forcier stated that their concern was the visual aspect of the rear of the building from their property and the contrast between the front was evident and they would rather see the rear of the building similar to the architecture of the front. He stated that the motel units had single windows which gave them some privacy but the windows and decks proposed for the new use would give them no privacy. Mr. Forcier stated that they were in favor of the conversion because residential units were more conforming and better for the neighborhood; he stated that the site had not been a problem in the past and he hoped to be able to continue working with the Trumans.

Mr. Rovner reiterated that it was clear in the public record that the office building was to be razed. Mr.

Maroon stated that the Board was voting on what was before them today and not what was done five years ago. Mr. Grysk stated that the only condition imposed by the Zoning Board five years ago was that there be no rental unit in the outbuilding and a new Zoning Board can change that.

Mr. Maroon read 10 letters from abutters and Pine Point residents. Mr. Maroon closed the public hearing.

Mr. Maroon read the Planning Board comments and noted that the Chairman indicated that the majority of the Board was in favor of this proposal but there was not unanimous support; he stated that density, parking and traffic were on the negative side and on the positive side were the structure and the overall usage of the space. Mr. Maroon noted that rental and traffic were the issues for the Planning Board.

Mr. Maroon stated that he did not support condotels and would not be in favor if this project were a condotel; he stated that if a condominium project were not Fannie Mae approved he would not be in favor. He stated that he thought condotels were detrimental to communities but condominium units could be sold and financed with ease and were appealing. He stated that it was very difficult to get financing for condotels and they became a blight. Mr. Libby stated that these condominiums would be Fannie Mae approved.

Mr. Nicholas Truman stated that they had spoken with Robert Carson, of the Fire Department, and the building would be sprinklered. He stated that they were dealing with Biddeford-Saco Savings Bank who would not finance this project if it were condotels. Mr. Maroon stated that that seal of approval was the reason this project would succeed because the owners were not taking the risk of losing the status of being approved by Fannie Mae. Mr. Truman stated that the middle of the back of the main building would be shielded by the outbuilding and there was a group of pine trees along the building. He stated that the proposed windows would be for sunlight but they would be high enough so that no one could see out. He stated that they would address the back of the building and would go before the Planning Board for site plan review.

Mr. Dillon stated that his concern was with parking; he noted that the Town required only two spaces per unit which was the norm for condominiums. Mr. Truman stated that their spaces were 9 by 18 feet and there would be six guest spaces for a total of 28 spaces. Mr. Grysk noted that handicap spaces were not required for residential use; he stated that 18 spaces were required and they proposed 22. Mr. Macisso stated that he thought two spaces per unit were satisfactory and he was not concerned about parking. He stated that people rented their own homes at Pine Point and condominium owners should also be able to rent theirs. Mr. Macisso stated that he drove to Pine Point frequently and never got stuck in traffic. He stated that he had seen no renderings of the unit in the office; Mr. Truman stated that the building would be resided but would not change otherwise. To a question from Mr. Macisso, Mr. Truman replied that the bearing walls would remain but the main structure would be gutted down to the studs. Mr. Macisso stated that this would be a very attractive improvement and he would hate to see the building stay the way it is and rented out in the winter.

To a question from Mr. Crockett, Mr. Libby replied that there would be condominium standards governed by the State. Mr. Crockett suggested a three car limit in the documents. Mr. Truman stated that they currently told their guests if they needed more than one parking stall they would have to park at the Town parking lot and they would have strict parking rules and the owners would police that. He stated that these would be private residences and they were willing to put limits in the bylaws. To a question from Mr. Crockett, Mr. Truman replied that snow would be removed by the association and would be taken offsite if it piled up.

Mr. Maroon stated that he thought the appellant had done a great job; he stated that the property was in existence and the changes would be in the existing footprint. Mr. Maroon asked that the Board address

Findings of Fact on the Restriction on Nonconforming Uses: a. Mr. Crockett stated that he did not think this proposal had an adverse effect on the neighborhood and would be more aesthetically pleasing and conformed with the homes in the area; the Board agreed.

The Board addressed the Special Exception criteria as follows:

- a. The Board agreed that this site was served by public sewer and water and would not create unhealthful conditions;
- b. Mr. Crockett stated that traffic impact would be minimal especially during the winter and would not increase during peak times; Mr. Maroon stated that there would be an improvement in traffic since there would be fewer cars. The Board agreed.
- c. Mr. Crockett stated that with the bylaws limiting cars per unit, public safety would not be substantially different; Mr. Maroon noted that permanent residents would stabilize the neighborhood; the Board agreed.
- d. There would be no effect on sedimentation or erosion or on water supplies.
- e. Mr. Crockett stated that the nearby homes were similar and the window orientation in the rear would not allow people to look out at the neighbors and the use was, therefore compatible. Mr. Maroon stated that the intensity of use would decrease and though there would be more density, there would be no greater impact on the neighborhood; the Board agreed.
- f. The building is not in the Shoreland Zone.
- g. The applicant has sufficient right, title and interest.
- h. The applicant has the technical and financial ability to comply.
- i. Mr. Crockett stated that this would be residential as is the existing neighborhood and would be compatible with respect to noise. Mr. Maroon stated that this would no longer generate the noise of a motel.

Mr. Macisso moved to approve Appeal No. 2438 with the request that the condominium documents indicate that there be no more than three vehicles allowed per unit, that the design of the rear of the building meet the standards of the Planning Board and Planning Department and that the property be approved by Fannie Mae; Mr. Dillon seconded.

Voted 4-0

b. Appeal No. 2439 – A Miscellaneous Appeal by Peter and Nicholas Truman, dba The Lighthouse Inn, 376 Pine Point Road, Assessor’s Map U22 Parcel 108, to expand their nonconforming structure in the R-4A Zone

At the request of Mr. Maroon, Attorney Libby addressed the Special Exception criteria as noted above and as addressed in writing. Mr. Libby stated that the third story would be 26 feet high, as measured according to the Zoning Ordinance requirements. He stated that the setbacks would not be encroached upon because they had stepped back the third story.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal. Mr. Maroon stated that the letters that were read for Appeal No. 2438 also apply to this appeal. Mr. Maroon closed the public hearing.

Mr. Macisso moved to approve Appeal No. 2439 as presented; Mr. Dillon seconded.

Mr. Maroon stated that he hoped this project was successful. Mr. Crockett stated that it was great that the applicant was working with the neighbors.

Voted 4-0

c. Appeal No. 2440 – A Special Exception Appeal by Stan and Lilly Pauwels, 11 Ole Ironside Lane, Assessor’s Map U4 Parcel 104, to create an accessory unit above their garage in the R-2 Zone

Mr. Pauwels stated that they had a four bedroom house and would like to convert their master bedroom into an accessory unit within the existing structure; he stated that a small kitchen would be constructed in the storage room and a door to the yard added. He stated that construction would be within the existing structure except for the stairway. Mr. Grysk stated that there was enough space for the stairs within the setback requirement. Mr. Maroon stated that he would want an enclosed stairwell.

Mr. Maroon and Mr. Pauwels addressed the criteria and the Accessory Unit standards.

Mr. Maroon opened the public hearing. Mr. Ben Viola, of 7 Militia Lane, stated that one of the standards for an Accessory Unit was that there could be no exterior stairway; Mr. Maroon read the standards and agreed. Mr. Maroon closed the public hearing.

Mr. Pauwels stated that he could think of no alternative. Mr. Maroon stated that the rules were very clear and he recommended that the Board approve the appeal and that the Code Officers make sure the stairs were built within the existing structure. Mr. Grysk noted that Standard J. also stated that the streetscape and character of the neighborhood should be respected. Mr. Viola stated that the Ordinance talked about the character of the neighborhood as well as streetscape and he would see the stairs from his house. Mr. Maroon noted that when he helped draft the Ordinance for Accessory Units, his meaning was that a structure not look like a two family house. Mr. Grysk noted that there were many homes with stairs from decks in the rear so he considered only the streetscape in the front. Mr. Maroon stated that this proposal met the requirement as he meant it when he wrote it.

Mr. Maroon read Standard J. “Accessory units shall retain and respect the existing streetscape and character of the neighborhood. No open or enclosed outside stairways shall be permitted except for access to the first floor of the building.” He moved to approve the appeal with the allowance of an outside stairway; Mr. Dillon seconded.

Voted 1-3 – Mr. Maroon voted in favor. The motion failed.

Mr. Dillon moved to approve the appeal with the condition that the stairway must be built to meet the codes inside the building; Mr. Crockett seconded.

Voted 4-0

d. Appeal No. 2441 – A Special Exception Appeal by Beverly Hachey, 1A Pleasant Ridge Road, Assessor’s Map R79 Parcel 20B, to create an accessory unit in her basement in the R-2 Zone

Ms. Hachey stated that she would like to create an Accessory Unit in her basement. Mr. Grysk stated that this was a daylight basement and there would be no stairs. He stated that this was a new home under construction and simply needed approval for a kitchen; he stated that all the requirements were met.

Mr. Maroon and Ms. Hachey addressed the criteria and the Accessory Unit standards. Mr. Maroon confirmed that the unit would be 750 square feet.

Mr. Maroon opened the public hearing; no one spoke for or against the appeal; Mr. Maroon closed the public hearing.

Mr. Dillon moved to approve the appeal as presented; Mr. Macisso seconded.

Voted 4-0

e. Appeal No. 2442 – A Variance Appeal by Edward and Robin McCarthy, 10 Shipwreck Road, Assessor’s Map U1 Parcel 54, to amend a previously approved appeal to rebuild a house 9 feet from the right side property line and 4 feet from the left side property line in the R-4 Zone

Mr. Jim Fisher, of Northeast Civil Solutions, explained that two months ago when this appeal was originally approved, an error was made and they did not ask for sufficient variances to cover the eaves. Mr. Grysk stated that because he knew Mr. Fisher’s work, he assumed the eaves had been included in the request so he did not question it. Mr. Fisher noted that the new house would be considerably narrower than the old one and they would still be within the original footprint. He stated that they were now asking for another foot of variance on each side.

Mr. Maroon opened the public hearing; no one spoke for or against the amendment; Mr. Maroon closed the public hearing.

Mr. Maroon moved to approve the amendment to the original appeal; Mr. Dillon seconded.

Voted 4-0

5. Zoning Board Comments

Mr. Crockett noted a change in the minutes of October 12, 2011.

6. Adjournment

The meeting was adjourned at 10:15 P. M.