

AGENDA

1. Call to Order and Pledge of Allegiance (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (November 9, 2005)
4. Appeals
  - a. Appeal No. 2240 – Miscellaneous Appeals by Peter and Nicholas Truman, dba Lighthouse Inn, 366 Pine Point Road, Assessor’s Map U22 Parcels 108 and 109A, to convert and expand a nonconforming motel into a 6 unit condominium project in the R-4A Zone
  - b. Appeal No. 2241 – A Practical Difficulty Variance Appeal by Peter and Nicholas Truman, 366 Pine Point Road, to add a third story with nonconforming setbacks in the R-4A Zone
  - c. Appeal No. 2243 – An Administrative Appeal by David Miley, dba Commercial Place, 200 Enterprise Drive, Assessor’s Map U39 Parcel 4702, against the decision of the Code Enforcement Officer who determined that a detention pond is not allowed in the Stream Protection Zone
  - e. Appeal No. 2260 – A Special Exception Appeal by King Weinstein, 96 East Grand Avenue, Assessor’s Map U23 Parcel 76, to create an Accessory Unit above a detached garage in the R-4 Zone
  - f. Appeal No. 2281 – A Limited Reduction of Yard Size Appeal by Bennett Thompson and Marcia Taylor, 22 Riversands Drive, Assessor’s Map U21 Parcel 29, to construct a second floor addition 30 feet from the front property line in the R-2 Zone
  - g. Appeal No. 2282 – A Practical Difficulty Variance Appeal by John and Barbara O’Brien, 28 Morning Street, Assessor’s Map U2 Parcel 40, to demolish a cottage and rebuild a new home in a more conforming location in the R-4 Zone
  - h. Appeal No. 2283 – A Limited Reduction of Yard Size Appeal by Brian Fournier and Shelly Saucier, 34 Dresser Road, Assessor’s Map R31 Parcel 2, to construct a breezeway 40 feet from the front property line in the R-F Zone
  - i. Appeal No. 2284 – A Special Exception Appeal by Bayley’s Camping Resort, Ross Road, Assessor’s Map R86 Parcel 4 and Map R87 Parcels 18 and 19, to expand a nonconforming use by adding 181 campsites in the R-F Zone
5. Zoning Board Comments
6. Adjournment

NO NEW ITEMS SHALL BE TAKEN UP AFTER 10:30 P. M.

Town of Scarborough

Zoning Board of Appeals

December 14, 2005

MINUTES

Members Present

Staff

Mr. Blaise  
Mr. Craft  
Mr. Maroon  
Mr. Massengill  
Mr. Temm  
Mr. Tgettis

Mr. Grysk, Code Enforcement Officer  
Mrs. 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; Mr. Dryzga was absent. Mr. Maroon authorized Mr. Massengill to vote.

3. Approval of Minutes (November 9, 2005)

Mr. Blaise moved to approve the minutes of November 9, 2005; Mr. Massengill seconded.

Voted 5-0

4. Appeals

a. Appeal No. 2240 – Miscellaneous Appeals by Peter and Nicholas Truman, dba Lighthouse Inn, 366 Pine Point Road, Assessor’s Map U22 Parcels 108 and 109A, to convert and expand a nonconforming motel into a 6 unit condominium project in the R-4A Zone

This appeal was tabled at the request of the appellant.

b. Appeal No. 2241 – A Practical Difficulty Variance Appeal by Peter and Nicholas Truman, 366 Pine Point Road, to add a third story with nonconforming setbacks in the R-4A Zone

This appeal was tabled at the request of the appellant.

c. Appeal No. 2243 – An Administrative Appeal by David Miley, dba Commercial Place, 200 Enterprise Drive, Assessor’s Map U39 Parcel 4702, against the decision of the Code Enforcement Officer who determined that a detention pond is not allowed in the Stream Protection Zone

This appeal was tabled at the request of the appellant.

d. Appeal No. 2260 – A Special Exception Appeal by King Weinstein, 96 East Grand Avenue, Assessor’s Map U23 Parcel 76, to create an Accessory Unit above a detached garage in the R-4 Zone

Mr. Massengill recused himself from this appeal. Mr. Maroon authorized Mr. Temm to vote.

Attorney Peter Hatem stated one of the Board's issues was Mr. Weinstein's residency status; he stated that it was clearly indicated the property would be used year round and not just seasonally. He stated that the property was for rent at this time but if this request were granted, Mr. Weinstein would move into the unit when it was built and would then renovate the house for his own residence and move into the house and rent the accessory unit. Mr. Hatem stated that, at the request of Mr. Dryzga, he addressed the compatibility of the proposal with the neighborhood in the package; he stated that this is a one story building in a neighborhood of two-story houses and a small hotel. He stated that the package contained an elevation plan and photos of the existing site; he stated that the footprint would not be expanded. Mr. Hatem stated that they would work with the abutters regarding whether or not they wanted windows in the side of the unit facing their property and they would consider a fence if the abutters wanted one.

Mr. Craft asked what would happen to the house between now and when the unit was built; Mr. Hatem replied that it would be rented for the winter and that Mr. Weinstein would move into the house in the fall of 2006. Mr. Grysk stated that this was a straightforward appeal but there had been concerns that the appellant did not intend to live onsite, but must in order to meet the ordinance requirements. Mr. Temm asked how long the appellant had to live on the property to consider it his residence; Mr. Grysk stated that the site had to be owner-occupied when it was rented.

The Board agreed to reopen the public hearing. Mr. Maroon reopened the public hearing. Attorney Sally Daggett stated that she represented the closest abutters, Peter and Steven Gross, at 5 Eleventh Street. She showed photos of their house and where all their activities took place in the front and side yard next to the garage in question; she stated that their objection was the visual impact and the intrusiveness of the second story looking right into their main recreation area. Ms. Daggett stated that there was a difference between a two story garage and an apartment; she stated that with the Special Exception Appeal the Board could look at impacts on the neighborhood.

Ms. Daggett stated that the second objection was the issue of evidence to support a finding of whether the appellant would live at this property; she stated that they did not think the Board had enough evidence and Mr. Weinstein should prove his residence by moving to the site and changing his address and registering his car, etc. in Scarborough. She stated that they thought it appropriate to table the appeal for a year so he had the opportunity to do what he said he would do.

Mr. Maroon closed the public hearing.

To a question from Mr. Craft, Mr. Grysk replied that the buildings in the neighborhood were all close together on small lots with side and rear setbacks of less than 15 feet, which meant that buildings were less than 30 feet apart. Mr. Grysk stated that there were a lot of second story additions resulting from Limited Reduction of Yard Size Appeals. He stated that this area was zoned for one and two family houses and multiplexes and the code did allow accessory units. He stated that this was one of the few lots which were a little larger than the others in the neighborhood.

To a question from Mr. Temm, Mr. Grysk replied that if the appellant lived onsite only seasonally, he could rent the accessory unit only seasonally; he stated that one did not have to be a resident to get an accessory unit, but did have to move to the property to rent the unit. To a question from Mr. Tgettis, Mr. Maroon replied that the accessory unit ordinance was created because there had been a need for family members to live independently, but close to their families. He stated that the units were created in a way to not deteriorate neighborhoods by having rental property; he stated that the Town Council did not want to affect the old neighborhoods; he stated that the most difficult issue was the seasonal issue, which was a very important catch so the unit could not be rented if the owner was not in residence.

Mr. Tgettis stated that the main issue was how much the appellant would live onsite and the Board could not make him prove it, but that needed to be enforced after the fact; he stated that the granting of the accessory unit could be revoked if the appellant did not live there. Mr. Temm stated that the Town should not rely on the neighbors for information because that would be looking over Mr. Weinstein's shoulder. Mr. Maroon stated that the Code Officers could not go into houses and had to rely on outside information.

Mr. Maroon stated that he was not comfortable with the word "intention." Mr. Weinstein stated that he would occupy the property. There was lengthy discussion regarding the logistics of moving in and out of the unit and the house. Mr. Maroon stated that once the appeal was granted, the appellant could not rent anything unless he lived there. He read Performance Standard IX.J.A. regarding seasonal rentals, "...however, the non-owner occupied living area can be occupied only in a season which the owner is also in residence." Mr. Maroon stated that by getting an approval today, the appellant had eliminated his ability to rent tomorrow. Mr. Weinstein stated that renovating the large house would be a lengthy process because it was in a Shoreland Zone. To a question from Mr. Hatem, Mr. Maroon replied that once the appellant moved into the unit he could rent the house.

Mr. Maroon asked what would happen if the appellant could not get permits from the DEP to renovate the front property; Mr. Weinstein stated that he would change the scope of the project to meet the DEP requirements. To a question from Mr. Maroon, Mr. Weinstein replied that he understood he would have to change all his addresses. Mr. Weinstein stated that he would create any privacy implements the Grosses wanted and would work with them.

To a question from Mr. Blaise, Mr. Hatem replied that the lot was 15,518 square feet. Mr. Blaise stated that, in that case, he had a problem with the plans; he noted that the lot was 283 feet long and the width was 40 to 80 feet. HUH?

Mr. Blaise moved to approve the appeal; Mr. Tgettis seconded.

Mr. Maroon explained that the Board was voting on the assumptions that the appellant's representation that he would occupy the property, that he would change his residence and all documents, such as driver's license, etc., that he would not rent if he were not occupying the site as his primary or seasonal residence, and that he understood the property would have to stay vacant until he occupied it. Mr. Grysk stated that usually one could not usually rent a building until the Certificate of Occupancy was issued, but the Town Attorney may say that the house would be rented while the accessory unit was being constructed; he stated that he did not know whether the house could be rented while the unit was being constructed.

Mr. Maroon moved the above commentary as the condition of approval; Mr. Craft seconded. Voted 5-0 for the condition.

Mr. Maroon stated that the Board should deal with the privacy issue; he stated that if both parties made a good faith effort to come to an agreement for their mutual side of the property. He stated that the Board should not get involved in someone's subjective idea of aesthetics. Ms. Daggett suggested that there be a condition that, before the building permit was issued, the parties make good faith effort to address the Grosses' privacy issue, but if the abutters disagreed, the appellant could go forward. Mr. Maroon moved Ms. Daggett's suggestion as a condition; Mr. Blaise seconded. Voted 5-0 on the condition.

The main motion was voted on as amended: Voted 4-1 – Mr. Blaise opposed.

f. Appeal No. 2281 – A Limited Reduction of Yard Size appeal by Bennett Thompson and Marcia Taylor, 22 Riversands Drive, Assessor's Map U21 Parcel 29, to construct a second floor addition 30 feet from the front property lien in the R-2 Zone

Mr. Michael Richmond, who represented the appellant, stated that the appellant wanted to create a two story dwelling from a one story dwelling; he stated that there was a large roof overhang which would be removed and the second story would be above the area of the removed overhang (??). Mr. Richmond stated that the square footage may be reduced by removing a stairway.

Mr. Maroon and Mr. Richmond addressed the criteria as presented in writing.

Mr. Craft confirmed that the appellant was asking for a 30 foot setback and the overhang impacted the setback a little more than that. Mr. Richmond stated that they would not change the footprint over the deck. To a question from Mr. Maroon, Mr. Richmond replied that they were trying to align the structure with the columns so only the front eave line would be beyond the existing deck, but not more than 10 feet into the required setback. To a question from Mr. Blaise, Mr. Richmond replied that the existing deck was 31 feet 2 inches from the front property line.

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

Mr. Craft moved to approve the appeal as presented; Mr. Blaise seconded.

Voted 5-0

g. Appeal No. 2282 – A Practical Difficulty Variance Appeal by John and Barbara O’Brien, 28 Morning Street, Assessor’s Map U2 Parcel 40, to demolish a cottage and rebuild a new home in a more conforming location in the R-4 Zone

Timothy O’Brien, son of the appellants, explained that the current structure was dangerous, as noted in the structural report, and was a fire hazard. He stated that his parents wanted to replace the cottage with a house in the same footprint with a second story set in two feet. He stated that they wanted to leave the footprint in the same location because access to the garage would be difficult and they would not be able to meet the required 15 foot setback in the rear with another configuration.

Mr. Grysk noted that he and the appellant had discussed the property many times and this was the best that could be done with the property. Mr. Maroon noted that he had spoken with Mr. O’Brien but felt there was no conflict.

Mr. Maroon and Mr. O’Brien addressed the criteria as presented in writing.

To a question from Mr. Maroon, Mr. O’Brien explained that they would like to remove the deck and replace some of it with living space. Mr. Maroon stated that the appellant had a right to request what he wanted and if he wanted to use the deck for living space he should make it clear because whatever the Board voted on was what could be done. Mr. O’Brien stated that they would like to keep the deck and use some of it for living space. Mr. John O’Brien stated that they would like to use the existing footprint; he stated that they could demolish the stairway and square off the deck area.

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

Mr. Blaise moved to approve the construction of a new building within the footprint as exists and to use a portion of the deck as living space; Mr. Maroon seconded.

Voted 5-0

h. Appeal No. 2283 – A Limited Reduction of Yard Size Appeal by Brian Fournier and Shelly Saucier, 34 Dresser Road, Assessor’s Map R31 Parcel 2, to construct a breezeway 40 feet from the front property line in the R-F Zone

Mr. Fournier stated that they would like to add a breezeway to the back of the house. Mr. Grysk stated that the appellant wanted a garage with a breezeway; he stated that the garage met the setback requirements but the breezeway did not and they wanted to add the breezeway between the two structures.

Mr. Maroon and Mr. Fournier addressed the criteria as presented in writing.

Mr. Maroon opened the public hearing. Mr. Adam Mack stated that he had received approval for a three lot subdivision abutting this property and as part of that approval, in exchange for changes to the right of way, he was constructing the new garage and planting landscaping as approved by the Planning Board. He stated that if it were not for his new subdivision the appellant would not need the reduction but his new road impacted this property. He stated that the breezeway would take the place of an existing porch and would be 50 feet from the road but not from the right of way. Mr. Maroon closed the public hearing.

Mr. Massengill moved to approve the appeal as presented; Mr. Blaise seconded.

Voted 5-0

i. Appeal No. 2284 – A Special Exception Appeal by Bayley’s Camping Resort, Ross Road, Assessor’s Map R86 Parcel 4 and Map R87 Parcels 18 and 19, to expand a Special Exception use by adding 181 campsites in the R-F Zone

Mr. James Fisher, of North East Civil Solutions, stated that the appellant wanted to expand a use that had been in existence since 1971; he stated that only about two-thirds of the site was used for camping and the remaining land was open space with a large field for recreation. Mr. Fisher stated that expansion of a Special Exception required approval by the Zoning Board followed by site plan approval by the Planning Board.

Mr. Maroon and Mr. Fisher addressed the criteria as presented in writing.

To a question from Mr. Maroon, Mr. Grysk replied that the appellant could not exceed 25% impervious surface and the dams were considered a temporary structure and not considered impervious surface. To a question from Mr. Tgettis, Mr. Fisher replied that the RVs were not placed on cement pads but on loosely packed gravel or earth.

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

To a question from Mr. Craft, Mr. Fisher replied that the main access was off Pine Point Road and there was a minor access from Ross Road, as well as an emergency-only access at Snow Road. Mr. Fisher stated that their traffic engineer’s report and information from the DOT showed that there would be no major traffic impact from this expansion.

Mr. Blaise moved to approve the appeal as presented; Mr. Tgettis seconded.

Voted 5-0

## 5. Zoning Board Comments

Mr. Tgettis stated that he liked the fact that the Board was as specific as possible in getting the attorneys to agree on the Weinstein appeal. Mr. Maroon noted that the Board members had the right to look at properties individually but should disclose that at the meetings. Mr. Craft and Mr. Massengill agreed that the workshop they had attended was very informative.

After a short discussion, Mr. Tgettis moved to put held over appeals at the bottom of the agenda after they had been tabled for two months; Mr. Maroon seconded and stated that this would be the Board's policy.

Voted 5-0

6. Adjournment

The meeting was adjourned at 8:45 P. M.