

Town of Scarborough

Zoning Board of Appeals

December 17, 2008

AGENDA

1. Call to Order (7:00 P. M.)
2. Roll Call
3. Approval of Minutes (November 12, 2008)
4. Appeals
  - a. Appeal No. 2467 – A Miscellaneous Appeal by Phil and Debbi Parker, dba Higgins Beach Market, 82 Spurwink Road, Assessor’s Map R94 Parcel 3, to expand a nonconforming use in the R-F Zone
  - b. Appeal No. 2470 – A Limited Reduction of Yard Size Appeal by Robert and Linda Voskian, 18 Driftwood Lane, Assessor’s Map U21 Parcel 101, to construct an addition and a deck 10 and 13 feet respectively from the side property line in the R-2 Zone
  - c. Appeal No. 2471 – A Practical Difficulty Variance by Michael Fresina, 1 Sea Rose Lane, to demolish and rebuild a home in the same footprint 4.5 feet from the left side, 9.5 feet from the rear line and 12 feet from the right side property line in the R-4A Zone
5. Zoning Board Comments
6. Adjournment

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

Town of Scarborough

Zoning Board of Appeals

December 17, 2008

MINUTES

Members Present

Staff

Mr. Blaise  
Mr. Loisel  
Mr. Maroon  
Mr. Massengill  
Mr. Temm

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

1. Call to Order

Mr. Maroon called the meeting to order at 7:15 P. M.

2. Roll Call

The Recording Secretary called the roll; Mr. Dougherty was absent.

3. Approval of Minutes (November 12, 2008)

Mr. Blaise moved to approve the minutes of November 12, 2008; Mr. Loisel seconded

Voted 5-0

Mr. Loisel moved to hear Appeals 2470 and 2471 first so those appellants would not have to wait through a longer appeal; Mr. Blaise seconded.

Voted 5-0

4. Appeals

b. Appeal No. 2470 – A Limited Reduction of Yard Size Appeal by Robert and Linda Voskian, 18 Driftwood Lane, Assessor’s Map U21 Parcel 101, to construct an addition and a deck 10 and 13 feet respectively from the side property line in the R-2 Zone

Mr. Mike Richman, of Custom Concepts, noted that the appeal was from the left side of the property; he stated that this proposal was the only way to get an addition to work on this site. He stated that the house was a simple chalet and the addition would be 26 feet 8 in inches high and the appellant would like to maintain the overhang to match the house. Mr. Richman stated that there was no reasonable way to add off the house without disturbing the interior layout.

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

Mr. Maroon opened the public hearing. Attorney Paul Bulger, who represented Jo-Ann and Frank Johnson, of 18 Driftwood Lane, stated that the Johnsons objected to this project for three reasons. He stated that there were three separate encroachments on the setback; he stated that the addition could be built deeper to the north and be not as wide. Mr. Bulger stated that the building would be different from the neighborhood with regard to size. He stated that the Pillsbury Shores deeds, including that of the

appellant did not allow a setback less than 20 feet so this proposal violated their deed restrictions. Mr. Bulger stated that this project was conclusory in all respects and failed to meet the ordinance.

Mr. Thomas Billen, of 16 Driftwood Lane, stated that when Pillsbury Shores was conceived, there was a 20 foot side setback required by the deed so there would be an uninterrupted view to the water for all residents and a ten foot setback would take away from the character of the neighborhood. Mr. Billen stated that there could also be encroachment of construction vehicles on the abutting property.

To a question from Mr. Maroon, Mr. Richman replied that he was not aware of the deed restriction; he stated that he would like to table the appeal so that he could consult his client.

Mr. Loisel moved to table the appeal for one month, at which time the appellant could request another tabling; Mr. Blaise seconded.

Voted 5-0 to table

c. Appeal No. 2471 – A Practical Difficulty Variance by Michael Fresina, 1 Sea Rose Lane, to demolish and rebuild a home in the same footprint 4.5 feet from the left side, 9.5 feet from the rear line and 12 feet from the right side property line in the R-4A Zone

Mr. Jim Bernard, a residential designer, explained that the existing cottage was in the same condition it was in during the 1940s, was built under substandard conditions on a 40 by 82 foot lot and needed to be brought up to code. He stated that a goal of the appellants was to accommodate a relative in a wheelchair with a bedroom on the first floor and space for movement in the kitchen. He stated that the only bumpout from the existing footprint would be the stairway which would allow the larger kitchen; he stated that the encroachment would be 2.5 feet. Mr. Bernard stated that they would move the house back from the front. Mr. Bernard showed photos of the existing conditions of the house and the neighborhood.

To a question from Mr. Maroon, Mr. Bernard replied that they had removed the existing second set of steps and the bulkhead and the proposed stairs would run parallel to the building; he stated that the porch at the rear would be removed.

Mr. Fresina explained that he lived in North Carolina, but Higgins Beach had been home to him since he was a child and the property had been in his family since the 1940s. He stated that he wanted to make the house handicap accessible for his brother-in-law who is in a wheelchair. Mr. Maroon confirmed that the structure would be a two story house.

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

Mr. Maroon and Mr. Bernard addressed the criteria as presented in writing. To a question from Mr. Maroon, Mr. Reinsborough replied that the property was in the back dune but it was up to the DEP to determine whether or not this structure could be built following any approval by the Zoning Board. Mr. Maroon stated that he was satisfied with the structure being in the same footprint.

To a question from Mr. Massengill, Mr. Bernard replied that the interior stairway would be four feet wide to accommodate moving furniture to the second floor and the bump out would be 2.6 feet by 12 feet to accommodate those stairs and allow circulation in the kitchen. Mr. Fresina stated that the bulkhead would make it easier for utility people to get into the cellar when no one was home and would take the place of the old steps. Mr. Reinsborough noted that the fireplace would be a protrusion into the setback; Mr. Bernard stated that the fireplace could be recessed into the house. Mr. Bernard noted that the three foot variance was for the overhang.

Mr. Massengill moved to approve the appeal with the following changes: That the variance for the left side be 3 feet 6 inches to accommodate the overhang and that the bulkhead will extend 5 feet 8 inches or less from the house; Mr. Loisel seconded.

Voted 5-0

a. Appeal No. 2467 – A Miscellaneous Appeal by Phil and Debbi Parker, dba Higgins Beach Market, 82 Spurwink Road, Assessor’s Map R94 Parcel 3, to expand a nonconforming use in the R-F Zone

Mr. Maroon stated that this appeal had been tabled from the last meeting so more information could be provided to the Board. He stated that he would like to start by defining the use of the site; he stated that it had not been a vegetable stand since 1947. Mr. Maroon read a letter from Mr. Reinsborough giving history and conditions of approval from both the Planning and Zoning Boards; he stated that there were numerous letters in favor of the appeal and a few in opposition. He proposed that the Board establish that this is not a farmstand but a market of some type in order to get to the next step to get the proper approvals in place. He stated that there was nothing in place other than to default to the 1989 plan. Mr. Maroon stated that the next step would be to require that the property owners develop a site plan based on a market concept and not a farmstand.

Mr. Temm asked whether the site would still be useable as a farmstand until the plan was approved; Mr. Maroon replied that the process should continue through the winter so the business could open in the spring, otherwise the Code Office would require the use to be as it was approved by the Zoning Board in 1989.

Mr. Maroon moved to determine that the Higgins Beach Market was a market of sorts and did not fit under the farmstand definition; Mr. Massengill seconded.

Mr. Reinsborough stated that the issue was that numerous items had been sold at the market and the Board needed to make it clear that this is a nonconforming market.

Mr. Maroon opened the public hearing on the issue of whether or not this is a farmstand by town definition. Mr. Parker stated that it was not a farmstand but a market called the Higgins Beach Market. He stated that he had talked with the Town Manager who agreed it was not a farmstand and indicated that it had been allowed because it was helping the community, so he kept adding items, not knowing he needed approvals. Mr. Maroon closed the public hearing.

Mr. Loisel stated that he would consider jellies and pies, etc. farmstand items but precooked meals were not. Mr. Blaise stated that this was an excellent stand and no one had ever considered it a farmstand, but a rural market supporting a rural area of town; he noted that designating this as a market would allow the appellants to go before the Planning Board for site plan review. Mr. Massengill agreed. Mr. Temm noted that if the site were designated a market, it would have to meet the requirements for site plan review so all the Board was doing tonight was changing the designation from a farmstand to a market. Mr. Maroon noted that only the 1989 approval could be grandfathered.

Voted 5-0 to designate the site as a market.

Mr. Maroon stated that there was not enough information for the Board to vote on the Miscellaneous Appeal request and moved to table the appeal for no longer than three months so the appellant could go through the process with the Planning Board; Mr. Loisel seconded.

Mr. Reinsborough suggested that the Board indicate to the Parkers what would be acceptable to the Board members for their future approval.

Mr. Maroon opened the public hearing to address what the market is doing and its current uses. Ms. Diane Vasile, of 83 Spurwink Road, stated that she had lived across from the market for 35 years and when they first moved in it was a vegetable stand that opened at 8:00 A. M. and the owners grew their own vegetables. She stated that since the Parkers purchased the property it has been a variety store and something new was added every year. Mrs. Vasile stated that the market had evolved into something that was not a farmstand; she stated that the opening hour approved in 1989 was 9:00 A. M. but the business now opened at 6:00 A. M.; she stated that the approval indicated that there would be no increase in noise but there was the noise of the dumpsters, delivery trucks and doors slamming. She stated that the traffic was heavy in 1989 and was worse now. She stated that the Parkers provided a great service but the amount of product was way beyond what should be sold for the size of the site.

Mr. Robert Hodgdon, of 5 Ocean Avenue, stated that he had lived at Higgins Beach since 1960; he stated that two traffic surveys were done as part of the Higgins Beach Management Plan of 1998 and the market had changed since then. He stated that off-season there were 800 to 1,800 vehicles per 24 hour period and during the summer 1,500 to 5,000 per 24 hour period. He stated that the speed limit was 35 MPH on Spurwink Road where there were vehicles, pedestrians, wheelchairs and bicycles using the road. He stated that the impact on the immediate neighbors was great. Mr. Hodgdon stated that he was amazed by the letter from the Police Chief stating that there were no problems at the intersection according to the data. He stated that he would like to see a specific police report and have counts taken and speeds regulated. Mr. Hodgdon stated that this was the worst intersection in Scarborough.

Mr. Wendell Strout, of 6 Pearl Street, stated that there were many other factors that contributed to the increase in traffic than the market. Mr. Maroon closed the public hearing.

Mr. Maroon read letters from Mr. Bacon, Town Planner, Mr. Gutter, former owner, and a letter from Ken and Penny Kacere verifying that they had given permission for the Parkers to use part of their property for parking, as well as several new letters in favor of the appeal.

Mr. Maroon stated that a parking layout that did not require cars to back into the street would be very important. Mr. Loisel stated that he would not like to see cars going straight across the intersection from Ocean Avenue to this site; he stated that the number of parking spaces was key. Mr. Maroon noted that the sales area was approved for only 400 square feet with a cooler of 80 square feet. Mr. Reinsborough noted that the ice machine should be included as sales area and the appellant should be given guidance about display under the overhang of the building. Mr. Maroon stated that if there were no parking in front of the building the sales area could extend somewhat but not too close to the road. To a question from Mr. Temm, Mr. Maroon replied that a limit could be set on sales area in front of the building by imposing a measurement from the building. Mr. Blaise stated that the carts against the side of the building worked well now.

Mr. Maroon stated that he did not care what items were sold from the market but had a serious concern about the fryolater and food preparation. Mr. Massengill stated that his concern was whether the food preparation met code requirements; Mr. Loisel agreed. Mr. Maroon stated that he had a problem with the dumpster and the container, which should be part of the expansion of the nonconformity and should be addressed by the Planning Board. He stated that he did not like the storage container which did not look appropriate for the area.

Mr. Maroon stated that the Town and the Code Officers wanted to work with the appellant and the Parkers should meet with Harvey Rosenfeld, of SEDCO, to devise a plan and then work with the Code Office to come up with a concept that is workable. He stated that the Town was trying to work with the Parkers but not set a precedent.

Mr. Maroon stated that he had a serious concern about the cooking equipment and that was the breaking point for him for where this use would go beyond a market. Mr. Reinsborough noted that the State allowed their license for a market by the percentage of sales of produce to stay under the agricultural license category. Mr. Loisel stated that he agreed with Mr. Maroon and wanted to be sure there was public water and sewer and that food preparation needed to meet the standards. Mr. Parker stated that they had water and sewer and the State always approved the site.

Mr. Maroon noted the change in hours of operation. Mr. Parker stated that the former owners did not start earlier because they did not want to work those hours. Mr. Maroon stated that he would leave the hours the way they were if the noise dropped. He stated that if traffic flowed behind the building it would be good for the neighbors. Mr. Reinsborough stated that a Class A survey should be done for site plan review. Mr. Maroon stated that he would like to see parking for the employees off-site; he stated that the important thing for the site is safety. Mr. Loisel stated that people should be able to wait for a parking space onsite and not in the street; he stated that an engineer should be hired to determine what could be done.

Voted 5-0 to table

5. Zoning Board Comments

There were no comments.

6. Adjournment

The meeting was adjourned at 9:45 P. M.