

Great Barrington Zoning Board of Appeals

Minutes of May 7, 2013, meeting.

The board met at the second-floor meeting room at Town Hall. Attending were Chairman Ron Majdalany, Carolyn Ivory, Madonna Meagher, Kathy Kotleski and Michael Wise and alternate members Don Hagberg and John Katz. Town Planner Chris Rembold was in the audience.

The chairman at 7:30 p.m. opened a public hearing on the variance petition of **Stephen and Sarah Donaldson**, 1 Cypress St., to construct a dormer on an existing dwelling. The property is in an R-1 zone. Members visited the site prior to the hearing. The hearing was posted with the Town Clerk's office, twice advertised in The Berkshire Record March 29 and April 5, 2013. Notices were mailed to abutters whose names appeared on the certified list from the Assessor's office.

Mr. Donaldson said he would like add a dormer on the north side of the dwelling to allow construction of a room to be used, in conjunction with his photography business, as a framing workshop. He said a kitchen/bath addition was constructed in 2003 in compliance with the area requirements of zoning, with a properly issued building permit. He said the only way he can create new interior space is with the dormer. He presented photographs of neighboring homes with third-level dormers or sky-windows to demonstrate how common they are. He said his ca1910 home came under zoning requirements when the town passed a zoning bylaw in 1932. He said the dormer will not go higher than the existing peak. In answer to questions, he said the new room would range in height from about 6'2" to 9'. He said his property is nonconforming as to lot size, but does meet setbacks.

On a motion by Ms. Kotleski, seconded by Ms. Ivory, the hearing was closed at 8:50 p.m. Chairman Majdalany said the size of the lot does not make it eligible for a variance. Mr. Wise moved the board deny the variance petition as inappropriate because the size of the lot is not grounds for a variance. Ms. Meagher seconded and the vote was unanimous.

Ms. Ivory said, considering the 2011 case law Gale vs. ZBA of Gloucester, the board needs to determine if the proposed dormer would increase the building's nonconformity or create a new conformity, and if so whether it would be substantially more detrimental the neighborhood. Mr. Katz said Gale makes it clear that if no detriment is seen, the board can proceed to act on granting a special permit under Section 10.4.2. Ms. Ivory said what is proposed is within the character of the neighborhood, as many neighboring homes have taken advantage of third-floor space. Mr. Rembold said the ZBA can move on to grant whatever relief seems appropriate, as long as the appropriate findings can be made.

Mr. Wise moved the board could grant a special permit as the proposed dormer is not substantially more detrimental to the neighborhood, the scale would be so small and the result so consistent with the rest of the neighborhood. Ms. Kotleski seconded. All agreed.

The board then made these findings under 10.4.2:

- Social, economic or community needs -economic gain in that the homeowner can improve his home business
- Traffic flow and safety – not an issue
- Adequacy of utilities – dwelling is already served by town sewer and water
- Neighborhood character – Many neighboring homes have made use of third-floor space
- Potential fiscal impact –will help owner's business, will increase town tax base

Ms. Ivory moved to grant a special permit, as the proposal meets all the findings. Mr. Wise seconded. All voted in favor. Ms. Ivory said she would write the decision.

On a motion by Mr. Wise, seconded by Ms. Meagher, the board voted to approve the **minutes** of March 5, 2013, with the addition of one word in the fourth paragraph.

In other business, reported the board had received a letter dated March 20, 2013, from Brian J. Winner of Kopelman and Paige regarding **Danny Bell's LLC v. Town of Great Barrington Zoning Board of Appeals**, and Edwin May in His Capacity as Building Commissioner, Appeals Court, Docket No. 12-P-

280. The court found in favor of the ZBA and Mr. May. He included a two-page copy of the court decision. In a second letter, dated April 16, 2013, Mr. Winner indicated the appellant had filed application for further appeal with the Supreme Judicial Court. He included a 15-page document, the town's opposition to Danny Bell's Application for Leave to Obtain Further Appellate Review.

The meeting adjourned at 8:05 p.m.

Respectfully submitted,

Bernard A. Drew

