

Great Barrington Zoning Board of Appeals

Minutes of Sept. 10, 2013, meeting.

Attending were Chairman Ron Majdalany, Vice-Chairman Carolyn Ivory, Kathy Kotleski, Michael Wise, John Katz and Don Hagberg. The meeting opened at 7:31 p.m. at Great Barrington Town Hall.

The board held a public hearing on the special permit application of **James B. Ketchen** (filed July 31, 2013) (SP #818-13) for property at 70 Castle Hill Ave., Great Barrington, to construct a fire escape on a pre-existing, non-conforming structure in an R1A zone. The hearing was posted with the Town Clerk's office, advertised in the *Berkshire Record* Aug. 16 and 23, 2013, and mailed to abutters whose names appeared on a certified list from the Assessor's office. The board received positive recommendations from the Board of Selectmen, Planning Board, Board of Health and Conservation Commission. The chairman asked Mr. Hagberg to sit in for member Madonna Bachman, who was not at the hearing.

Kate McCormick appeared on behalf the applicant. She presented documentation (a mortgage of Frank Crine to Great Barrington Savings Bank) to verify the building was in place in 1910, well before the town adopted its first zoning bylaw in 1932. She said the Ketchen family has owned the dwelling since 1940 and it has had two-family occupancy. The applicant desires to construct a spiral staircase to serve as attic and second-floor fire escape, to meet building code. There will be small square platforms at the attic and second-floor levels to allow entry onto the staircase. There will be no rear-yard encroachment. The building itself encroaches well into the 20-foot sideyard setback. The new staircase will protrude no further than the existing building, Ms. McCormick said. Steep topography on the south side of the house discourages construction of the staircase there, she said. The board closed its hearing at 7:50 p.m.

The board found the proposed work is not substantially more detrimental than the existing nonconformity of the structure to the neighborhood, as the spiral staircase would replace an existing wooden stairway and the proposed new work would protrude no deeper into the setback. Under Section 10.4.2 the board found the proposed work would benefit the community's economic needs as it would assure two housing units; it would not increase traffic flow or safety, as it is already two-family occupancy; it already uses town utilities, so will create no further demand; is within the character of the neighborhood, which consists of many large homes, some of them two-family; will create no greater impact on the natural environment; and will have a positive fiscal impact on the town as it will assure continued two-family use.

Mr. Wise moved to approve the special permit as it is not substantially more detrimental than what is there at present and beneficial impacts of the proposal outweigh any adverse impacts. Ms. Ivory seconded and all voted in favor. Ms. Ivory will write the decision.

On a motion by Mr. Wise, seconded by Ms. Kotleski, the board approved the **minutes** of the Aug. 6, 2013, meeting.

The secretary said the board has received an appeal petition from **Lynn Hutchinson/Brian Schwab**, 263 Long Pond Road, represented by Alexandra H. Glover of Lazan Glover & Luciloski of Great Barrington. Petitioners appeal a cease order issued by Building Commissioner Ed May regarding the cutting of trees on their property, which is within the Water Quality Protection Overlay District – Zone A. According to Ms. Glover, Ms. Hutchinson is concerned about wording in the building commissioner's order. Ms. Glover has met with the Conservation Commission, and expects its order and Mr. May's can be reconciled. The ZBA appeal is a fallback. Ms. Glover requested a 45-day extension before the ZBA holds a hearing. She expects to ultimately withdraw the appeal.

The board on a motion by Ms. Ivory, seconded by Ms. Kotleski, approved a letter to Ms. Glover, as follows: "In response to your Aug. 22, 2013, written request for the Great Barrington Zoning Board of Appeals to delay scheduling a public hearing in the Lynn Hutchinson/Brian Schwab, 263 Long Pond Road, appeal of a building commissioner's cease order regarding a Water Quality Protection Overlay District—Zone A Violation, the ZBA voted tonight to approve your request for a 45-day extension.

"The appeal was filed Aug. 22, 2013. This now means the Zoning Board of Appeals in order to meet timeline requirements on or about Oct. 26 will schedule a hearing date (the hearing to be held no later

than Dec. 10), unless you submit a written request to withdraw the appeal. Further, the Zoning Board of Appeals by its vote this evening authorizes the chairman to act on its behalf and accept a written request to extend the hearing delay a second time or to withdraw the appeal.”

In other business, the secretary noted that David J. Doneski of Kopelman and Paige has filed a Notice of Appearance of counsel for the defendants (the ZBA and four members) in the case of **Danny Bell**, et al. v. Town of Great Barrington Zoning Board of Appeals, et al, Berkshire Superior Court C.A. No. 23013-00216-A.

The meeting adjourned at 9:20 p.m.

Respectfully submitted

Bernard A. Drew
Secretary

A handwritten signature in cursive script that reads "Bernard A. Drew". The signature is written in dark ink and is positioned to the right of the typed name and title.