

Great Barrington Zoning Board of Appeals

Minutes of Nov. 12, 2013, meeting.

Attending were Chairman Ron Majdalany, Vice-Chairman Carolyn Ivory, Kathy Kotleski, Madonna Meagher, Michael Wise, John Katz and Don Hagberg. The meeting opened at 7:30 p.m. at Great Barrington Town Hall.

The chairman opened a public hearing on the special permit application of **Robert and Mary Ann Norris** for property at 22 Prospect St., Great Barrington. Brian Hazelton also appeared on behalf of the applicants. Board members made a site visit the evening of the hearing (or earlier). Notice of the hearing was posted with the Town Clerk's office and was twice advertised in the Berkshire Record, Oct. 18 and Oct. 25. Notices were mailed to abutters whose names appeared on a list provided by the Assessor's office.

Mr. Hazelton said the Norrises wish to move the outside wall of the garage 8 feet toward a sideyard line. The zoning bylaw requires 20 feet setback; with the change, the building would be about 12 feet setback. Mr. Hazelton said there are a fence, driveway and wooden fence to serve as buffer. With the filing and on the evening of the hearing, the applicants presented letters from seven people on the certified list of abutters who said they endorse the project. The alteration is to create living space on one level, Mr. Hazelton said. The dwelling is non-conforming in that one corner is 19 feet 7 inches from a lot line. The secretary read letters from the Selectmen, Planning Board, Conservation Commission and Board of Health. All recommended approval. In answer to a question, Mr. Hazelton said the side driveway is to reach a compost bin and is sometimes used by neighbors. Town Planner Chris Rembold, answering a question from Chairman Majdalany, said the board, since *Gale v. Gloucester*, makes decisions on one- and two-family dwellings on a case-by-case basis, no decision making a precedent for another.

Mr. Wise made a motion that the existing nonconformity of the dwelling is *de minimis* in its encroachment on the setback. Ms. Ivory seconded and all voted in the positive. As to whether the project creates a greater nonconformity, Ms. Ivory said neighbors are comfortable with it and the appearance of the altered building will be in keeping with the neighborhood. Mr. Wise said the sideyard setback is not being eliminated entirely; approval of the SP request will not set a precedent. The chairman ran through the five criteria and the board found (1) as to social and economic needs, the project would enhance the property's value to the owners; (2) traffic flow, no change as it would remain a one-family dwelling; (3) drain on utilities, none, for the same reason as (2); (4) alter the character of the neighborhood or have a negative impact on the environment, no, as the dwelling already exists and any changes would still be within the neighborhood's character; and (5) be a drain on the town's fiscal resources, no, in fact, it would likely trigger a property tax increase. Mr. Wise moved to approve the application as it would not be detrimental to the neighborhood and all five criteria in the bylaw are satisfied. Ms. Ivory second, all were in favor. Ms. Kotleski said she would write the decision.

In other business, the board on a motion by Ms. Ivory, seconded by Mr. Wise, voted to accept the minutes of the Sept. 10, 2013, meeting as distributed. The secretary read a one-sentence report of board activities for fiscal 2012, intended for the annual town report. The board dealt with one application in that period, but in the first five months of the new fiscal year, has had 10 applications. The secretary explained that the ZBA routinely asks for a level funded \$2,600 budget each fiscal year, not knowing what caseload to anticipate. The secretary reminded members to turn in conflict-of-interest forms to the Town Clerk's office.

The secretary said the board had received a new appeal application from Claudia Shapiro, regarding the building inspector's alleged failure to uphold the zoning bylaw regarding a Selectmen's entertainment license last summer. The secretary said that, after consultation with the chairman and town manager, a letter was sent Ms. Shapiro explaining why the board would not act on it: entertainment licenses are not under the ZBA's jurisdiction. The secretary noted that the Town Manager has forwarded to Kopelman and Paige a copy of a new **lawsuit** filed by Claudia Shapiro (against the ZBA and four members), regarding the board's failure to hold a hearing on her appeal of the building inspector's failure to take action against an air show being held at the Great Barrington Airport. This suit joins an earlier one from Danny Bell.

On the **Lynn Hutchinson/Brian Schwab** appeal, the secretary reported that counsel Alexandra H. Glover, representing the couple, has asked that the matter be extended a second time, to Jan. 15, as the Conservation Commission has determined an order of conditions but the building inspector has yet to accept them and sign off on his cease order.

On the variance petition by **Stephen Bennett**, the board agreed on a hearing date of Dec. 19, 2013, at 7:30 p.m. at Town Hall, with a site visit the same day at 4:30 p.m.

The meeting adjourned at 8 p.m.

Respectfully submitted

Bernard A. Drew
Secretary

