

Great Barrington Zoning Board of Appeals

Minutes of March 25, 2014, meeting.

Attending the meeting at Town Hall were Chairman Ron Majdalany, Vice Chairman Carolyn Ivory, Kathy Kotleski, Madonna Meagher, Michael Wise and John Katz. The meeting opened at 7:32 p.m. at Great Barrington Town Hall.

The chairman opened a public hearing on the special permit application of **John and Sue Corcoran** for property at 14 Lake Ave. (No. 825-14) to allow construction of a family room. The application was filed Jan. 29, 2014. Legal notice was published in *The Berkshire Record* on Feb. 14 and 21, 2014. The notice was posted with the town clerk and mailed to abutters whose names appeared on a list certified by the Assessors' office. ZBA members made a site visit prior to the hearing.

Attorney Dennis Downing said the R-1-A district has a 25-foot front yard setback requirement. The proposed addition, while not as close to the street as the main house, would still be 22.1 feet from the street. He said the Corcorans for functional access to the family room need the extra distance to install doors from the kitchen and dining area. Mr. Downing said a brief he submitted earlier to the board included letters from several neighbors supporting the application. He said the house was built in 1986. He said a provision in the bylaw for "contextual setback" allowed the building inspector to use an averaging of like homes on the street to allow some encroachment into the front yard setback. In answer to a question, Mr. Corcoran said their lot was originally the rear yard of a property on Prospect Street. Mr. Downing suggested the Gale Decision now allows the ZBA to allow greater latitude in granting a special permit. Town Planner Chris Rembold, in answer to a question from Mr. Wise, said contextual setback has been in the zoning bylaw since 1932. Ms. Ivory said the provision allows neighborhoods to maintain their character.

Chairman Majdalany asked board members if the proposal increased the nonconformity of the property. All said yes. He asked if it was substantially more detrimental. Members agreed it was no more detrimental than neighboring houses. The chairman then ran through a checklist of findings: Social, economic needs served? Neutral. Traffic increase? Not applicable. Drain on utilities? No change. Neighborhood character? Consistent. Effect on natural environment? None. Fiscal impact? Will increase assessed value of the home. Ms. Ivory moved to accept the proposal as it would be beneficial to the homeowners and the neighborhood. Ms. Meagher seconded. They, Ms. Kotleski, Mr. Wise and Dr. Majdalany all voted to approve the special permit. Ms. Ivory agreed to write the findings.

The board opened the public hearing on the two appeals filed by **Lynn Hutchinson and Brian Schwab**, 263 Long Pond Road (No. 826-14). The original appeal was filed Aug. 22, 2013. The ZBA, responding to written requests from Alexandra H. Glover, attorney for the appellant, extended the time period within which it would hold a public hearing to Oct. 26, 2013, then to Nov. 12, 2013, then to Jan. 15, 2014, then to April 1, 2014, all to allow time for the Conservation Commission to issue an order of conditions and for Building Inspector Ed May to consider revising his action under the town's Water Quality Protection Overlay District—Zone A bylaw. The hearing was advertised in *The Berkshire Record* on Feb. 14 and 21, 2014. On Feb. 26, 2014, a second application was presented to the ZBA, this time regarding Mr. May's revised order. Legal notice was published in *The Berkshire Record* on March 7 and March 24, 2014. Notices for both hearings were posted with the town clerk and abutters were notified by mail. The ZBA heard evidence on the two appeals simultaneously.

The chairman announced that, in the absence of the building inspector, the hearing would be continued to a date certain. Nevertheless, with the board's agreement he permitted Attorney Glover and Chairman Andrew Mankin and Agent Shepley Evans of the Great Barrington Conservation Commission briefly describe the issue and the different jurisdictions of the Wetlands Protection Act (WPA) and the Water Quality Protection Overlay District (WQPOD).

Ms. Glover said Ms. Hutchinson purchased a property with dwelling on Long Pond Road in July 2013 and her husband soon cleared trees, shrubs and invasive vegetation from an area going toward the lake that had historically been cleared. Work came no closer than 50 feet of the pond, she said. She said the sellers had never advised Ms. Hutchinson that Long Pond was a public water supply (Housatonic Water Co.). Hutchinson and Schwab became subject to two violations: with the Conservation Commission under the WPA and with the town under the WQPOD. Her clients engaged Mark Volk of Foresight Land Services to map the species removals. The Conservation Commission issued a three-year replanting plan. Mr. May revised his stop work order. But, according to Ms. Glover, it does not specify the violation, it uses the term "encroachment" and it is vague about the specific remedy. She said her client does not want to be in permanent violation. She said there are also issues of what a property owner can do within a WQPOD. She said there has been mowing within the area of violation for 20 years.

Mr. Mankin said the WPA covers land within 100 feet of a waterway or wetland. Mr. Evans said there can be no cutting within that 100-foot buffer. Besides Long Pond, he said, there are two wetland areas on the Hutchinson land that triggered further jurisdiction for the Conservation Commission. The WQPOD covers within 400 feet of the edge of a water supply. Mr. Mankin said there are several zones under the WQPOD. Zone A covers public water supplies. Mr. Evans said the Conservation Commission serves as consultant to the building inspector on these matters. Mr. Mankin said the only permitted uses are those that relate to the operation and maintenance of the public water supply.

With this background, the ZBA decided to continue the hearing to Wednesday, April 30, at 8 p.m. at Town Hall. Members will make a site visit at approximately 5:30 p.m. the same day, following a site visit to 11 Crissey Road. 11 Crissey Road, according to Mr. Rembold, was expected to file a special permit application March 26. That hearing will begin at 7:30 p.m. on April 30. Mr. Rembold said he would provide a map of the Hutchinson property to the ZBA.

On a motion by Ms. Ivory, seconded by Mr. Wise, the board approved the **minutes** of the Dec. 19, 2013, meeting.

The meeting adjourned at 8:20 p.m.

Respectfully submitted


Bernard A. Drew
Secretary