

## Zoning Board of Appeals Minutes, 06/15/2016

### Zoning Board of Appeals Minutes Land Use Meeting Room June 15, 2016

**Members present:** Chair Ethan Berg, (EB); Shawn Leary Considine, (SLC); Clayton Hambrick, (CH); Robert Fuster, RF; Clifford Snyder, (CS)  
**Absent with notification:** Ned Douglas, ND  
**Staff present:** Gwen Miller, Land Use Director/Town Planner (GM); Peggy Ammendola, Land Use Clerk (PA)

**Ed and Jen Culver, 43 King William Road (Map 28, Parcel 50)** Special Permit under the provisions of Section 4.1.1 "Table of Dimensional Requirements", Footnote 7 to construct a new deck following the existing house side line in accordance with a pre-existing non-conformance.

Present were Ed Culver and Scott Pudlow, the Culver's contractor. Mr. Pudlow reviewed the plans with the Board. There is an existing covered porch which will be made into a sunroom. The new deck will follow the existing side line of the house, and will not encroach any further into the side setback. The Building Inspector noted that according to his GIS system, the house is 23' 6" from the side lot line and the set back is twenty five feet. As a result, the Commissioner told the applicant that the ZBA would have to approve.

There were no members of the public present, but there were three letters from abutters, all supporting the project. The writers were as follows:  
Alex and Ellen Lomaglio, 49 King William  
Kraig Brigham, 48 King William  
Dawn and Jay Carberry, 37 King William

SLC made a motion to grant the applicants' request for a special permit to extend the nonconforming line on the west side of the house to allow for the deck as presented. RF seconded the motion and the Board voted to approve 5-0.

**HG October Mountain Estate LLC, 430 East Street (Map 18, Parcel 85), aka Eastover Resort-** Modify an existing Special Permit to allow an accessory structure housing an eco-machine on site under Section 10 "Definitions" of the Lenox Zoning Bylaw

Presenting the application were Stephen Nolan, an architect, and Yingxing Wang, owner of Eastover Resort. It was noted that there was a typographical error was in the notice in that it read that Scott Pudlow was the petitioner. The error was regarded as de minimis as the property was accurately described.

Ms. Wang said that they were confused as to why a special permit was required, but said that the Building Inspector said that it was necessary because the resort was a special use in an R1A zone. The resort applied to the Massachusetts Department of Environmental Protection for the eco-system and a permit has been granted. This application is for the greenhouse structure which is a part of the system. The Board agreed that if the building height exceeded 20 feet or was within the setback, a special permit would be required. This structure will be about 27 feet high, below the 35 feet permitted.

Ms. Wang explained that the system uses a small pump and the treatment is done by tropical plants, resulting in gray water that is better than it is with a conventional septic system. No chemicals are used. Presently Eastover is on a septic system. To use the gray water for irrigation, and avoid putting in the leaching field, further permitting would be required as well as a six month period of testing of the gray water. She preferred to put in another leaching field than to go through that process.

Ms. Wang stated that there are many similar systems in the state with the oldest one in Weston. It is located in the middle of town and has been operational for 20 years.

The Board agreed that what is before the Board is a request for an accessory building and it is immaterial what is in the structure. SLC said that the resort is a grandfathered use, having existed prior to zoning. She explained that it is non-conforming; a resort use in a residential zone and therefore does not have a special permit. She referred to this as "legal fiction". RF did not think that the Board could modify a fictional special permit. A few years ago, the resort applied for a Special Permit for an elevator. This Special Permit is what is being modified. GM said that the building department has been working closely with Eastover to catch up with code requirements, making sure that everything is in good order going forward.

Discussion ensued as to if the Board would be to amending a fictional special permit that must be in place in order for them to be operating as a resort as opposed to special permit given three years ago which has nothing to do with this application.

There was no correspondence.

Attorney Elizabeth Goodman, who represents Kelly Brown and Ted Silverman of 520 East St. who are the next door abutters on the north side of Eastover, questioned the exact location of the proposed green house. She also said that in a review of the files at Town Hall, the only permit located was the 2014 special permit for the elevator. She felt that it was confusing that this request would be a modification of that permit. She would prefer that this be an application for a special permit. She agrees that it is a pre-existing, non-conforming use, a resort in a residential neighborhood which doesn't have a general special permit but said that in the bylaw's table of uses a special permit could be granted if someone wanted to develop a resort on an open field in the R1A district. Attorney Goodman questioned if the board could determine if this proposal would be more detrimental and if more buildings would be constructed. She also wanted to know what would happen if there was a power outage; would there be noise from a generator, would there be lighting or smell or if there are plans for a buffer around the green house. She feels that all of these concerns could be addressed with conditions to a special permit.

Ms. Wang said the building would be south east side of Talley Ho and indicated it on the plan. Mr. Brown is to the northwest. Mr. Brown says that he has a clear view of Talley Ho which is located between his property and the proposed location of the green house. It is believed that the Talley Ho building would block the view of the greenhouse from Mr. Brown's property. Ms. Wang said that the green house would be very close to Talley Ho which is the main site for functions. The concerns expressed by Mr. Brown, noise, smell etc. would be more of an impact to her guests, and would have a detrimental effect on her business, indicating that she would not be putting in this system if odor was an issue.

Ms. Wang understands the neighbors' concerns but stated that the Department of Environmental Protection has already permitted the system after the lengthy process of noticing and a public hearing. Her request presented to the Board is for permission to put in the structure. EB responded that the Board is only focusing on the zoning issues regarding her application.

Ms. Wang pointed out that she applied for a special permit and not a modification. SLC responded that it is not relevant if it is a simple special permit or a modification as the standards are the same. GM suggested that this hearing be continued so that the applicant could have the opportunity to have her attorney present. Ms. Wang stated that this is a simple matter, therefore did not feel that having her attorney present was necessary unless the Board didn't approve her request.

Ms. Goodman pointed out that the application doesn't state the height of the proposed structure. RF responded that this would be a part of the decision. The light, odor and noise could be addressed in the conditions to the permit.

GM advised the Board that she had questioned the need for a special permit when this system is an alternative to a sewer or conventional septic system. If this proposal did not need to have the greenhouse which happens to exceed the limit of 20 feet in height, there would be no need for coming before the ZBA.

The Board agreed to have a site visit on July 6<sup>th</sup>, no earlier than 3 PM. The applicant agreed to have the corners of the proposed building marked as well as a balloon to depict the proposed height. Mr. Brown agreed to provide access from his property. GM will provide a photo from Google Earth of the site and indicate the location of the green house. The hearing was continued to 7:00 PM also on July 6<sup>th</sup>.

**Karen Spies, 12 Maple Street (Map 46, Parcel 44) Special Permit under Section 3.3.3(1) "Nonconforming Structures"** to extend a new addition into the side setback to allow for a mudroom and deck on a pre-existing non-conforming structure.

Designer Mark Smith of Mark Smith Designs presented the application and a site plan of the entire property. The addition to the pre-existing non-conforming home will not increase the non-conformity.

There was neither correspondence nor members of the public present.

SLC made a motion to grant the special permit as presented. CH seconded the motion and the Board voted to agree 5-0.

**Minutes: June 1, 2016** RF made a motion to approve the minutes as published and SLC seconded the motion. The Board voted to approve 4-0-1. CH abstained as he was not at that hearing.

Respectfully submitted,  
Peggy Ammendola