
Zoning Board of Appeals Minutes 3/28/18

ZBA Hearing Minutes

Address: 452 Main Rd

Date: 3/28/18

Hearing began at: 3pm

Members Present: Jonathan Levin, Chair, Stanley Ross, Clerk, Fred Chapman, Susan Cooper and Gary Shaw

Also present: Mark Makuc, Don Torrico, Michael Banner, Mickey Jervas, Steve Moore, Wendy Jensen, Sue Cain, Kay Purcell, Maryellen Brown, Claudia Crane, Pat Salomon, Julie, Jen Brown, Kenn Basler, Lisa Smyle, Rob Tedesco, Project Manager, Joe Baker, Mark Volk, Colleen Johnson

The hearing began with Jonathan Levin, Chair, explaining the hearing process and then Stanley Ross, Clerk, read the legal notice (which was posted for 2 consecutive weeks in the Berkshire Eagle and at the Town Hall) and letters from the Planning Board, Conservation Commission, Board of Health, Building Inspector and interested parties.

Jon clarified that the original letter from the Building Inspector stated that the ZBA was to consider both a special permit and variance request however upon further review the Building Inspector determined a variance is not necessary for the retaining wall. A special permit is required for the other items listed in the application, only one of which is to be determined by the Zoning Board of Appeals.

Jon also addressed the fact that the applicant still needs to satisfy the Conservation Commission and Planning Board in addition to the ZBA. The ZBA is not required to make a decision today and condition their decision or if they are not comfortable may wait on the determinations of the other 2 Boards.

Mark Makuc and the project manager have confirmed that if any changes are made to the proposed plan the grant monies will be lost (\$1.8million). Mark then provided a history of the building and why the building committee chose to stay in this location rather than the other 2 sites that were considered.

Parking: The MLBC has a requirement of a minimum of 10 spaces in order to receive the grant monies. The bylaws require 15 spaces which is one of the things they are seeking relief for.

Fred thought that applying the commercial standard for parking spaces was wrong, residential was not applicable and if we don't have something in the bylaw that addresses municipal parking then we shouldn't even consider this as an issue; regardless this is the Planning Board's purview not the ZBA's. Don clarified that the parking determination was actually consumer service not commercial.

1,654 square feet of the proposed Parking Area will be within the 75ft area set back from Konkopot Brook, and 173 feet of new building constructions will be within 75 feet of the set back from the Brook..

The library has approximately 10k visits per year and the amount of people in the building at one time when there is an event can be over 60 people.

Steve Moore and Wendy Jensen, abutters spoke in favor of the project.

Susan inquired about the precautions taken with the proposed impervious surfaces to minimize runoff into the river. Mark Volk, Engineer spoke to this. The storm water system proposed will require ongoing maintenance by the town.

Kay Purcell commented that having parking next to the library would be a huge improvement and make it safer for all those visiting the library.

At this point the Board closed the public portion of the hearing and began their deliberations to address the violation of 7.2.4 of the bylaws regarding parking and the 75ft mean high water line. There is an exception that allows the ZBA to grant a special permit if

compliance with this section of the bylaws would cause unreasonable difficulty on the applicant rather than the usual measures the Board has to make a determination on.

Gary felt that the library had done everything possible to comply with the bylaws as best they could and to impose the bylaws requirements would cause unreasonable difficulty. Stan concurred and added that town meeting overwhelmingly approved this project at town meeting.

Following documents were submitted to the Board:

1. Application dated February 5, 2018;
2. Original Site Plans dated 11/20/17 and revised Plans dated March 1, 2017;(Exhibits A-1 and A-2)
3. Publication, Letters and Comments read into the public record (Exhibit B)

The Board made the following findings:

1. The property is in the Business District and abuts the old General Store, Konkapot Brook and a multi-unit condominium complex.
2. The proposed construction is conforming under the by-law, except for a portion of the new construction, parking and impervious areas all of which are within 75 feet of the mean high water line of the Konkapot Brook, and thus subject to Section 7.2.4 of the By-Law.
3. Applicant seeks a Special Permit to construct the portion of the new construction, parking and impervious areas within 75' of the Brook.
4. The Lot is an irregular shaped lot, with one side abutting the Brook. The property slopes down from the Condominium abutter to the old General Store abutter. Business parcels on the other side of Main Road do not abut the Brook and do not have the same slope to their lots, and the Business parcels to the west (Old General Store side of the subject parcel) are relatively flat sloped in the immediate vicinity. The proposed parking, provides safety for library users, as they will not be required to park on Main Road and walk up to the library, and handicapped access to the new proposed Library.
5. The incursion of the expanded building into the 75' Brook set back will amount to approximately 173 sq. feet, and the parking and impervious areas in excess of that permitted by the by-law is 1654 sq. ft, and both incursions appear to be the minimum the applicant can do and still provide a suitable library facility, reasonable on-site parking and handicapped parking and access at the site. Strict compliance with Section 7.2.4 would cause unreasonably difficulty on the applicant. The By-law requires the Board to apply this distinct test in this circumstance and the Board need not make a determination on the special permit application on the basis of the more standard Special Permit test as set forth in the By-law and applicable law.

The Board set the following conditions:

1. Applicant must obtain a parking Special Permit and Site Plan review approval from the Planning Board, and satisfy the Conservation Commission and obtain an Order of Conditions. Any substantive changes to the plans approved by this Board in order to satisfy the requirements of the Planning Board or the Conservation Commission shall require that Applicant seek further relief from this Board.

A motion was made to grant the project as proposed with the conditions. The motion was seconded and approved unanimously.

DECISION: The Special Permit for the proposed project was approved by a vote of 5-0.

The hearing concluded at 4:27pm

Submitted by
Melissa Noe, Administrative Assistant