

June 19th, 2019
ZBA Minutes

Members Present: Bill Martin, Dick Stover, Wendy Laurin, Ina Wilhelm, Peter Killeen, Howard Greenhalgh

Also present: Elisabeth C. Goodman, Town Attorney

Community Members: Edward Hoe, Christian Hanson, Ron Veillette, Roger Manzolini, Steve Traver, Eric Smith

Meeting called to order 7:07

Special Application for 590 Caanan Road. Site visit was at 6 pm.

Special Variance for 81 State Road. Site visit was 6:30 pm.

Minutes from the May 29, 2019 meeting.

A motion was made to accept the minutes. It was seconded and approved.

A motion was made to approve the draft of Scorpa Decision.

It was seconded and approved.

It will be delivered to the Town Clerk and there will be a 20 day appeal once it is filed.

Special Permit Variance/Appeal

Edward Hoe and Lisa Bouchard

590 Canaan Road, Map 406 Lot 0026-0000.0

Public Hearing was opened on the application.

Short term rentals at the property.

Exhibit 1- Application –April 23, 2019. Received by Town of Richmond, April 24, 2018.

Notice to Boards and Commissions was sent on April 29, 2019.

Abutters and abutting towns notified May 3, 2019

Exhibit 2 - Public Notice – May 3, 2019

Board of Selectman –Had no comment

Planning Board – Had no comment

Exhibit 3 - Conservation Committee Letter than confirms no wetland on property but did indicate that it might be above jurisdiction of Scenic Mountain Act so if there is any building expansion additional permitting may be required.

Published in Berkshire Eagle on May 28 and June 3, 2019.

Petitioner: Edward Hoe presented the request.

Ron Veillette from the Conservation Committee noted that it is not just the buildings in terms of the scenic mountain act but also other things like tennis courts would have to be approved.

This permit does not have any changes to structures.

Ed Hoe spoke

Request for a Short Term Rental as defined in the Zoning By-Laws

Property is 7 acres at 590 Canaan Rd. The house is significantly set back from the road.

House is approximately 4500 square feet. It has four Bedrooms, 3 ½ baths, and a mother-in-law apartment which is one bedroom and one bath.

Intention is to rent the property in total to one tenant. No individual room rentals. Will have total of 5 bedrooms (includes main house and mother in law apartment).

Bill Martin asked if anyone was in favor or against

No one spoke in favor or against.

Public Hearing of this application is closed at 7:15

Short Term rental definition in By-laws

Rental of a dwelling, or rooms within a dwelling or rental of an accessory structure or rooms within an accessory structure by an absentee owner or investor owner where the rental period is 1 to 30 nights and while the owner is not dwelling on site, this definition does not apply to an owner occupied site

Bill asked if the property is owner occupied. Ed Hoe replied no.

Special Permit

Section 4.8 A 13 which requires special permit which has 3 bullet points

1. Passes an annual safety inspection by the building inspector and the applicant is to arrange that directly.
2. Business must comply with all town regulations and by-laws and all Commonwealth of Massachusetts law including all health and safety regulations. It is up to the applicant to follow these rules.

3. Our jurisdiction which is the Board of Appeals will find that the lot size, building structure, off street parking and number of occupants and other facilities and equipment are adequate for intended use and that the business will not be detrimental to the neighborhood.

In addition, will need to follow the typical special permit findings and there should be conditions applied.

Opened for discussion with the Board Members to see if the property fits section C, parking and other issues and other items that should be discussed in detail.

Ina

Should we discuss number of people allowed there during the day?

Bill

So we might want to impose some conditions with section C.

Reasonable to set a limit of 10 Adult (over 18) overnight. Kids are fine.

Parking is based on the size of the lot and the length of the driveway so it would not be a burden on the property to allow five cars.

The use may be modified so it won't be detrimental to the neighborhood. Limits on the number of guests at any time would have an upper limit.

Dick

Only rent to adults. Is there anything to prevent kids just staying there?

Bill

Could require an adult on property. Minimum of over 18 age but that could a problem with college students.

Ina

With Airbnb there are certain restrictions that have to be followed.

Ed Hoe

It is his intent to have no events there.

Bill

So that the making sure the requirements of C are complied with can impose reasonable conditions that were discussed.

Upper limit of number of people on property

Amplified music with a time limit that is more restrictive than the town by law noise limit.

No outside Fires

Don't want it to be a party spot.

Wendy

Question on cars during the day.

Ed Hoe

Amplified noise

This is reasonable since if neighbors or on the road can hear it, it would be pretty loud.

Bill

Owner could put more conditions on rental but doesn't want town to micromanage.

Dick

What if a renter wanted a wedding, would they have to come to town to get a special permit.

Bill

This permit wouldn't allow it.

Special Conditions

1. Limit of 10 adults (over 18) overnight. Based on the number of bedrooms, size of structure and lot size.
2. Upper limit of 25 people on premises based on size of lot which would not create a situation that the neighbors would be offended by.
3. Parking. Based on large driveway and lot size - 5 Cars Max at night. 15 during the day.
4. No outside fires
5. No amplified outside music after 9pm

Bill asked for a motion that the ZBA finds under section C that the lot size, building structure, off street parking and number of occupants and other facilities and equipment are adequate for proposed use and that the operation of the business will not be detrimental to the neighborhood.

Motion was moved, seconded and approved.

Also had to go through 6.3.4 to make sure that the ZBA make specific findings.

1. Proposed use is in compliance with provisions and requirements of the by-laws and harmony with its general intent and purpose.

2. That it is not undesirable or does not substantially derogate from the public good or convenience at the proposed location.

Note: House is isolated and modified by the conditions.

3. Will not be detrimental to the use or future character of the neighborhood

Note: Very rural area and conditions approved

4. Will not create undo traffic congestion or unduly or impair pedestrian safety.

5. Lastly will not overload any public water or drainage, etc.

For the 5 requirements

Motion that the property is in compliance with the 5 findings.

Seconded and voted that the property is in compliance.

Formally impose the conditions.

Motion to Condition the second permit.

Seconded and approved.

Permit is allowed

Second petition

Special Permit/Variance Appeal

81 State Road, Richmond, MA

Variance related to the setback requirement under the new Farm Function zoning bylaw.

Christian and Donna Hanson and Primadonna LLC

Map 403.0 Lot 0000.0

403.0, Lot 1000.0

RA-C

Reduction in setback.

Exhibit 1 Petition May 9th, 2019 received by town on May 11, 2019

Notice to Board – May 15, 2019

Abutters - May 28, 2019

Abutting Towns - May 28, 2019

Berkshire Eagle - June 3 and 10, 2019

Exhibit 2 –Legal Notice

Agenda – May 28, 2019

Planning Board - voted not to comment

Selectman - voted not to comment

Exhibit 3 Conservation Committee letter June 11, 2019 - Stated No jurisdiction

No written comments from any other parties

Exhibit 4 -June 15, 2019 comment from applicate in a letter which was circulated to the board.

Before opening public comment

Bill talked to Beth Goodman, the Town Council before the meeting.

May not be necessary for ZBA to act on it. ZBA may want to consider it and act on it.

He believes that it is not within the ZBA's authority.

There is a substantial issue that should be deferred back to the selectmen. Depending on their view they can either rely on the what the ZBA decides or decide 81 State Road didn't need to apply for a variance in the first place.

Beth

Special Permit Application is scheduled for July 15th.

Bill

Procedural process

Farm Function new section under the zoning by-law.

Definition

Any event or concert held on a farm referring to the town bylaw as to definition of a farm including to but not limited to weddings, family celebrations for which a fee is paid, concerts, promotional events and other activities held on a farm of sufficient size supplement farm income in order to promote the sustainability of farming and enhance our community and preserve open space.

Farm Function By-law creates the special permit granting authority to be the selectmen for a farm function. The selectman will decide whether or not the proposed activity is a farm function and whether or not that farm function meets the criteria for a special permit.

This is not the role of the ZBA in this case.

By-law that talks about the requirement that the selectmen would have to adhere to has the following requirements.

Talks about the use of a farm including land buildings but not limited to structures to the purposed of holding farm functions referring back to the definition provided by the list of A to E items.

The only one that applies here would be B where the sides, rear and front setbacks of the function would be a minimum of 100 feet.

Bill believes that selectman referred to ZBA because the parking lot is closer than the 100 foot setback. Bill doesn't believe that it is parking lot but the function within the winery building itself that is set back from the 100 foot.

The closest that a function we be from a side yard is a minimum of 150 feet. In his view

The function in his view is more than a 100 feet from the property line and the bylaw does not specifically require that the parking lot be a 100 feet.

Bolstered by the fact that the by-law has a secondary requirement which is distinct from the special permit which is in section 6.6 which talks about parking. That section says that any business activity an applicant has to submit a site plan for approval by the selectman listing a bunch of criteria that has nothing to do with the setback.

In that context the parking is within the purview of the selectman.

Beth

The parking would still need to comply with the normal setback for zoning.

Bill

Yes

Beth

35 Feet

Bill

That is with the selectmen's site plan.

He thinks that the selectman saw the parking plan and that it is closer than a hundred feet to the side yard and because of the view that they had to take a pause sending it to the ZBA before they could make a determination on the site plan.

Beth

Thinks it was from the applicant.

The selectman asked the applicant if they were meeting the setback and the applicant asked for permission put the parking feet less than a 100 feet. So the applicant determined that they were going to ask for a variance.

Bill

ZBA could go forward if the applicant wants to on the variance issue. But he thinks that the selectman can decide whether it can be closer than a 100 feet or could say that the parking could be screened, etc. But the selectman could decide about the parking because it is separate from the farm function.

Bill

Said the ZBA will leave it to the applicant to decide whether to go forward and the ZBA could decide on the variance request and it is either meaningful because the ZBA granted it and theoretically have decided or the ZBA could deny it and it could be moot.

Beth said that it is not moot.

But whatever is decided will have to go back to selectman for the special permit.

Bill

If ZBA decides not to approve, he thinks that the selectman can authorize a parking lot.

Roger asked if driveway and parking lot is 35 feet.

Beth (several people were talking so not sure but think she said there is no setback for a driveway.)

There is a separate section in the bylaws

Roger pointed out that other parking for other areas is right on the highway. He doesn't see issue with the parking on Route 41.

Beth

Section 5.1

Any building used for dwelling purposes and any building or structure housing a permitted principle use including any use authorized by a special permit shall be so constructed and located on lot to meet the minimum requirements of lot area, frontage, width front and side and rear yards.

Roger

Are the driveways use?

Bill

Doesn't think driveway is a structure and Beth agreed. She said it was a use

Beth

6.7.3 Bylaw and it a RA-C location.

Bill

What does the selectman's plan show now?

Roger pointed out some more parking areas that are close to the road.

Peter

Believes most of those were grandfathered.

Roger agreed with that.

Beth

Still looking at by-laws for driveways and it said for common driveways that there needs to be a 25 foot setback from the driveway of origin and no common driveway is 100 feet. Driveways can have a setback.

This is 6.7.3 in the bylaw and it does it specify a setback on driveways.

6.7 doesn't specify a setback so could interpret the bylaws by saying there is no setback for parking. She believes it is discretionary with the selectman.

Bill thinks according to 6.6 it should reside with the selectman to make

Beth pointed out that it has to be adequately size and suitably screened from abutting use.

Bill is comfortable that the applicant could go forward with the variance or not. But thinks that the applicant should go back to the selectman with the site plan and the selectman will need to decide whether it meets the requirements of the site plan for section 6.6.

46:16

If the applicant wants to go forward with the application they can but Bill believes that it is within the purview of the selectman.

Roger go through negatives or positive. If ZBA denies what happens?

Beth said it is denied. A denial is a denial. It has legal effect.

Applicant has asked to waive bylaw and if the board says no it is no.

The applicant has to decide if he wants the board to act or withdraw.

Bill.

If the board is asked to act on a variance and deny it is going to muddy waters that will create confusion in the future. If the Board of Selectman and Town Counsel accept the view of the ZBA that the application is not necessary there isn't a requirement for the 100 feet the applicant can withdraw the application and Selectman can decide.

ZBA could decide to take vote that selectman can then decide but there is no standard to be varied from.

The standard for parking is in 6.6 and there is no dimensional requirement. The Selectman can decide.

Beth

If ZBA votes on this, it would be a no for the application.

Bill

Applicant needs to decide to withdraw or ZBA will vote.

Christian Hanson (the applicant), the reason he is that the one word in the bylaw here the farm function is on land and there will be a tent, parking and building.

Bill

If Christian and his counsel think they need the variance than ZBA should go forward.

Christian asked if could be delayed until July 10th Selectman meeting

Beth

If that is a continuation of the special permit and approval of parking need to give them a site plan.

Christian

Selectman have one.

Time for next meetings to discuss.

Bill

Need to continue until after selectman meeting. Proposed July 31.

Function is defined as a bunch of things but not the parking.

Beth there is a separate item on parking in the by-laws so might need a special permit.

Bill

Have to have a farm function permit for the activity and an off-site parking permit.

Beth

Have to get approval of site plan for parking under 6.6.

Bill

There are two separate things for the Selectman to approve the function and the parking based on the site plan.

Bill made a motion to continue Balderdash application until July 31st at 7.

Exhibit Four –Was the request to continue application.

Bill opened public hearing at 8:05 and to continue on July 31st at 7pm for Primadonna LLC at 7.

Motion was seconded and approved.

Ron Villette have comments on location of parking and will send it to ZBA as a citizen.

Bill said starting construction on parking was jumping the gun.

Third Agenda

Informational Meeting with Trustees of Fire Department

Came to the meeting for advice.

Brand new structure there is a parking lot there now.

Trustees of Fire Department own the property.

Showed site plan. Want to put it next to the pavilion.

Want to put building within 20 feet of Town Line

Have not been to building inspector but in front of conservation committee.

Zone is Commercial 1.

Section 3

Beth

In Com 1 setback is 20 feet.

Eric Smith it is 4 feet from the town property line and a 10 feet setback on front. Not meeting side and front.

Bill said would probably need variance.

Eric also thinks they probably do but thinks that none of the other building are within the right setbacks. Are those grandfathered?

Beth said that it doesn't help.

Trustees of Fireman own property so it is private and own the building. Trustees are non-profit. Charge rent to Town of Richmond to house equipment and fire department activities.

Doing this because of being maxed out with existing building. There are only inches between vehicles. Takes more time to move out equipment. Want to split equipment between two buildings.

Gives more space and improve response times. Trying not to go to town to ask for a new building as it would cost a lot of money. Could add onto it but to bring it up to building codes would not be cost effective.

Charge the town a monthly rent. Would not lease the new building to the town.

Beth pointed out that if they did lease it would permit it as municipal building.

There is other town equipment parked right now on where the building would go. The Fire Department does not charge rent to the town to use the land.

Beth if lease to town would have permitted use. Beth looked at permitted uses according to By-laws.

Light Industrial Warehousing use might be a possibility.

Bill it is a non-profit.

Building needs a variance because of setbacks

Beth

Might also need special permit because of use.

Dick it is not a warehouse but a garage.

Beth nothing in by-laws about garage

Wendy

Light industrial use could be storage.

Beth

Industrial use is the closest.

Question on municipal use

Beth

A municipal use owned or operated by a town agency is allowed in all districts. If not that, light industrial use is allowed in com 1 and 2 by selectman.

Bill

Question if it could count as expansion of a nonconforming building.

Beth

But it is an empty lot.

Discussion on what could be expansion

Bill-

The board might authorize a use or activity not otherwise permitted in a district

7.2.3 use variance

7.2.2 building variance

Beth

So could give them a variance.

Bill

Come to ZBA and ask for a variance for use and dimension and because of unique property.

Beth agreed.

Unique property and need a firehouse. Has to be there.

Bill will touch base with Mark Volk at Foresight to see if can do Fire Station House application. They are already doing the Town Garage.

Beth

Question about if ZBA can do special permit.

Conservation Committee

Ron gave a permit to Town Garage (shed behind Post Office).

Beth

Town Garage - Taking down an existing building and rebuilding.

Preexisting, non-conforming structures maybe extended, altered or changed by special permit by the ZBA.

Bill

Have Town Garage and Fire Department on 31st.

One variance and one special permit

Town get notice out.

Asked Eric when like to start. Hopefully this fall.

Beth suggested that they contact building inspector to confirm they agree.

Motion to adjourn meeting.

Meeting closed at 8:30