



Zoning Board of Appeals
Minutes of Meeting
5/4/2021
7:30PM
Virtual (Zoom) meeting

Board of Appeals members in attendance: Ken Kozik, Adam Hoffman, R. Scott Robb
Staff Present: Kristen Guichard, Planning Director

1.0 Opening

Chair, Ken Kozik opened the meeting at 7:34PM. He read the guidelines for virtual meeting.

He called the roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye

1.1 Approve previous meeting minutes

At 7:36 PM, Adam Hoffman moved and Scott Robb seconded to approve the minutes of April 6, 2021 as written. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

II. New and Special Business

1. Public Hearing for ZBA21-04 - 20 Parker Street Variance Application

Ken Kozik opened the hearing at 7:40PM.

The Applicant and owner of the property (Cucurbit Farm), Heidi Nelson presented her application to the Board; the farm would like to construct a permanent covered structure on the property to shelter the produce that they sell at the farm stand. She noted that vegetables cannot be stored in the sunlight, so a shelter is required, and they have expanded their sales outdoors due to COVID and foresees outdoor sales being a necessity for the farm into the future.

Ken Kozik asked how the application met the criteria for a variance.

Heidi explained how the property's topography limits the options of where the covered structure could be located. Heidi then explained how the property's topography was unique to the zoning district in the neighborhood.

Public Comment:

- Lou York and Eileen 7 Brookside Circle – Stated they were fully supportive of the application and noted that the topography at the farm is the only place around where it goes down to the brook.

- Lori Krinsky – Agreed with the topography on the site and advocated for the approval of the requested variance.
- Tom Lemire – Noted variances for structures and lot, and his support for the application.
- Lucy Kirshner – Spoke in favor of the application and agreed with the observations of topography on the site.

Adam Hoffman moved to close the public hearing at 8:19PM. The motion was seconded by Mr. Robb and was approved by a unanimous roll call vote. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

All Board members agreed that the variance met the mandatory findings of Section 10.5.5 regarding the topography hardship on the lot.

Board Comments:

- Members agreed that the lot was unique due to its topography.
- That the topography constraints of the lot prohibit the business owner from constructing the desired structure elsewhere on the lot.
- Regardless of COVID, the business owner expressed that the outdoor sale area necessary for her business operation and would otherwise cause a hardship.

Adam Hoffman moved to approve the variance with the following conditions:

- Be built substantially as shown in the plans submitted to the board on March 4, 2021.
- In compliance before any building permit is issued with any of the outstanding issues identified in the May 5, 2021 ZBA meeting folder. Address all issues satisfied to the town.

The motion was seconded by Scott Robb. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

Scott Robb offered to write the decision.

2. Public Hearing for ZBA15-05- 3 Nash Road Special Permit Amendment Application

Ken Kozik opened the hearing at 8:30PM.

The Applicant and owner of the property, Tom Heffernan, presented the application to the Board; he requested an increase in the size of the structure by 21.6% to accommodate a one-car garage with office space above and a first floor mudroom. He contended that the addition was consistent with the homes in the neighborhood and that the addition complies with all setback requirements.

Board members asked for clarification on the size of the addition.

Board members asked, and Kristen Guichard explained, what a land disturbance permit is and the thresholds that require submission of an application.

Adam Hoffman moved to close the public hearing at 8:45PM. The motion was seconded by Mr. Robb and was approved by a unanimous roll call vote. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

All Board members agreed that the special permit met the mandatory findings of Section 8.1.5.

Board Comments:

- Board members agreed that the proposed addition did increase the nonconformity, but that it is not substantially more detrimental to the neighborhood than the existing structure on the nonconforming lot.
- Board members determined the addition and would meet all the required findings of section 10.3.

Adam Hoffman moved to approve the special permit with the following conditions:

- Be built substantially as shown in the plans submitted.
- That the Applicant complete a land disturbance permit if applicable.

The motion was seconded by Scott Robb. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

Adam Hoffman offered to write the decision.

3. Public Hearing for ZBA 20-10- 62-64 Pope Road Special Permit Amendment Application

Ken Kozik reopened the hearing at 8:53PM.

Lou Levine provided an overview of the additions added that are being requested in this amendment application. He noted the most recent letter and showed a landscape plan the Applicant proposed to mollify the view of the additions from the street.

In viewing the renderings and recent pictures of the house, Board members noted that the house showed siding where it previously was wrapped, and questioned the Applicant, Leo Bertolami, why he had continued to finish the construction when he was issued a stop work order. Lou Levine, agreed that last time clapboard was not on the entire house.

Lou Levine noted the modifications should have been done after an amendment, and apologized again on behalf of the Applicant. He asked that the Board focus on the findings of the Bylaw that it is not more detrimental or more non-conforming and argued that the additions are an improvement along with the landscaping.

The Applicant stated that the Building Commissioner told him he could finish siding and make it weather tight.

Adam Hoffman asked Kristen if the Building Commissioner allowed for construction to continue, Kristen Guichard, stated she was not aware of any further guidance given by the Building Commissioner other than the stop work order.

Ken Kozik noted that the stop work order was violated on multiple occasions by the Applicant after he was repeatedly told to stop work. He noted concern that the Applicant only asked for the amendment because he was caught. The Bylaws and Master Plan does not condone situations where someone violates the bylaw multiple times, and continues to violate the bylaw during the amendment hearing.

Ken Kozik noted the Applicant expanded on the special permit claiming it was a mistake after being caught; after the Applicant admitted it was a mistake and ordered to stop, he continued to build. He stated that his opinion, the Bylaws and the Master Plan does not condone this situation; if the Board focused solely on Section 10.3.5, the mandatory findings—he did not think the Master Plan envisioned this, he did not think the Bylaw allows for granting of special permits to rectify zoning mistakes or violations.

Adam Hoffman question the intent of the landscape plan.

Lou Levine stated the additional landscaping was suggested as a way to mollify the view of the additions from the street.

Adam Hoffman moved to close the hearing at 9:28PM. The motion was seconded by Scott Robb. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

Scott Robb noted this was a difficult situation and that the Applicant's request

Adam Hoffman expressed concern that approving this request would send a message that anyone can build what they wish and then come ask for an amendment. He also noted that the Applicant continued to violate the stop work order.

Ken Kozik expressed concern that the Applicant continued to build multiple times after being told to stop, and that the Bylaw and Master Plan does not say anything about building beyond what is allowed and then going to ask for an amendment or permission after the fact.

- 8.1.5 - Board members agreed that the proposed addition did not increase the nonconformity, but that it is not substantially more detrimental to the neighborhood than the existing structure on the nonconforming lot.
- 10.3.5 - Board members determined the application was not consistent with the Master Plan and was not in harmony with the purpose and intent of the Bylaw.

Adam Hoffman moved to deny the special permit amendment. The motion was seconded by Scott Robb. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

Ken will write the decision.

Kristen Guichard noted the next Board meeting would be on June 1, 2021.

Adam Hoffman moved to close the meeting at 9:47PM. The motion was seconded by Scott Robb. The Chair called roll. Adam Hoffman – Aye; Scott Robb – Aye; Ken Kozik – Aye, the motion carried unanimously.

Respectfully Submitted,
Kristen Guichard
Planning Director and Zoning Enforcement Officer

Documents Used at the Meeting:

doc.acton-ma.gov/dsweb/View/Collection-13045

<http://doc.acton-ma.gov/dsweb/View/Collection-13466>

[http://doc.acton-ma.gov/dsweb/Get/Document-76249/Special Permit Application \(3 Nash Road\).pdf](http://doc.acton-ma.gov/dsweb/Get/Document-76249/Special%20Permit%20Application%20(3%20Nash%20Road).pdf)

[http://doc.acton-ma.gov/dsweb/Get/Document-77397/3 Nash Rd%2c hearing 15-05 Amendment 1 decision.pdf](http://doc.acton-ma.gov/dsweb/Get/Document-77397/3%20Nash%20Rd%2c%20hearing%2015-05%20Amendment%201%20decision.pdf)

[http://doc.acton-ma.gov/dsweb/Get/Document-76564/15-05 - 3 Nash Road Planning Dept Memo - Amendment.pdf](http://doc.acton-ma.gov/dsweb/Get/Document-76564/15-05%20-%203%20Nash%20Road%20Planning%20Dept%20Memo%20-%20Amendment.pdf)

<http://doc.acton-ma.gov/dsweb/Get/Document-76251/AWD.pdf>

[http://doc.acton-ma.gov/dsweb/Get/Document-76331/Engineering Department Comments.pdf](http://doc.acton-ma.gov/dsweb/Get/Document-76331/Engineering%20Department%20Comments.pdf)

<http://doc.acton-ma.gov/dsweb/Get/Document-76565/Health Division Comments.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76250/Natural Resources.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76851/6464 may meeting materials2 4.29.21.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76852/Letter to Acton Zoning Board of Appeals 4.29.21 - Country Properties LLC.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76578/62-64 Pope Road Special Permit Amendment 1 Continuation.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76438/62-64 POPE ROAD BASEMENT STORAGE.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76404/62Pope Rd L1 Planting Plan.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76379/As-Built Plot Plan.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76380/Sketch Plan.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-75887/Special Permit Amendment Application.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76437/ 21-1 62-64 Pope Road Special Permit - Planning Memo Revised 4-6-21.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76354/ 21-1 62-64 Pope Road Special Permit - Planning Memo 3-31-21.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76275/AWD Comments.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-75976/Engineering Department Comments.pdf>

http://doc.acton-ma.gov/dsweb/Get/Document-76356/IMG_8721.jpg

http://doc.acton-ma.gov/dsweb/Get/Document-76355/IMG_1743.JPG

<http://doc.acton-ma.gov/dsweb/View/Collection-13501>

<http://doc.acton-ma.gov/dsweb/Get/Document-75588/Application.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76345/Exhibit A - Letter to Acton Board of Appeals 2.1.21 with attachments.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76346/Exhibit B - Michael Fabbiano's 2021-03-24 Solar Review Memo - Michael Fabbiano.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76347/Exhibit C - Section 5.3.5.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76348/Exhibit D - Office Park Districts.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76349/Exhibit E - Town Meeting Vote.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76042/Alissa Nicol Comments.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76403/Jim Snyder-Grant Comments.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76359/21-1- 100 Nagog Park Variance Planning Memo.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76424/Andrea Becerra - Sustainability Director.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-75609/Health Comments.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76375/04-06-21 ZBA Agenda.pdf>

<http://doc.acton-ma.gov/dsweb/Get/Document-76376/DRAFT 12-16-20 Zoning Board of Appeals Minutes.pdf>