

# Town of Ipswich

## ZONING BOARD OF APPEALS

### Meeting Minutes February 17, 2022

Pursuant to a written notice posted by the Town Clerk and published in the Ipswich Local News, a newspaper of general circulation; the Ipswich Zoning Board of Appeals held a special meeting on Thursday February 17, 2022 at 7:00 p.m. remotely via Zoom Video Conferencing, in accordance with the Governor's 3.12.20 Order suspending provisions of the Open Meeting Law to promote public health and safety and social distancing during the public health emergency.

Members tuned in were Chair Robert Gambale, Rob Clocker, Elliot Posada, Julia O'Leary and Samuel Robertson. Also, Administrative Assistant Marie Rodgers. Benjamin Fierro was not present with prior notice.

Video recorded by the host.

#### Citizen Queries:

**28 Skytop Rd.** Allison & Jeffrey Duback request an appeal of the Building Inspector decision pursuant to section XI.G, or in the alternative, a special permit pursuant to II.B.3 and XI.J of the Zoning Bylaw, to remove, repair and replace the existing 12' x 22' deck and proposed screened-in covered porch; located in the Rural Residential B District (RRB) and shown on the Ipswich Assessor's Map 15D, Lot 094.

Chairman Gambale read the legal notice and opened the public hearing at 7:14 p.m. Jim Bone, Building Inspector was present. Petitioner Jeff Duback was present to explain the request to screen in the existing 12' x 22' porch. Chair reviewed the history of the town's zoning as it related to uncovered porches. The required setback is 20-feet; the request is 12.5 feet.

The Petitioner explained in 1988 the previous owners pulled building permits and built the existing deck. It's classified as a legally existing non-conforming structure. The footprint will not change, it will not be a living space, nor a three season's room. The roof height is well below the requirement. He submitted letters of support from neighbors. Chair recognized Jim Bone the Building Inspector who spoke to zoning bylaw changes. In 2011 only buildings with a roof had to comply with zoning dimensional controls. The deck, without a roof, was permitted in 1989 allowing the deck to be built into the setback. Now it become a part of the primary structure and both buildings and structures have to comply. He indicated that he sent the Petitioner to the ZBA, because he felt it was important for abutters to be heard on this proposed change.

The Board reviewed the criteria under sections II.B.3.

#### MOTION:

Mr. Gambale moved the Board find pursuant to section II.B.3 it has the authority to take action. Mr. Posada seconded. The motion passed with a roll call vote; Gambale, yes; Clocker, yes; Posada, yes; and O'Leary, yes.

The Board discussed the Zoning Protective Bylaw and the deck classified as legally existing non-conforming.

#### MOTION:

Ms. O'Leary moved the Board find re-construction of the deck as covered screen in porch is not more substantially detrimental to the neighborhood. Mr. Posada. Seconded. The motion passed with a roll call vote; Gambale, yes; Clocker, yes; Posada, yes; and O'Leary, yes.

There were no objections from abutters or others.

Mr. Gambale read letters of support into the record. (hereby incorporated). The letter from Proprietors of Great Neck Inc. supported the proposal, subject to removal of old fencing debris left behind the new fence. Discussion took place with the Petitioner who indicated it was not on his property. When asked about the shed on his property it was permitted and moved and complies with proper setbacks.

Discussion took place concerning the special permit criteria and procedure for an appeal of the Building Inspector decision pursuant to section XI.G. The proposal will allow residents to enjoy his deck, no fiscal impact on town, no traffic flow or parking issues, the deck is existing and will not impact utilities. The Board made the finding that the proposal is compatibility with neighborhood character and proposal will have no negative impacts on the natural environment.

**MOTION:**

Mr. Posada moved that the Board has made the findings 1-6 as set forth in section XI.J that the special permit criteria have been satisfied. And the application and materials are sufficiently and credible meets the intent of the bylaw Mr. Robertson seconded. The motion passed unanimously with a roll call vote; Gambale, yes; Clocker, yes; O’Leary, yes; and Posada, yes.

**MOTION:**

Ms. O’Leary moved the Board find there will be no adverse effects and will benefit the homeowner. Mr. Robertson seconded, the motion passed unanimously with a roll call vote.

**MOTION:**

Mr. Gambale moved the Board not overrule the Building Inspector’s decision and not act on the violation order; that the Building Inspector agree with the ZBA decision of a special permit negates Building Inspector’s actions. Ms. O’Leary seconded. The motion passed with a roll call vote; Gambale, yes; Clocker, yes; Posada, yes; and O’Leary, yes.

The deck can be rebuilt with a screened in porch and roof as presented in the application.

*Documents and exhibits used by the Appeals Board:* Petition and supporting documentation. email dated 2.16.2022 from Jim Bone Building Inspector; email dated 2.6.2022 from John Arthur Balch, Pres/Treas Proprietors of Great Neck Inc. letters of support dated 1/10/2022 from 26 Skytop, Tehee; 31 Skytop, Turner; and 30 Skytop, Cavatorta.

**194 High St.** Douglas Plant & Susan Usovicz request a special permit and/or variance pursuant, but not necessarily limited to, Sections II, V. and XI.J and K to allow a second dwelling unit to remain at 194 High Street, which is located in the Highway Business District (HB) and shown on the Ipswich Assessor’s Map 30A, Lot 012. Chairman Gambale read the legal notice and opened the public hearing at 7:42 p.m.

The Petitioners were present to explain their request to allow the second dwelling unit at 194 High Street to exist lawfully. Discussion took place regarding the ‘use’ history of the dwelling. Jim Bone, Building Inspector related his findings. Discussion took place regarding definitions in the zoning bylaw, this building should be classified as Multi Family Use with (1) commercial unit and (1) residential unit and one additional residential unit.

Mr. Clocker confirmed with the Building Inspector that that the property now complies with code requirements for both, health and building.

Mr. Clocker initiated discussion regarding the comments in an email dated 2/15/22 from Ethan Parsons Director of Planning and Development, regarding procedural act of overturning the ZBA decision from 2003 and allowing the unit to be used as a dwelling unit. It has been in existence since 1970 it can become legal through the issuance of a special permit from the ZBA.

**MOTION:**

Mr. Gambale moved the Board overturn the ZBA Decision from November 20, 2003 asking to eliminate the dwelling unit at 194 High Street and Board to take action to allow the building to house two dwelling units and one commercial business unit. In accordance with the application submitted by Douglas Plant & Susan Usovicz. Mr. Clocker added that

the Board finds the use is pre-existing non-conforming residential mixed use. Mr. Posada seconded. The motion passed with a roll call vote; Gambale, yes; Clocker, yes; Posada, yes; and O'Leary, yes.

*Documents and exhibits used by the Appeals Board:* Petition and supporting documentation. Email dated 2/15/2022 from Ethan Parsons Director of Planning and Development; email dated 2.16.2022 from Jim Bone Building Inspector

**4 Winter St.** Roger LeBlanc requests a special permit and/or variance pursuant, but not necessarily limited to, Sections I.B.1, II.B.2, II.B.5, VII, XI.J and XI.K of the Zoning Bylaw for a change of use and /or substantial extension of a use from one non-conforming use to another less detrimental nonconforming use, and allowing a fire-damaged building to be reconstructed with an increase in volume but a reduction in footprint, as a 4-unit multi family dwelling at 4 Winter Street, which is located in the Industrial District (I) and shown on the Ipswich Assessor's Map 41D, Lot 067.

Chairman Gambale read the legal notice and opened the public hearing at 8:10 p.m.

The Petitioners were present to explain their request and provided a lengthy history of the property. Currently, the right side setback is not met. The proposal for four units will have a smaller footprint, while increasing the building height. One unit will be handicapped accessible, one studio unit will be affordable at 50% of AMI rentals for the first five years, then ownership; all units will count to the town's SHI.

Discussion continued concerning the condition of the property, easements for water and utilities and drainage system. Water issues, guest parking, traffic and handicapped parking and dumpster and mailbox locations were discussed while viewing the site plan. The Petitioner spoke to parking and location of dumpster and mailboxes and indicated he as open to suggestions.

Additional discussion was held concerning swales, proposed vegetation and infiltration systems placed in the new buildings to mitigate roof runoff.

Chair recognized Stacy Stone abutter at 6 Winter St; she read her letter of opposition into the record.

Patty & John Desmond 5 Winter St were not present. Mr. Posada read their letter of opposition into the record. Marko Bena, 6 Cherry St was not present. Mr. Posada read his letter of opposition into the record. Jamie and Jennifer Murphy, 14 Safford Street were not present. Mr. Clocker read their letter of opposition into the record.

Chair related his observations of water on site, the intermittent stream and culvert area. He related his conversation with Rick Clarke, DPW Director who indicated that there are plans to dig up soils to facilitate water flow. He suggested changing location of the dumpster; all residence will have parking designated and when there are speeding and noise issues, residents should call the police.

The Petitioners then spoke to concerns listed in the letters of opposition; they are willing to place a fence to the rear of the property and along the stone property. Conditions in the lease will manage and control the property. Parking stickers are required, no trailers, no plow equipment; only vehicles of a certain size will be allowed.

Chair recognized Stacy Stone 6 Winter St who expressed her concerns for parking and a ranch style home in which she has lived near for 23 years with one person, the change to a four family with four vehicles, is an extreme change.

Ms. Stone introduced her Attorney Diane Mc Glynn who indicated the project calls for Variance and the suggested Board take a closer look at IIB.2.3 and 5; she opined a variance would be needed and her impression the project does not have the criteria for a variance.

Discussion continued regarding the history of the building; one and two families are not allowed in this district; the building would be the same footprint; two-family home lived in by one person. The property owner said he resided in the second dwelling unit on and off over the 50 year history.

Chair noted the Ethan Parsons Director of Planning and Development, was unable to attend this evening and ZBA member Ben Fierro has indicated he would exercise the Mullin Rule and attend the March meeting. The Petitioner indicated he was willing to continue to March meeting.

The Board requested the Petitioner provide a revised parking plan, with dumpster location, rear fence a sample of the lease agreement and parking rules and regulations and the owner's testimonial. Mrs. Stone said she would consult her husband regarding the fence.

The Petitioner requested to continue to the March 17, 2022 meeting at 7:00 pm. via zoom.

In response to the Chair, the Board agreed to continue the public hearing.

*Documents and exhibits used by the Appeals Board:* Petition and supporting documentation. Patty & John Desmond Jamie, Stacy and Donald Stone, 6 Winter St and Jennifer Murphy, 14 Safford Street, Marko Bena, 6 Cherry St. Parking lot lighting cut sheets; site plan S1 dated 1.20.2022 Savoie Nolan architects, LLC; email dated 2.16.2022 from Jim Bone Building Inspector

**3 West St.** Richard E. Thompson, Jr. requests a special permit and/or variance pursuant, but not necessarily limited to, Sections V.I.F, Requirements for Accessory Buildings and Structures, and XI.J and K to construct an accessory structure exceeding 750 square feet in area (1,872 sq. ft. proposed) on a lot having less than five acres at 3 West Street, which is located in the Rural Residential A District (RRA) and shown on the Ipswich Assessor's Map 50, Lot 11. Chairman Gambale read the legal notice and opened the public hearing at 9:43 p.m.

The Petitioner were present represented by Attorney Richard Kallman. The proposed accessory building exceeds 750sf on a lot under 5 acres and requires a special permit. Attorney Kallman provided a list of vehicles the Petitioner needs to store. He then reviewed the area in every direction, noting only two abutters that may be impacted.

Discussion took place concerning the elevation and topography of the property; the height of his home in comparison to the proposed garage. It was suggested the Petitioner look at the Morton building website and find a design more in line with the neighborhood and provide a photo from the manufacture, showing color, roof overhang and trim.

Discussion was held regarding the appropriateness of a Morton building in a residential neighborhood. The Board would like to see it fit in with the character of the surrounding neighborhood.

The Board requested additional information concerning lighting, siding, driveway material and plantings. Additionally, questions regarding the existing box trailer, tractor, storage trailers located on the property.

Mr. Thompson agreed to continue, Attorney Kallman requested to continue to the March 17, 2022 meeting at 7:00 pm. via zoom.

In response to the Chair, the Board agreed to continue the public hearing.

*Documents and exhibits used by the Appeals Board:* Petition and supporting documentation. Letter of support dated 2.3.2022 from abutter at 124 East St Topsfield Ma; email dated 2.16.2022 from Jim Bone Building Inspector.

### **Approval of Minutes:**

Ms. O'Leary moved to approve the meeting minutes of 1.20.2022 with minor edits. Mr. Posada seconded, the motion passed unanimously. *(meeting minutes hereby incorporated by reference)*

Approval of the Executive session meeting minutes were table to next month.

**Adjourn** - As there was no further business, the Board unanimously voted to adjourn at 10:45 p.m.

Respectfully submitted,

Marie Rodgers  
Administrative Assistant

These minutes were approved by the Board on 3.17.2022

Pursuant to the 'Open Meeting Law' the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting; the members present or absent; the findings made and actions taken. Any other description of statements made by any person, or the summary of the discussion on any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.