



ZONING BOARD OF ADJUSTMENT
MINUTES MEETING OF MARCH 18, 2013
APPROVED AT MEETING OF 4.15.13

Present: S. Bogert, Chair; S. Perley, Vice Chair/Secretary; M. Foote; O. Gibbs; D. Greski; R. Smith, Alternate; D. Robitaille, Alternate; K. Geraci, Alternate

Absent: S. Saunders, Planning Director

Staff: K. Snow, Zoning Technician

S. Bogert called the meeting to order at 7:00 pm and welcomed everyone to the ZBA meeting for March 18, 2013.

D. Greski recused himself from the first hearing for 12 Leighton Avenue. R. Smith was seated as a full board member for this hearing.

CONTINUED HEARING:

Application # 2013-0003
P & A Algeo

MSL 31-253-11
12 Leighton Ave N

RR1 Zone
Variance

The applicant is requesting a variance from 235-35 (B), side and rear setbacks, in order to raise the roof in an existing loft area and add dormers. The property is currently non-conforming and there will be no further encroachment into setbacks.

Applicant: Don Miller appeared for the applicant. He presented a letter of authorization from the property owner to represent them at this evening's hearing. He passed out the deed which shows the ownership of the property in question and spoke to the encroachment.

He reminded the board that the property owners want to add headroom on the second floor. They will dormer the front half of the building. About 19 inches crosses the property line. He said it is the highlighted area on the plans. There is a building permit on file for another portion of the property.

S. Perley asked how much this is going to encroach and was told 19 inches. They are adding nothing on the ground and there will be no further encroachment.

Public: No one spoke for or against the application.

Steve Bogert closed the hearing to the public.

Board: There was no further board discussion.



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Motion: S. Perley moved to approve application 2013-0003 which will allow the property owners to add dormers to a portion of the property which currently encroaches. The property is currently non-conforming and there will be no further encroachment.

The granting of the variance is not contrary to public interest as there is no impact on the general public.

The spirit of the ordinance is observed as granting the variance will not injure any public or private rights. This is a simple addition to a house which currently exists on a non-conforming lot. This cannot meet the setbacks for the zone.

Substantial justice is done in granting the variance as there is no effect on neighboring properties and the benefit to the applicant is far outweighed by any negative impact to the general public.

Property values won't be diminished and should be enhanced by improving the property.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. The proposal won't alter the essential character of the neighborhood or threaten public health, safety or welfare.

The use is a reasonable one and is allowed in the zone.

M. Foote seconded the motion with all voting in favor of approval, 5-0..

D. Greski was re-seated as a full board member with R. Smith returning to Alternate status.

Application # 2012-0037
As For Me LLC

MSL # 371-152-55
105 Mechanic St

RG Zone
Variance

The applicant is requesting a variance from 235-28, Uses Not Permitted under Table I, Table of Permitted uses, in order to construct a self storage unit with an office. The proposed building would meet all setback requirements.

Applicant: Bill Allen appeared for the application. He said he is back to answer the questions that the board had at his first hearing and apologized for the delay.

He said that the lighting on the building will all be downcast and as shown on the plans that he passed out. Two bays will share one light. They will be on a motion detector so they won't be continuously lit.

The primary use will be for his own business which is located in Lakeport. The other 4 bays he hopes will offset costs for the building.



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Most of the properties in this area are commercial. He said they tried to design something that won't look too out of place but will serve the purpose that he needs. Three of the units, including the office space, are for his own use; the remaining 4 will be rented out.

The structure will have a metal roof. The siding is vinyl and the plans show the proposed colors. The trim will be white and there will be no signage on the building. He said he is not trying to create the traditional rental storage. He said he is creating a "barn" type of storage for himself and hopes to try to offset his costs with the rentals. The only signage will be the address on the building, # 105.

D. Greski said the building will go from the front to the back and asked about the house to the left of the property. He said they will see the back wall and asked if there will be any windows. B. Allen said no, this side of the building will be a solid wall.

S. Perley asked if there will be a fence on the other side and was told there is presently one now; the other property has one. If they removed it, he would probably put one up. The property is only 66' wide and the building will be 28' long. Starting from the left side, he thinks will have a 15-18' setback. S. Perley asked if a truck can get in and turn and was told a pickup can. S. Perley said she thinks the lot would be hard for a larger vehicle to navigate. B. Allen said there is another 25-35 ft in the rear of the building before it goes up hill. It goes up hill quite a ways.

S. Perley asked if the color will be tan and was told yes with white trim. B. Allen said it is almost identical to the house they own across the street. S. Bogert said this is more of a residential siding. S. Perley said they did a good job in making it fit in and look unobtrusive from the front.

M. Foote asked if tenants will have 24 hours access and was told no. B. Allen said he plans to have regular business hours so thinks they would be open until around 5 pm.

S. Bogert asked if a mechanic could set up shop here and was told no. B. Allen said he needs 3 of the bays himself. He said he knows people who are in need of seasonal storage, and that is what he is anticipating the remaining bays to be used for.

Public: No one spoke for or against the application.

Board: S. Perley clarified that this will be cold storage and B. Allen said he will heat the first unit and the office, which will be his. The rest will not be heated.

S. Bogert closed the hearing to the public.

S. Perley said she feels comfortable with approving this. It is low impact use with a good design. This won't diminish property values. D. Greski said from the street he thinks this will be a plus. S. Perley said this is a small business, and good to encourage.



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Motion: D. Greski moved to approve application # 2012-0037 in order to allow the construction of a self-storage building with 7 bays. The structure will meet setbacks and green space.

Granting the variance will not be contrary to public interest. The lot is empty except for an old garage. They will remove the garage and add the storage facility consisting of 7 bays. They won't be used 24 hours a day – just regular business hour usage. There will be no signage. If they propose any future signage, they would have to apply. Lighting will be on motion sensors so it won't be lit all night. This won't alter the essential character of the locality which is a residential area with many businesses now.

The use won't threaten the public health, safety or welfare.

The spirit of the ordinance is observed as this is an established neighborhood. There should be no negative impact as there are businesses already located here. This will have minimal traffic as the tenants will have yearly leases. They would drop off and leave.

Substantial justice is done as the proposal will have no impact on the surrounding properties. The neighbor on the left will see a blank wall. From the street the design is a positive addition to the area.

The values of surrounding properties are not diminished. This has been an eyesore since the fire, and the building has a good design. It will be a positive addition to the neighborhood. It will clean up this lot, and will be a plus to the area.

Literal enforcement of the ordinance will be a hardship. There are already businesses in the neighborhood. Not allowing this use means the property would remain sitting idle.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of the provision to the property. There is no threat to public safety, and this won't impact the essential character of the area.

The proposed use is reasonable.

O. Gibbs seconded.

S. Bogert said he would like to add some conditions to the approval. 1) No digital or automatic copy signs can be erected on the property. 2) This will not be a 24 hour service. 3) There will be no mechanical work, including automotive, done in the rented bays. 4) All units are to remain cold storage except for unit 1 and the office area, which may be heated for the owner.

D. Greski agreed to the additions to his motion and M. Foote seconded with all voting in favor of approval, 5-0.



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NEW HEARING:

Application # 2013-0002
Akwa Village LLC

MSL # 124-234-003
616 Scenic Road

SFR Zone
Variance

The applicant is requesting a variance from 235-37, Table II, Table of Dimensional Requirements, in order to construct a multi-family structure that will exceed the permitted structure height. The permitted height in the zone is 35 ft and the structure would be approximately 60 ft in height.

Applicant: Chris Duprey appeared for the application.

S. Bogert said before the hearing begins he wanted to bring up the e-mail that had been received from Richard Sanders which stated he would withdraw his objection on the condition that he can raise objections later. S. Bogert asked if he realizes that after this is approved he really cannot make complaints other than the 30 days appeal process. C. Duprey said he has had conversations with him regarding this.

R. Smith said he will also have the opportunity at the Planning Board level to make comments.

C. Duprey asked if that objection is considered withdrawn and S. Bogert said he can voice his opinion but by reading this it sounds like he is ok to proceed. C. Duprey said he will make sure that R. Sanders is aware of this and of the appeal process.

C. Duprey said the property is located on Scenic Road. He showed the townhomes that are already in process and where Akwa is located up above the units.

Mid-Rise has received their approvals. That approval was granted in July 2009, and the height variance granted in September of 2009. That parcel was reconfigured. It is 6.7 acres in the SFR zone. He showed the area in question on the plan.

Approved units 18/19 are part of the townhomes and are located across from this site. There were some deserted buildings on the site, and those have been removed. The site is generally level. At the front there is an existing roadway that ties back into the Ortolani's property, and provides access to the former Chase property, which is now owned by Akwa Vista. There are some level pockets suitable for development and in the rear the property slopes steeply up the hill.

The request is to consolidate the development and keep the new structure at the front of the lot. They propose one building on the more level portion of the site, which will reduce the overall impact on the site. There will be less clearing, less asphalt, and parking. The main parking area will be under the building with additional parking located on the site.



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There is a wetland setback on the north end of the site. Consolidating the units into one building allows them to pull away more and keep out of the buffer area.

There are 3 direct abutters, as well as Akwa up on the hill, and the townhomes across the street.

D. Greski asked C. Duprey to show where the land begins to slope and C. Duprey indicated that on the plans. D. Greski asked where is the concern about blocking the view and C. Duprey said he will get to that point later in his presentation.

The concern is from residents in the single family neighborhood on the mountain. He said he had a dialogue with several folks that expressed concerns. They discussed protection of the view shed from the mountain down to this site. Protection is being accomplished by few factors. They are leaving open space. The lot is further protected by approvals granted by the Planning Board, which includes the waterfront. As they are granted approvals by the Planning Board they include cutting restrictions so that portion is protected as well. Also the developer has agreed to place a private restriction on the upper portion of the site, with no development there.

The property has been divided into 3 zones for their usage. The upper area will support amenities like hiking trails, which might include a gazebo or a rain shelter. Second zone is what is permitted by the zoning. The lower level is where the building will be located.

D. Greski asked if single family homes are located at the top and was told yes. He said the lot drops dramatically so wouldn't this impact their views and C. Duprey said they don't think so, and this has been looked at many ways. He showed a profile for elevations. He told the board members this should be shown on their conceptual grading plan, 615' peak elevation. The living room deck of the first home is at 802' so well above the peak of this proposed building. He showed Commander's Helm at 235' above and the lighthouse, which is 300' above the peak of this structure.

They had the surveyor measure the height of the trees, a random sampling, which were identified as in the 80-90 ft tall range. The average canopy height is at 70'.

D. Robitaille said he thinks their line of sight is blocked. That was clarified and K. Geraci said they will see the trees.

S. Bogert asked where the other buildings that have been approved are located on the plan and was shown. He asked if this building is in line with those and was told this one is located closer to the road, and about 80' lower.

D. Greski asked for the location to be explained from the lake. C. Duprey said shoreline, railroad tracks, buildings, Scenic Road, and then this site. He said he knows the view from the lake will be a concern and



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will be addressed at the Planning Board level. He brought a photo of the townhomes along to show the color schemes they are thinking about so this will blend in from the lake.

Units 18-19 of the townhomes are yet to be built, and there is a pocket of wetlands that is heavily forested.

S. Bogert asked if we didn't require a balloon test back on the original 3 buildings; he said he recalls that was 60' high because an abutter had an issue at that time. It became a non-issue as they couldn't see the balloon.

C. Duprey said that Cedar Lodge had requested that to be done as well as Mr. Frazier at Lighthouse Cliffs. He showed D. Greski on the map where Lighthouse Cliff is located. He said the Frazier's asked questions on this proposal as well. He was an owner for the previous project and asked regarding this one. His house is at 300' above the peak of the proposed project.

C. Duprey said this won't be contrary to public interest as the proposed layout preserve views, limits shadows, and allows sufficient light and air which is an aim of the ordinance. There is no shadow impact as proposed. This is approximately 280' from the Ortolani's residence.

D. Greski clarified that this is one building that will have 24 units and C. Duprey said that Zoning density allows 40 units but they are only doing 24. He showed an artistic rendering. There is a parking garage underneath, which provides more than half of the parking for the site and eliminates some of the site disturbance. D. Greski said doing only one building saves the site. S. Bogert said that is one of the reasons for the building height, which is the same as their other project.

C. Duprey said this lot has more flat area so it is not as dramatic but they feel this is a better alternative than having multiple buildings on the site.

M. Foote asked if this would be individual condos and was told yes, they will be sold individually. D. Greski asked if they will be drilling for a well and was told they are extending the city water. Right now that runs to mid-way at the town homes, near the peak of the hill. The sewer that services units 18 and 19 has the capacity to service this building. D. Greski asked if he meant city sewer and was told that the Townhomes tie in down the hill, closer to the marina. They extended the service up the hill, and the townhomes have a pressurized system, which has the capacity to handle this project. D. Greski clarified that there will be no leach fields.

D. Duprey said that the expansion of the sidewalks will be part of the planning Board process and approvals. S. Bogert said this all ties into the marina and the residences at the top of the mountain for trails and golf cart usage. There will be a store, cabanas, a restaurant, and the marina, which will all tie in.

D. Robitaille asked what transpired here last year with the back road that goes up – there was an issue with sewer, he thought. C. Duprey said there was a blockage in the line, and showed the area in question. D. Robitaille asked where that runs and was told that it ties into the pump station.



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C. Duprey spoke to values of surrounding properties and said they would not be diminished. Based on assessed values, and asking values for several that are on the market, they should be enhanced by this project. The price of their units range from \$480-\$650K. The assessed values of the neighboring properties range from \$133 – \$348K. Two of the three are on the market now - one at \$490K, the other at \$695K so they are not diminishing the values of the properties.

Public: No one from the public spoke for or against the project. (The board received 2 abutter e-mails regarding the project.)

Board: S. Perley clarified that the units to the left, which were approved at the height of 60', are located further up on the site and was told yes. They did a peak elevation comparison and this site about 80' lower than the ones that had been approved earlier.

S. Bogert closed the hearing to the public.

Board: S. Bogert said this approval keeps the area consistent. D. Greski said this is good for the town, and is a good project. Done this way there is less impact to the environment. There is no impact from water and sewage and they are not opening the land up for leach fields. S. Bogert said a lot of infrastructure work has been done.

M. Foote said that this has been an ambitious and extensive project, and has been going on for about 10 years now. A lot of the approvals have been through special exceptions. He said there are less views to the lakes now. We have the impact of the water tower, which can be seen throughout the area. He said he does understand the water tower is for marketing.

S. Bogert said the city negotiated that. M. Foote said this has all been done by variance or special exception and wonders if this be done the entire way up the road. He said he agrees there is low impact on the property, but there is a lot of view from the lake that can be seen. This is a two-way view-way. He said he is not saying this is bad but this has been a series of special exceptions so is this part of the City's master plan or is this being driven by the developer.

S. Bogert said he feels it is both. There is no land left in this area until you get to the other side, and there are no lake views there. The entire side of the mountain is developed past the marina. This is all that is left. The pump house where the road makes the sharp turn, goes back up to the Watson Road area with the bars.

S. Perley said that all of the special exceptions have been granted, and were all planned out with the city. M. Foote said he sees that water tower every day. O. Gibbs said if every lot had their own McMansion built on it, would that be a good thing? This allowed more development in the area.



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Motion: D. Greski moved to approve application 2013-0002 in order to construct a multi-family structure that will exceed the permitted height for the zone.

This project won't be contrary to public interest. It won't threaten public health, safety, or welfare. It won't alter the essential character of the neighborhood. One abutter at Lighthouse Cliff was concerned with view impact but it was explained that the elevation there is 300' higher than the roof peak of this proposal.

The structure is located on steeply sloping terrain. The property drops in elevation so this appears to be tucked into the side of the mountain.

The spirit of the ordinance is observed as the proposal meets the residential density requirements. The developer could put in 40 units but is doing 24. Height restriction is to protect loss of air and of sunlight so this should have no negative impact.

This proposal is consistent with the master plan in lessening environment impacts. One building with 24 units vs. 24 separate units is much less impact on the environment.

Substantial justice is done in granting this. There should be no impact to the surrounding properties and they will minimize the environmental impacts by going up. Over half of the parking will be underground so there is less need to cut trees.

With a prior project a balloon test was done. This project is 80' lower than the previously approved project so it should not have any impact.

The values of the surrounding properties are not diminished. The values, as explained tonight, show they have been improved. They are adding municipal water and sewer, which reduces impact to the environment and increases property values.

Literal enforcement of the ordinance would result in an unnecessary hardship. This is a unique site, with a wetland and steep slopes so creates challenges in trying to develop.

There is no fair and substantial relationship that exists between the general public purposes of the ordinance provision and the specific application of the provision to the property. By building up and consolidating the units into one building it reduces environmental impacts to the property. Part of the parking will be located underground, which lessens environmental impacts. The physical characteristics of the subject property negates the height requirement restriction.

The use is a reasonable one and is allowed in the zone.

S. Perley seconded and all voted in favor of approval, 5-0.



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OTHER BUSINESS: a) Zoning Task Force; S. Perley said the ZTF is meeting on April 1, and are preparing for the first run through of changes, which gets more extensive all the time. They are not yet at the point where they are ready for public input.

b) Any other business that comes before the board: Paul Bordeau asked if Southdown had filed, and was told no.

K. Snow was reminded to move the minutes to the beginning of the agenda from now on. The board would also like to receive an updated member list.

MINUTES: The minutes from the meeting of February 19, 2013 were discussed. A change was made; one word was changed from "improve" to "approve". The motion to approve the minutes, with the suggested change, was made by M. Foote and seconded by O. Gibbs with all voting in favor of approval, 5-0.

ADJOURNMENT: S. Perley moved to adjourn the meeting of March 18. S. Bogert seconded and all voted in favor, with the meeting adjourning at 8:30 pm.