

Zoning Board of Appeals  
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David Pereira - Chairman  
John Scanlon - Vice Chairman  
Richard Panofsky - Clerk  
Richard Barrett  
Antonio Oliveira  
Raymond Olivier, Assoc. Mbr.  
Stephen Silva, Assoc. Mbr.

**ZONING BOARD OF APPEALS MEETING**  
**Meeting Minutes – October 15, 2020**

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Call to order at 6:05 PM by David Pereira, Chairman

In attendance: Chairman David Pereira; John Scanlon, Vice Chairman; Richard Panofsky, Clerk; Antonio Oliveira; associate member Raymond Olivier.

The meeting was held remotely, via Zoom.

The agenda was reordered to a degree, so the public hearing could begin at 6:15.

With only four regular members present, Chair Pereira declared Associate Member Raymond Olivier will vote tonight.

**GENERAL BUSINESS**

1. File #817 – Cryan – 18 Round Farm Road – variance. J. Scanlon moved to approve the Findings as written and distributed by email; D. Pereira seconded; the motion carried unanimously on a roll call vote: Scanlon, aye; Pereira, aye; Panofsky, aye; Olivier, aye.
2. Sign Mylars – The Reserve – Phase III. Not having received the paperwork, the committee will defer this to a future meeting.

**PUBLIC HEARINGS & MEETINGS**

1. File #813 – 103 County Street – Morrell – variance. While we voted last meeting to close this hearing, we also need to come to a decision on the request. One concern was that a special request seems more appropriate than a variance, but absent more information no judgment can be made. R. Panofsky moved to deny the appeal without prejudice, due to a lack of information; A. Oliveira seconded; the motion carried unanimously on a roll call vote: Scanlon, aye; Pereira, aye; Panofsky, aye; Oliveira, aye; Olivier, aye.

**MINUTES**

On a motion by J. Scanlon and seconded by A. Oliveira, the minutes of September 17, 2020, were approved unanimously as written on a roll call vote: Scanlon, aye; Pereira, aye; Panofsky, aye; Oliveira, aye; Olivier, aye.

## PUBLIC HEARINGS & MEETINGS, Continued.

2. File #818 – 46 Locust Street – Silvia – Special Permit. Request is for a special permit to construct a two-story family residence on an existing foundation of a pre-existing, currently non-conforming one-story structure. The non-conformance includes the lot being very small and the house sitting right up to one property line. At 6:15 pm, a motion was made by J. Scanlon to open the public hearing and seconded by A. Oliveira. A roll-call vote was taken: Scanlon, aye; Pereira, aye; Panofsky, aye; Oliveira, aye; Olivier, aye.

Attending electronically to explain the request were Eliot Brais, Attorney, 188 N Washington St., North Attleborough, MA 02760; and the property owner, Derek Silvia. Mr. Brais explained that the existing one-story structure is dilapidated. The request is to use the footprint of the existing foundation for a new two-story building. Atty Brais said that the new structure would be in keeping with the neighborhood, in that many other houses there are also two stories high. He also cited a precedent in law finding that adding additional stories to a pre-existing, non-conforming building is permitted if the new building uses the same foundation footprint.

Carol Entim, 105 Martin Street, spoke first. She represented the Land Trust in her comments. The property has on it a rare and threatened species of spadefoot toad, near extinction in this region. Ms. Entim asked if the foundation was to be new or the old one would be used. She also asked about the location of the well and septic system. Atty Brais responded that the foundation would be new but using the original footprint. The location of well and septic are yet to be determined. Ms. Entim asked if there is to be a driveway; Atty Brais responded that one would be installed. Ms. Entim then expressed strong worries that the construction processes for the driveway, foundation, well, and septic system on this small lot, which includes a wet, marshy area, would dangerously disrupt the fragile habitat of the spadefoot toad. Ms. Entim asked to be granted a role with the builders to help them to do "least damage," perhaps moving the locations of some features. Atty Brais and Mr. Silvia both replied they would grant that.

Abutters were invited to speak.

Benjamin Cornell, 84 Summer Street, is an immediate abutter. He opposes the special permit. The two story structure is not in keeping with the neighborhood, and would be detrimental to his and other abutters' property values as well as their quality of life using their property. The house lot is very small, one sixth of current minima, and the rear of the house sits immediately on the property edge that abuts his. A historical playhouse on his land would be subject to damage from snow and ice from the new building's roof, and his children would be in danger using the playhouse. The upstairs windows would look directly into his bedroom windows. R. Panofsky asked for a clarification whether the Cornell house is two-stories; the town records show it as a one-and-a-half story structure. Mr. Cornell agreed it is just one-and-a-half stories. Mr. Cornell stressed the importance of the by-law on special permits for changes to pre-existing, non-conforming, buildings, that "such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood."

Tyler W. Ward, 74 Summer Street, is on the list of abutters. He shares all of the concerns of Mr. Cornell and Ms. Entim. He cited the negative impact on his property value and quality of life, and expressed strong opposition.

Christine Ashman, 42 Locust Avenue, is an immediate abutter. She shares the strong opposition expressed by Mr. Cornell. Her building is 18.6 feet high, and the new building's plans seem to be for a much taller structure. As a three-bedroom house, it

would presumably have a large family, and the lot is very small for such a size. Ms. Ashman also asked about approvals related to this being a Water Resource Protection District; Chairman Pereira explained that any concerns might be addressed in the process of future approvals, but not by this board. Discussion showed her house is also officially one-and-a-half stories.

Committee members scrutinized the plans to ascertain the exact height of the proposed building, but an essential dimension was not labeled. Atty Brais telephoned the architect, and said that he said the building would be 30 feet high.

No others wished to speak. J. Scanlon moved and D. Pereira seconded to close the hearing. A roll-call vote was taken: Scanlon, aye; Pereira, aye; Panofsky, aye; Oliveira, aye; Olivier, aye. Discussion considered the legal precedent permitting additional height if the existing foundation footprint is used. This is violated by the presence of a second-story overhang. Importantly, substantial weight must be given to the will of the Rehoboth residents in enacting their by-laws. Conditions stated in our by-laws for such special permits are not to be negated even if otherwise a two-story structure could be allowed. A. Oliveira moved to deny the request for a special permit because the building would be "substantially more detrimental" than the existing building is. R. Panofsky seconded. The motion passed unanimously on a roll call vote: Scanlon, aye; Pereira, aye; Panofsky, aye; Oliveira, aye; Olivier, aye.

#### NEXT MEETING

The next meeting of the Board is scheduled for Thursday, November 19, 2020, 6 PM, to be held remotely, via Zoom.

#### ADJOURNMENT

On a motion by J. Scanlon and seconded by D. Pereira, the Board voted to adjourn at 7:06 by roll call vote: Scanlon, aye; Pereira, aye; Panofsky, aye; Oliveira, aye; Olivier, aye.

Respectfully submitted by Richard Panofsky, Clerk

  
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David Pereira, Chairman

  
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John Scanlon, Vice-Chairman