



Michael Connelly <mconnelly@natickma.org>

14 Dartmouth St. Trees (Makofsky)

1 message

Jason <skippybrew@hotmail.com>

Fri, May 4, 2018 at 12:22 PM

To: "mconnelly@natickma.org" <mconnelly@natickma.org>

Hi, Mike:

The purpose of this email is to summarize our conversations over the last couple of days, and to confirm that I am absolutely willing to comply with any remaining obligations respecting the replacement of trees contained in our Section 6 Finding (ZBA Case #2014-002).

Some background: The trees that were removed were within the right-of-way of Lowell Road, where our property abuts the layout. They were removed so that we could eliminate an ancient cesspool and connect our old house to the sanitary sewer system in Lowell Road. All necessary approvals and permits were granted by the Board of Health, Building Dept., and DPW. This was completely unrelated to our application for a Section 6 Finding to construct our new house. In fact, the sewer connection was completed in October, 2013--months before the ZBA issued its Finding in March of 2014.

When discussing the conditions to be included in the Finding, the ZBA initially proposed to delete any requirement that we replace the trees, since they recognized the trees had nothing to do with the new house construction or the Finding. The ZBA members also recognized that the trees were in the right-of-way and that I don't have the right to plant trees in the right-of-way. Ultimately, the ZBA included condition #9 which states that I must "make a good-faith effort to work with the DPW to replace the three trees." One ZBA member actually stated that this condition was "wildly unfair." Nonetheless, that is what the ZBA approved, and I did not appeal their decision so it is part of the Finding today.

At the time, I figured the DPW would reach out to me when they were ready to plant the trees, to discuss the location and, presumably, to get me to pay for them. To be honest, once we got the Finding and our permit and began construction, I forgot about the trees. If I was supposed to initiate something, that was not my understanding and I apologize for the misunderstanding.

That said, I am certainly still willing to pay for the purchase of three trees as required by condition #9, and to work with the DPW to determine their locations. I would like to ensure no trees are planted in the vicinity of the sewer line, since tree roots can damage sewer pipes. Also, I understand that Lowell Road is not a Town accepted way, and the Tree Warden and the DPW are unsure if they have the authority to undertake any tree planting here. If the Town is unable to plant the trees in Lowell Road, I will still commit to comply with the spirit of condition #9 by making a donation to the Town for the value of the trees that the Town can use to plant trees wherever it likes.

I appreciate your attention to this. Please let me know if there is anything else you need.

Jason Makofsky
14 Dartmouth St.



Michael Connelly <mconnelly@natickma.org>

12 Dartmouth/Lowell Rd Tree Issues1 message

Arthur Goodhind <agoodhind@natickma.org>
To: Michael Connelly <mconnelly@natickma.org>

Thu, May 3, 2018 at 8:39 AM

Hello Mike,

Here is a synopsis of our position.

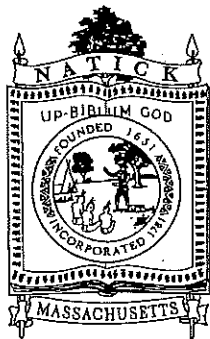
Based on the ZBA agreement stating 'Work with DPW' I would be willing to review a species list and review planting locations and provide guidance.

Lowell Road is not a publicly accepted street layout. I cannot assist with the actual planting of the trees.

In this case it is my understanding that the homeowner would need to come to an agreement with the property owners at 18 and 19 Lowell Rd.

From what you read to me it sounds as if the owner at 12 Dartmouth made a commitment to plant the trees, the final decisions of location and species cannot be made by Public Works. The work cannot be completed by Public Works.

Thanks,
Art



COMMUNITY DEVELOPMENT

BUILDING

PLANNING

ZONING

CONSERVATION

ZONING BOARD OF APPEALS DECISION
CASE #2014-002

PRIOR ZONING BOARD OF APPEALS DECISION
CASE #2009-006

MAP 18, LOT 112
BOOK 53248, PAGE 512

SUBJECT PROPERTY: 12 DARTMOUTH STREET REAR
PETITIONERS: JASON MAKOFISKY AND KELLY MCQUEENEY
PROPERTY OWNERS: JASON MAKOFISKY AND KELLY MCQUEENEY

RECEIVED
2014 MAR 25 AM 10:37
TOWN CLERK-NATICK

LOCATION

The subject property is located off the southerly side of Dartmouth Street (access via an easement) in a Residential Single A Zone. The parcel has no direct frontage on Dartmouth Street, 57.22 feet of frontage on Lowell Road which is substandard to the 110 feet of required frontage, and is comprised of approximately 31,095 square feet, rendering the parcel dimensionally non-conforming to current intensity requirements in the referenced zone.

REQUEST

The Petitioners are requesting a Chapter 40A, Section 6 Finding and/or a modification to the prior decision for Zoning Case #2009-006 in order to construct a single family home, as shown on the plans submitted. The Petitioners, in their application for appeal, stated the following grounds and reasons in support of this request:

Reasons for Hearing:

Changes to the plans approved and referenced in Zoning Case #2009-006.

Description of Project:

Raze existing 700 square foot house and garage and construct new single family house in similar location with attached two-car garage with full walk-out basement and assorted grading, retaining walls and landscaping.

PLANS SUBMITTED

- Hydrologic Analysis prepared by Metrowest Engineering, Inc., dated November 2009, last revision date of March 2010
- Certified Existing Conditions Plan conducted by Professional Land Surveyor, Robert A. Gemma, No. 37046, prepared by MWE, 75 Franklin Street, Framingham, MA 01702, (508)626-0063, scale: 1" = 20', dated November 2, 2009, last revision date January 6, 2014.

- Certified Proposed Site Plan conducted by Professional Land Surveyor, Robert A. Gemma, No. 37046, prepared by MWE, 75 Franklin Street, Framingham, MA 01702, (508)626-0063, scale: 1" = 20', dated August 27, 2013, last revision date of January 6, 2014.
- Certified Proposed Site Plan Detail Sheet conducted by Professional Land Surveyor, Robert A. Gemma, No. 37046, prepared by MWE, 75 Franklin Street, Framingham, MA 01702, (508)626-0063, scale: 1" = 20', dated August 27, 2013, last revision date of January 6, 2014.
- Architectural Plans by Professional Engineer, William John Sieruta, No. 30148, Habitat Post & Beam, 21 Elm Street, S. Deerfield, MA, 01373, (413)665-4006, Sheets 1-6, scale: 1/4" = 1', dated April 6, 2009, last revision date of January 9, 2014, Sheet F1, scale: 1/4" = 1', dated August 15, 2013, last revision date of January 9, 2014, Sheet S1, scale: 3/8" = 1', dated May 29, 2013, last revision date of January 9, 2014, Sheet S2, scale: 3/8" = 1', dated July 15, 2013, last revision date of January 9, 2014, Sheet S3, scale: 3/8" = 1', dated July 16, 2013, last revision date of January 9, 2014, Sheet S4, scale: 3/8" = 1', dated July 19, 2013, last revision date of January 9, 2014..

LETTERS SUBMITTED

Letter dated January 7, 2014 from Building Commissioner, David G. Gusmini, C.B.O., to the Petitioner, stated:

"I have reviewed the submitted application regarding the proposed single family home which will be located on the above subject property..

The proposed plans submitted do not match the plans that were approved by the Natick Zoning Board of Appeals in the decision for case #2009-006.

At this time, I must deny this request for a building permit. To proceed with this project, specific zoning relief in the form of a Chapter 40A, Section 6 Finding and/or a modification to the prior Zoning Board of Appeals Decision mentioned above is required."

Letter dated January 24, 2014 from Director of Public Health, James White, to the Board, stated:

"Please be advised that the Natick Board of Health has reviewed the application for 12 Dartmouth Street Rear, Natick submitted by Jason Makofsky & Kelly McQueeney for the proposed changes made to a previously approved site plan for a new single family dwelling and submit the following comments:

1. The new house design and configuration introduces changes to the final grading elevations of the previously approved plans. It is the recommendation of this department that a meeting be scheduled with the applicants engineer, Board of Health and Department of Public Works Engineers to assure the proposed final grading changes will not significantly change the site drainage and adversely affect the direct abutters or drainage on Lowell and Vesta Road.
2. The above mentioned meeting request may also serve to satisfy a concern that the changes in the proposed site grading elevations will not adversely affect the sewer ejector pumps and holding tank that have recently been installed to connect the property to public sewer by Lowell Road. The design criteria for the said mentioned pumps were based on the elevations from the previously approved site plans."

Letter dated January 23, 2014 from Conservation Compliance Officer, Bob Bois, to the Board, stated:

"No Comment."

Letter dated January 24, 2014 from Assistant Town Engineer, John Digiacomio, to the Board, stated:

"The Department of Public Works is in receipt of the application for 12 Dartmouth Street Rear. Our comments are as follows:

Sewer:

This topic was discussed in detail during the previous hearing and this office has been working with the applicant's engineer over the last year on it. The sewer force main has been installed to the tank. The applicant will be required to obtain a Sewer Permit to re-tie into the tank and will be required to pay a Sewer Permit fee of \$200 and a Sewer Entrance Fee of \$1,300 for their three bedroom house (The entrance

fee would have been \$3,900 for three bedrooms but the applicant will be given a credit of \$2,600 for the initial entrance fee paid when the sewer was tied into the original house with 2 bedrooms).

Water:

The applicant's existing water service has already been cut prior to the demolition of the previous structure. As noted on the plans, the applicant will install a 1" water service to Dartmouth Street. The applicant will need to pay a Water Permit fee of \$200 to perform this work.

Drainage/Grading:

This office has reviewed the plans and do have concerns and questions in regards to grading and in particular the grade changes on the northeasterly side of the property (closest to Lowell Road). We request that a meeting occur between the applicant's engineer, DPW and Board of Health to discuss the grading and drainage prior to any approval of this application.

All conditions that were included under the previous ZBA decision for this site should also remain in effect including the applicant's driveway going out to Dartmouth Street."

Letter dated February 4, 2014 from Director of Public Health, James White, to the Board, stated:

"The Natick Board of Health submits the following revised comments to the application submitted by Jason Makofsky & Kelly McQueeney, 12 Dartmouth Street Rear:

1. It is the recommendation of this department that the applicants submit an Operations and Maintenance (O & M) plan to have the proposed drywell and infiltration unit inspected on an annual basis and maintained as needed to assure proper infiltration of the site drainage as designed.
2. The applicant has agreed to install risers for the covers to the sewer ejector pump chamber to accommodate for the increase in elevation to the final grade in this area and to allow access for maintenance purposes. The elevations to all the components and piping for the sewer pumps will remain as previously approved by the Board of Health.
3. On Tuesday, February 4, 2014, the Board of Health, Assistant Town Engineer and Brian Nelson, Civil Engineer representing the applicants, met to discuss the site drainage plan. The drainage concerns were addressed at that time and this department is satisfied with the plans submitted dated August 27, 2013 and revision date of January 6, 2014."

Letter dated February 5, 2014 from Assistant Town Engineer, John Digiacomio, to the Board, stated:

"This memo shall serve as a follow up to our January 24, 2014 memo in regards to the above noted Zoning Board of Appeals case.

A meeting occurred this past week between Jim White (Board of Health Director), Brian Nelson (the Applicant's Engineer) and myself to discuss the grading and drainage on the site. After discussion and review, it is our feeling that all of the DPW's comments and concerns have been addressed and we do not have an issue with the drainage and grading for this site separate of the first two comments noted under the BOH memo which we fully support.

The comments noted in the previous memo under Sewer and Water in regards to required permits and fees are still in effect. Also, as noted in the previous memo, it is our recommendation that all conditions that were included under the previous ZBA decision for this site should also remain in effect including the applicant's driveway exiting to Dartmouth Street."

Letter received January 27, 2014 from "The Undersigned Residents of Natick", to the Board, stated:

Re: In Support of Kelly and Jason's Project at 12 Rear Dartmouth Street

"We, the undersigned residents of Natick, wish to express our support for the proposed single-family house to be constructed at 12 Rear Dartmouth Street. We are familiar with the most recent plans from Metrowest Engineers, dated January 6, 2014 and from Habitat dated January 9, 2014.

The proposed house will replace an outdated and under-size 690 square foot cottage with a custom-designed post-and-beam house consistent in size and style with other new and renovated houses on Lake Cochituate. Thanks to the large lot size and the compliance with zoning set-backs, the new house will not be overwhelming nor will it crowd the neighboring houses.

Replacing the one-car garage with a two-car attached garage with storage below will improve the appearance of the neighborhood by permitting Jason and Kelly to store their vehicles, bicycles, yard equipment, kayaks, boat, and other items inside the garage rather than in the yard, exposed to the weather and visible from abutting properties and streets. The walk-out basement takes advantage of the natural contours of the land and avoids the need to import fill and do extensive grading on the eastern side of the property. This will also reduce stormwater runoff by eliminating steep grades. Undergrounding the electric and other utilities will also improve the aesthetics of the neighborhood.

This project will result in a significant improvement to the neighborhood and the Town by replacing a very small, outdated cottage with a modern lake house. It will make the neighborhood more attractive and desirable, will protect surrounding property values, and will yield a substantial increase in property taxes paid to the Town.

We support Kelly and Jason and their project. We encourage the Zoning Board of Appeals to approve this project as proposed."

The foregoing memoranda and letters were read into the record and are incorporated in this decision by reference and made a part hereof.

FACTS & EVIDENCE PRESENTED AT THE HEARING ON JANUARY 27, 2014

The Petitioners appeared at this hearing to describe the proposal in greater detail.

Mr. Landgren discloses that he and the applicant work together and the applicant agrees to have Mr. Landgren sit on the board for the hearing.

Mr. Havener asks where litigation stands and the applicant states that everything has been resolved.

Mr. Landgren explains to the rest of the board why the applicants have needed to come back in front of them.

Jason Makofsky introduces himself and Kelly McQueeney. He says he would like to submit the option B plans that were talked about and approved, but not submitted.

Mr. Landgren asks if the floor level has changed.

Jason Makofsky explains that it has changed by 6" and he doesn't believe it will affect the pump chamber.

Mr. Landgren asks if there was a chance to have the other boards meet with MWE prior to the meeting and Jason Makofsky states that MWE contacted the other boards but with the short notice, and people out of the office, they were not able to find a time to meet.

Jason Makofsky submits a one (1) page letter with nine (9) signatures from abutters supporting the project.

Mr. Landgren opens the public hearing to the audience for comments.

1. Roy Lurie, 18 Dartmouth Street, states that he has some concerns with the look of the potential garage as well as any future plans to have a driveway onto Lowell Road.
2. Larry Drolet, 14 Lowell Road, states that he is concerned about how everything had been previously settled with no access onto Lowell Road and now there are grading, pitch, and elevation changes that need to be revised.
3. Nancy Devereaux, 19 Lowell Road, states that she is opposed to access from Lowell Road.
4. Kenneth Stonemetz, 34 Birch Road, states that he was concerned at first about another bungalow home being taken down, but believes the proposed home will fit into the neighborhood. He also believes that Jason Makofsky and Kelly McQueeney are also a good fit for the neighborhood.
5. Larry Drolet, 14 Lowell Road, questions how the plan confusion happened to which Mr. Landgren states there were a lot of plans submitted with the same dates and it was a lengthy process with this case.

The board speaks to the applicants regarding the drainage for the property and reviews the old and new plans. They also speak regarding paving plans for the driveway and planting plans.

The Board voted to continue the public hearing to February 24, 2014 at 7:40PM.

FACTS & EVIDENCE PRESENTED AT THE HEARING ON FEBRUARY 24, 2014

The Petitioners appeared at this hearing to describe the proposal in greater detail.

Jason Makofsky speaks to the board regarding the meeting between MWE and the Board of Health and DPW that took place after the previous hearing.

Mr. Landgren asks the Petitioners if they are ok with comment #2 on the Board of Health revised comments to the Board. The Petitioners state that they are.

Mr. Landgren asks the Petitioners if there are any changes that were made to the submitted plans following the meeting with MWE. The Petitioners state that there were no changes needed.

Larry Drolet, 14 Lowell Road, asks the Board what plans are the legal plans.

The Board discusses and decides that the architectural plans have a revised date of 1/9/2014 and the Plot Plan has a revised date of 1/6/2014.

The Board discusses the differences between the previously approved February 25, 2010 plan and the current plans.

Mr. Landgren states that he wants to go through the conditions from the May 11, 2010 decision.

1. February 25, 2010 Site Plan should now be Site Plan by Professional Land Surveyor, Robert A. Gemma, No. 37046, dated August 27, 2013, last revision date of January 6, 2014.
2. No change
3. No change
4. Mr. Landgren states that they will discuss this momentarily.
5. Add "As stated and subsequently modified on BOH comments dated February 4, 2014 and DPW comments dated February 5, 2014.
6. No change
7. No change
8. No change
9. Remove this condition.
10. Remove because the project is not within the buffer zone for Conservation.
11. No change
12. No change
13. No change

Mr. Landgren states that he wants to discuss condition #4 from the modified decision dated April 9, 2013.

4. Remove "Option B Plan" and replace with Site Plan by Professional Land Surveyor, Robert A. Gemma, No. 37046, date August 27, 2013, last revision date of January 6, 2014; Architectural Plans by Professional Engineer, William John Sieruta, No. 30148, Habitat Post & Beam, Sheets 1-6, date April 6, 2009, last revision date of January 9, 2014, Sheet F1, date August 15, 2013, last revision date of January 9, 2014, Sheet S1, date May 29, 2013, last revision date of January 9, 2014, Sheet S2, date July 15, 2013, last revision date of January 9, 2014, Sheet S3, date July 16, 2013, last revision date of January 9, 2014, Sheet S4, date July 19, 2013, last revision date of January 9, 2014. Keep the rest of the wording from the April 9, 2013 modified condition #4.

Larry Drolet, 14 Lowell Road questions the board regarding the replanting of the trees according to condition #9 and wants to know why the Board has removed this condition. The Board explains that the trees are not on the Petitioners' property.

There is discussion regarding the trees that are to be replanted according to Condition #9. The Board concludes that Condition #9 will state the following:

9. Change to "The Petitioners shall make a good faith effort to work with the Department of Public Works to replace the three (3) trees that were removed with three (3) proposed 2" Cal. Red Maples."

Mr. Landgren asks if there are any other comments from the audience to which he hears none.

Mr. Landgren asks if there are any other questions or comments from the Board.

Mrs. Godin states that it is wildly unfair regarding having the Petitioners plant trees to prevent access to Lowell Road.

Mr. Landgren closes the public hearing at 8:38PM.

Mr. Landgren motioned to approve the request with the modified conditions.

Mr. Swinarski seconded the motion.

FINDINGS BY THE BOARD

The Board, after review of the facts, plans, and evidence presented at this hearing, and after deliberations on the same, makes the following findings for a Chapter 40A, Section 6 Finding to raze an existing single family home, and construct a new single family home, on a pre-existing, non-conforming lot:

- A. The desired relief may be granted without nullifying or substantially derogating from the intent and/or purpose of the Zoning By-Laws, as said single family dwelling will not tend to intrude upon adjacent residences, nor create an appearance of building congestion on this parcel or in this neighborhood.
- B. The desired relief may be granted without substantial detriment to the public good, as the proposed single family dwelling will be attractively designed and will tend to enhance this property and the neighborhood in general.
- C. The proposed extension or alteration is not substantially more detrimental than the existing nonconforming use to the neighborhood.

CONCLUSION

For the aforesaid reasons the Board voted to grant a Chapter 40A, Section 6 Finding to raze an existing single family home, and construct a new single family home, on a pre-existing, non-conforming lot, subject to the following conditions:

1. Proposed single family dwelling shall be constructed specifically as represented on Site Plan by Professional Land Surveyor, Robert A. Gemma, No. 37046, dated August 27, 2013, last revision date of January 6, 2014, and Hydrologic Analysis dated March 2010, each referred to herein.
2. Access to the proposed single family dwelling shall be only via the existing easement on Dartmouth Street.
3. No driveway shall be constructed on Lowell Road to the site in connection with this reconstruction.
4. To ensure that the Petitioners' Project will conform to the Petitioners' Site Plan by Professional Land Surveyor, Robert A. Gemma, No. 37046, dated August 27, 2013, last revision date of January 6, 2014, and Proposed Site Plan Detail Sheet by Professional Land Surveyor, Robert A. Gemma, No. 37046, dated August 27, 2013, last revision date of January 6, 2014, which does not show any access connection from Lowell Road, there shall not be any subsequent departures from the building and site development shown on said Site Plan, including but not limited to creating a second or alternative access via Lowell Road, without Board review and approval of a modified proposal.
5. The Petitioners shall comply with all additional review and requirements from the Board of Health and the Department of Public Works as stated and subsequently modified on the Board of Health comments dated February 4, 2014 and the Department of Public Works comments dated February 5, 2014.
6. The Petitioners shall install and maintain an onsite storm water infiltration system located completely within the subject property, currently known as Map 18, Lot 112.
7. New sanitary sewer connection shall only be on Lowell Road, subject to final review and approval by all Town Boards having jurisdiction over the matter.
8. New water connection shall be to Dartmouth Street, subject to final review and approval by all Town Boards having jurisdiction over the matter, specifically the Department of Public Works.
9. The Petitioners shall make a good faith effort to work with the Department of Public Works to replace the three (3) trees that were removed with three (3) proposed 2" Cal. Red Maples, as shown on the Site Plan by Professional Land Surveyor, Robert A. Gemma, No. 37046, dated August 27, 2013, last revision date of January 6, 2014, referred to herein.
10. As represented by the Petitioners agreement to maintain all drainage structures onsite, the Town of Natick is not either now or in the future responsible for any potential or future drainage issues or problems arising from this construction.
11. The Petitioners are solely responsible for O&M of the onsite drainage system.
12. The Petitioners shall comply with all subsequent requirements set forth by the Town departments having jurisdiction over this matter.
13. This Decision must be recorded at the South Middlesex Registry of Deeds and proof of such recording must be submitted to the Natick Building Department prior to issuance of a Building Permit.

The vote of the Board in favor of granting a Chapter 40A, Section 6 Finding to raze an existing single family home, and construct a new single family home, on a pre-existing, non-conforming lot, subject to conditions as outlined above, for the property located at 12 Dartmouth Street Rear, Map 18, Lot 112, was:

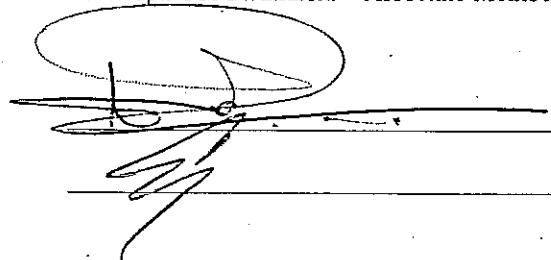
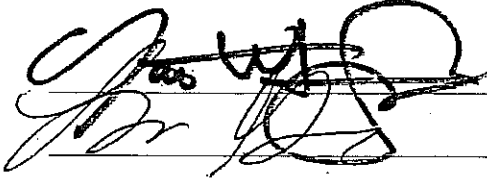
Scott W Landgren – Chair – Yes

Laura Godin – Clerk – Yes

NATICK ZONING BOARD OF APPEALS

Chike C Odunukwe – Associate Member - Yes

Christopher A Swiniarski – Associate Member - Yes



FILED march 25, 2014

**** NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK OF NATICK ****

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Natick Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: _____
Town Clerk Date