

October 18, 2012

Present: Polly Roberts, Kathy Leab, Peter Bowman, Rod Wyant

Alternates: Chip Wildman, Todd Peterson, Joan Kaplan

Absent: Todd Catlin

Staff: Shelley White, Mike Ajello

Also Present: Mr. Szymanski, P.E., Atty. Andrews, Mr. Ullram, Mr. Smith, Mr. Weaver, Architect, Mr. Sedito, Mr. Talbot, Architect, Mr. Low

Ms. Roberts, Chair, called the meeting to order at 7:33 pm.

Seated: Roberts, Leab, Bowman, Wyant, Peterson.

PUBLIC HEARING

ZBA-0931 – Request of Keating, 67 West Shore Road for Variance, Zoning Regulation(s) 11.6(Setbacks), 12.1.2 (Wetlands Watercourse Setback), 17.3.a (Expansion of Non Conforming use), 17.4.a (Expansion of Non Conforming Structure), to add 59 sq. ft. to existing deck.

Mr. Szymanski, P.E. was present to represent the property owners for this application. He stated that he had presented a plan before the Commission in July and took their feedback into consideration when revising this proposed plan for a deck at 67 West Shore Road. Mr. Szymanski noted that the deck would not exceed the existing depth that ranges from 5.5' to 9' and that the proposed deck would have a depth of 8.8' through the 36' length of the deck. He stated that they are planning to tear down the existing deck and rebuild it in an effort to address the existing deck that encroaches into the Deitz's property. Ms. Roberts and Mr. Szymanski looked at the map title Proposed Improvement Location Map, prepared for Herbert J. & Mary Jo Keating, by Arthur H. Howland & Associates, P.C., sheet PR-ZL, with a revision date of 9/12/12. Mr. Szymanski stated that the planted area would be removed and replaced with new plantings, which would act as a buffer. The Inland Wetlands Commission approved the proposed plan on September 12, 2012. Mr. Szymanski submitted a copy of the IWC Minutes of September 12, 2012 (on File in the Land Use Office).

Ms. Roberts noted that the proposed plan indicates a 57% lot coverage calculation. Mr. Szymanski stated that technically this property is connected to the main property across the street but they looked at this as a separate lot to be conservative. He stated that he believes the parcels are listed in the tax records as two lots but the survey indicates it as one lot.

Ms. Roberts stated that this plan proposes to make a nonconforming structure and nonconforming use larger but the regulations state that when these structures are eliminated they are not to be replaced. She asked that Mr. Szymanski address the land-based hardship.

Mr. Szymanski stated that there are no railings proposed or existing and it is difficult for people to walk along the deck because it is so narrow. The Commission asked why there are no proposed railings when there is quite a drop off. Mr. Szymanski acknowledged that the water is unusually low at this time. Mr. Ajello stated that the Building Official generally does not get involved in landscaping steps but this brings up a good question. He stated that this is an accessory structure to the primary use and railings are required on home decks when they are over 30 inches above

grade. Mr. Ajello stated that the proposed dock is certainly more than 30 inches above the rocks/water and feels that the Building Official could address this issue.

Ms. Roberts asked Mr. Szymanski what other hardship, other than improved safety, exists. Mr. Szymanski stated that topography of this parcel adjacent to the deck is rocky; it drops off significantly at this location and is unique to this property.

The Commission and Mr. Szymanski looked at the Proposed Improvement Location Map and Mr. Szymanski indicated what exists today and what is being proposed. Mr. Szymanski stated that they are proposing to add an approximate total of 53 sq. ft. to what exists.

Ms. Kaplan questioned whether the Commission should be allowing an already unsafe structure to become bigger.

Mr. Szymanski stated that a railing could be added if the Commission recommended it. He stated that this particular structure is an improvement because it helps preserve the existing embankment.

There was a brief discussion regarding railings for a deck, the view from the road, safety and materials that could be used for railings.

Ms. Leab stated that she is not seeing a land-based hardship.

Ms. Roberts stated that she is most troubled by the fact that this is a non conforming use and a non conforming structure. Mr. Bowman agreed and noted that they would be tearing down a non conforming use and then rebuilding it. Mr. Szymanski stated that the reason why they are tearing it down is to address the encroachment onto the Dietz's property.

Mr. Wildman and Mr. Bowman asked why the setback from the road could not be decreased rather than the water. Mr. Szymanski stated that there is a little bit of sheeting coming off of the road and this planting area acts as an infiltration area which allows for treatment of the run off into the Lake.

Ms. Roberts stated that the ZBA has always been concerned about the Lake and she feels this is a modest addition but the lot coverage calculation is way over the top. She feels that the safety is not a hardship.

Mr. Szymanski stated that he would like to continue this Public Hearing so that he may have time to consult with the surveyor.

Motion:

to continue the Public Hearing for ZBA-0931 at the next Regular Meeting of the ZBA on November 15, 2012 in the Upper Level Meeting Room at 7:30 pm for Request of Keating, 67 West Shore Road for Variance, Zoning Regulation(s) 11.6(Setbacks), 12.1.2 (Wetlands Watercourse Setback), 17.3.a (Expansion of Non Conforming use), 17.4.a (Expansion of Non Conforming Structure), to add 59 sq. ft. to existing deck, by Ms. Leab, seconded by Mr. Wyant, passed by 5-0 vote.

Seated: Roberts, Bowman, Leab, Wyant, Wildman, Alt.

PUBLIC HEARING

ZBA-0932 – Request of Lyman-Reigel, 29 Mallory Brook Road for Special Exception, Zoning Regulation(s) 12.14 (Noise Generating Equipment) to install a generator more than 25 ft. from building principally served.

Ms. Roberts stated that the adjoining property owners were not notified about the public hearing.

Motion:

to continue the Public Hearing for ZBA-0932 at next Regular Meeting of the ZBA on November 15, 2012 in the Upper Level Meeting Room at Bryan Memorial Town Hall for the Request of Lyman-Reigel, 29 Mallory Brook Road for Special Exception, Zoning Regulation(s) 12.14 (Noise Generating Equipment) to install a generator more than 25 ft. from building principally served by Ms. Leab, seconded by Mr. Wyant, passed by 5-0 vote.

Seated: Roberts, Bowman, Leab, Wyant, Wildman, Alt.

PUBLIC HEARING

ZBA-0933 – Request of Talbot (Doherty), 214 Calhoun Street, for Variance, Zoning Regulation(s) 11.6.1.c (Setbacks) for placement of heat pump, A/C condensing unit, bulkhead access for guesthouse.

Mr. Talbot, Architect and Mr. Sedito were present to discuss this application for the property owners of 214 Calhoun Street. Mr. Talbot stated that he had thought that they had acquired all of the approvals for this non conforming property and didn't realize until later that he needed a variance for the sound generating equipment within the setback. He stated that the Historic District Commission and Zoning Commission have approved this proposed plan. The Commission looked at the drawing titled Landscape & Utility Plan, Phase 1 Barn Complex & Pool, prepared for Doherty, by Peter Talbot Architects, sheet SP.103 with a revision date of September 06, 2012 and photos of the heating pump at its location. Mr. Talbot stated that the heating pump is 54 Db at the unit, is mounted on the street side of the building, 5 feet away from the property line, 17 feet away from the edge of the road, and 27 feet to the center line of the road. He noted that the unit is behind a barn sided fence. He stated that the A/C condensing unit is located 33 feet from the property line, 48 feet from the edge of the road, and degrades to 48-49 Db at the property line. Mr. Talbot stated that the hardship is that the main building is entirely within the front setback and the barn structure is about 80% in the setback, the grade increases and there is a rocky outcropping which, they would have had to blast to allow for the bulkhead doors. He stated that they are restricted by the topography and an effort to maintain the historic character. Mr. Talbot indicated that the bulkhead doors were painted a gray color and basically disappear+.

Ms. Roberts stated that she did look at the property and feels that the units are well hidden and she saw that there was a huge rock outcropping at the back of the barn.

Ms. White confirmed that seven out of eight return receipt postcards were returned to the Land Use Office.

Mr. Sedito stated that there also drainage problems in the back as well.

Ms. Leab stated that she feels that this was an oversight and not an intentional installation without coming before the Commission first.

There was a brief discussion regarding the screening.

There were no further questions or comments.

Motion:

to close the Public Hearing for ZBA-0933 – Request of Talbot (Doherty), 214 Calhoun Street, for Variance, Zoning Regulation(s) 11.6.1.c (Setbacks) for placement of heat pump, A/C condensing unit, bulkhead access for guesthouse, by Ms. Roberts, seconded by Mr. Wyant, passed by 5-0 vote.

MEETING

Mr. Wyant stated that he feels that this is well planned out and designed and does not feel that it could be located anywhere else because of the rocky area in the back. Mr. Wildman agreed that the location of the ledge is a hardship and the structures could not be located elsewhere. Ms. Leab agrees with Mr. Wyant and Mr. Wildman and feels that this was a truly an oversight on Mr. Talbot's part. Mr. Bowman stated that he agrees that this is the best placement for the structures and feels that the ZBA would not have denied it if it were in the original application. Ms. Roberts stated that most of the buildings are within the setback envelope and the ledge and the rock create a hardship.

Motion:

to approve ZBA-0933 – Request of Talbot (Doherty), 214 Calhoun Street, for Variance, Zoning Regulation(s) 11.6.1.c (Setbacks) for placement of heat pump, A/C condensing unit, bulkhead access for guesthouse, passed by 5-0 vote.

Seated: Bowman, Leab, Peterson, Alt, Kaplan, Alt., Wildman, Alt.
Ms. Roberts and Mr. Wyant recused themselves.

PUBLIC HEARING

ZBA – 0935 – Request of The Gunnery, 99 Green Hill Road, for Variance, Zoning Regulation(s) 11.5.1.c (Lot Coverage), for addition of ADA compliant bathrooms & entrance, and administrative offices to Bourne Building.

Ms. White stated that 20 certified neighbor notifications were sent out and the Land Use Office received 18 return receipt cards. Atty. Andrews, Mr. Smith, Surveyor, Mr. Weaver, Architect and Mr. Ullram, Assistant Head of School, were present representing The Gunnery for this application. Atty. Andrews stated that this application is for a coverage variance for a small addition that the School would like to add to the existing Bourne Building on campus. She stated that the existing lot coverage on The Gunnery's Main Campus is 24.8% and this proposed addition would add about 1800 square feet and increase the lot coverage by .002%.

Atty. Andrews stated that this addition would provide the first accessible restrooms in the Bourne Building and would also provide an accessible entrance, which addresses very significant ADA issues. She stated that over the years Bourne has been used for administrative offices, faculty apartments, dorm space and it has never been made handicap accessible. Atty. Andrews stated that the College Placement Offices would be located in the proposed addition, which is currently located in a very crowded space. She stressed that this proposed plan is not an intensification of the use of the campus, is not being done for the purposes of increasing staff or student enrollment

and is simply to address a serious overcrowding issue and provide the important ADA compliance.

Mr. Smith, Surveyor, gave an overview of the campus and stated that there are 21.7 acres and 17 buildings. The Commission looked at the map titled Proposed College Placement Office Site Plan, prepared for The Gunnery by Smith & Company Surveyors & Engineers, Inc., sheet 2 of 5, dated 8-10-12. Mr. Smith stated that the proposed addition would be built in an area where there is an existing courtyard surrounded by walls, which would remain and the total impervious area would be 1800 sq. ft. He stated that the proposed building is outside of any setbacks and would have a 1300 sq. ft. footprint.

Mr. Weaver, Architect, stated that the proposed addition would provide accessibility to the existing Bourne building, which it does not have at the moment. He stated that the proposed addition would have two stories that would have office space, the first floor would have two handicap accessible restrooms and the second floor would have offices and a conference space. The Commission looked and the drawing titled College Placement Offices, prepared for The Gunnery, by Wieber, Powell & Grunigen, Inc., Floor Plans, sheet A-1.0 and Exterior Elevations, sheet A-2.0. Mr. Weaver described the architecture and how it would tie into the existing Tudor style exterior.

Ms. Leab stated that there are seven offices in the proposed plan and feels like that is too many for the size of the School's college placement staff and that they are using ADA as a reason to add these offices.

Atty. Andrews responded that this was not the case and that there is a critical need to relieve the overcrowding of the administrative offices and needs to address ADA compliant accessibility.

Ms. Leab stated that ADA accessibility trumps everything but she does not agree with the size of this proposed addition.

Ms. Kaplan stated that perhaps it does give a sense of "piggy backing" with the ADA accessibility issue and she feels the School is doing a great job of addressing the issue and Ms. Leab's point is well taken. She questioned that it is a possibility that The Gunnery is looking to address the need for more office space and asked if this could be addressed.

Ms. Leab stated that as a requirement the ZBA needs to hear why this proposed addition needs to be in the exact proposed location, could not be located anywhere else on the campus and that it needs to be the proposed size.

Mr. Bowman stated that he believes the intent of the ADA regulations is to provide handicap access on the equivalent basis as everyone else.

Atty. Andrews responded that she works with the Federal Americans with Disability Act Regulations everyday. She stated that the Bourne building was built in the 1800s, 100 years before there was an ADA and there is a subset of regulations that are a part of the federal law that discuss the treatment of the ADA in historic buildings. She stated that the subset of regulations address a balance between the importance of historic buildings as well as address civil rights and even though The Gunnery has not provided this before they are not in violation. Atty. Andrews stated that this is ADA improvement to the Bourne building that will make a huge practical difference to students, parents, staff and other people that use the building. She stated that there is

no ADA regulation in the ZBA regulations on granting variances and they are not coming to the ZBA under an ADA regulation. Atty. Andrews stated that The Gunnery has to prove hardship, take due consideration of the public welfare, safety, etc., and make sure that what is done is in harmony with the zoning regulations in order for the ZBA to grant a variance. She stated that they are not using ADA as their only hardship and if it was not a factor in the hardship for this application she believes that this application would meet the criteria for granting a variance. Atty. Andrews noted that The Gunnery campus has exceeded the 10% coverage in an R-1 district since it existed and this had been considered when approving other variances.

Mr. Ullram and the Commission looked at the floor plans sheet A-1.0. Mr. Ullram stated the location of the proposed addition would tie into the existing location of the other administrative offices in the Bourne building. He discussed the use of each existing office and how the one room is used for the 4 people and as a conference area. Mr. Ullram stated that the student and staff member usually must find another place to have discussions and look at materials because there is no place to do this in the current office. He said that the intention of the addition is to make the College Placement Department a larger facility, to have offices that would provide privacy and the second floor would be used for conference space as well as allow for flexibility in the future.

Ms. Leab stated that it was clearer to her as to why the location of the addition should tie in to the existing administrative offices.

Mr. Bowman stated that he had a problem with the additions location in relationship to the existing Bourne building and was concerned with the space between the structures and proper fire exits.

There was a brief discussion regarding fire exits and egress. Atty. Andrews stated that this proposed plan would need to be approved by the Fire Marshal as part of the Special Permit process. Mr. Bowman stated that they would have to come back to ZBA if any changes to the proposed plan are made.

Mr. Peterson asked how many students traverse in and out of the office during the day. Mr. Low stated that on any given day they have about 10-20 students in and out of the office and there are 80 seniors so approximately a 1/3 of the class. Mr. Smith stated that the entrance to the proposed addition would alleviate some of the foot traffic through the hall of the existing administrative offices.

Atty. Andrews noted that if the building were placed anywhere on the campus or on top of an existing building it would require a variance because of the existing lot coverage.

Atty. Andrews went through the standards of the Town regulations and in the State Statute. The first standard that needs to be applied is due to conditions especially affecting the parcel and that generally affecting the zoning district that the parcel is in that a literal enforcement of the regulations would result in a hardship and exceptional difficulty. She stated that this application does have the hardship in that this addition would bring the existing building into compliance with ADA on restrooms and an entrance also the Gunnery, since the beginning of the school, has always exceeded the lot coverage requirement of 10% in an R-1 district and this has been a basis on which other variances have been granted to the school and if the lot coverage could not have been varied the School would not have a viable campus. She reiterated that this increase is not related to any increase in staff or school enrollment and to strictly apply the coverage regulation with out ever varying it would result in a really extreme hardship and exceptional difficulty because the

School would be unable to even improve a walkway. She stated that the variance must be in harmony with the Town's general intent and purposes of the zoning regulations. Private schools are Special Permit uses allowed in the residential districts and the campus and the small addition do not interfere with the zoning regulations. Atty. Andrews noted that, finally, the ZBA must give due consideration to public health, safety, convenience, welfare and property values and she stated that clearly with this very small addition there will be no adverse impact to these concerns. She stated that this is an increase in coverage by .002%. Atty. Andrews respectfully request that the ZBA grants this application for a variance of the coverage regulations.

There were no further questions or comments. Motion:

to close ZBA – 0935 – Request of The Gunnery, 99 Green Hill Road, for Variance, Zoning Regulation(s) 11.5.1.c (Lot Coverage), for addition of ADA compliant bathrooms & entrance, and administrative offices to Bourne Building,
by Ms Leab, seconded by Mr. Wildman, passed by 5-0 vote.

MEETING

Mr. Peterson stated that he appreciated the further explanation of the applicant and does not feel that adding the ADA compliant bathrooms and entry is being used as an opportunity to be excessive. He stated that he feels that this proposed addition would relieve existing space issues and it is a minute increase in the lot coverage. Ms. Kaplan stated that she was happy with the clarification from the applicants and she accepts and approves this application. Ms. Leab stated that she sees that the proposed space within the context of the Bourne building is needed and it is a small increase in lot coverage. Mr. Wildman stated that he agreed with what the other commissioners have said and feels that the architecture would make this addition blend in with the existing building, the .002% increase in lot coverage is very small and he is in favor of this application. Mr. Bowman stated that he agrees with everything that has been said, he is concerned with the proximity of the addition to the existing building, he would not like to see it get any bigger or any closer to the existing building and if something happens that requires a revision that would change the footprint of the proposed plan he would like to see this come back to the ZBA for review.

Motion:

to approve ZBA – 0935 – Request of The Gunnery, 99 Green Hill Road, for Variance, Zoning Regulation(s) 11.5.1.c (Lot Coverage), for addition of ADA compliant bathrooms & entrance, and administrative offices to Bourne Building., passed by 5-0 vote.

OTHER BUSINESS

Consideration of the Minutes:

The Commission considered the Minutes of the September 20, 2012 regular Meeting of the Zoning Board of Appeals.

Motion:

to approve the Zoning Board of Appeals Regular Meeting Minutes of September 20, 2012 and as submitted,
by Ms. Roberts, seconded by Mr. Wildman, passed by 5-0 vote.

Discussion of the Annual Report:

Ms. Roberts discussed the annual report that she would be submitting to the Selectman's Office. She asked Ms. White to forward her some missing information and to check that the website was up to date with all of the minutes from their meetings.

Adjournment

Motion:

to adjourn at 9:20 pm,

by Ms. Roberts, seconded by Ms. Kaplan, passed by 5-0 vote.

Ms. Roberts adjourned the meeting.

Submitted Subject to Approval,
Shelley White, Land Use Clerk