

Members present: Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa, Norm Leon
Members absent: None

Staff: Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:02 p.m.
Pledge to the Flag

Mr. Wilson noted Title 16.1.5.2.F.4.a. authorizes the Board of Appeals to hear the following miscellaneous variation appeal.

ITEM 1 – Jane Durgin requesting a miscellaneous variation to the terms of Title 16 Section 3.2.4.D in order to demolish an existing mudroom and garage and to construct a new mudroom and garage on property located at 6 Cook Street, Map 3 Lot 136, zoned Residential-Urban. Jane Durgin summarized the variation request as the current garage structure does not meet code. The new structure will be located 18 feet from the rear lot line which will be more conforming than the current location. Chairman Gardner asked if there was anyone wishing to speak for or against this project.

Eric Herlan supports Ms. Durgin, noting the foundation of the garage is falling apart. The trapezoid shape of the lot makes locating a new garage difficult, but the proposed location does not create increased nonconformity. The square footage remains the same, but by moving the structure 8' toward Cook Street, it becomes more conforming.

There was no further testimony, and the CEO provided:

1. This is a nonconforming lot with nonconforming structures and nonconforming lot coverage located in the Residential-Urban zone.
2. Applicant is proposing to demolish an existing garage and mud room and construct a new garage and mud room.
3. Title 16.3.2.4.D. requires a minimum 15-foot side property line setback. The proposed structure will be set back 5.5 feet from the side property line. The existing structure is located 3.5 feet from the side property line.
4. The proposed construction will be less than the required setback but no more nonconforming than what currently exists.
5. Title 16.3.2.4.D allows a maximum 20% building coverage per lot in this zone. The existing buildings total 22.6%; the new building coverage will be 22.6%, no more non-conforming than the existing lot coverage.

Mr. Leon stated the proposed construction is more in conformance than the existing, and appears appropriate to grant the variance.

Mr. Boyle concurred.

Mr. Wilson concurred and thanked the applicant for submitting application information that was clear and well done.

Mr. Costa concurred.

Mr. Gardner asked if the area covered between the deck and garage is included in the total building coverage. The CEO read the definition of building: *means any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of persons, animals, or property. Each portion of a building, separated from other portions by a fire wall, is considered as a separate*

structure. The deck is part of the structure. This is open to interpretation; however it does not have columns and walls. Prior Board findings have gone both ways.

Mr. Costa stated it is not enclosed and the Board may require it remain open, as a passageway.

Mr. Wilson stated he does not consider it living space and would not count it as coverage. Further, he does not believe the Board should restrict future enclosure as that action would require additional review.

Mr. Boyle does not believe this is an issue and does not see it as living space.

Mr. Leon concurred.

The CEO is comfortable with this direction.

Mr. Gardner asked if the Board wished to place a condition that the area never be enclosed.

Mr. Boyle stated enclosure would require further Board review.

Mr. Gardner asked if a roof extends 3 feet over a sidewalk, is that considered covered area. The CEO stated you are allowed a 24" overhang, but this applies to setback dimensions, not coverage.

Applicant agreed to limit the overhang of the new structure to 24 inches.

Mr. Costa moved to grant a miscellaneous variation to Jane Durgin to the terms of Title 16 Section 3.2.4.D in order to demolish an existing mudroom and garage and to construct a new mudroom and garage on property located at 6 Cook Street, Map 3 Lot 136, zoned Residential-Urban; that any future enclosure of the second floor patio/sun deck may require further Board of appeal action; and the applicant agreed the overhang will not exceed 24 inches.

Mr. Boyle seconded

Motion carried unanimously

Findings of Fact

1. Jane Durgin requested a miscellaneous variation to the terms of Title 16 Section 3.2.4.D in order to demolish an existing mudroom and garage and to construct a new mudroom and garage on property located at 6 Cook Street, Map 3 Lot 136, zoned Residential-Urban.
2. The existing garage foundation needs to be replaced and update garage and mudroom to code.
3. The lot, structures and coverage are nonconforming.
4. The existing side yard setback is 3.5 feet; proposed setback will be 5.5 feet where 15 feet is required.
5. Maximum building coverage is 20%, where 22.6% coverage currently exists. The proposed coverage is 22.6%, no more nonconforming.
6. The Board discussed whether the second floor deck is a structure for building coverage calculations and determined it was not.
7. The overhang of the second floor deck was unclear, and applicant agreed to limit the overhand to no greater than 24 inches.
8. The Board finds Title 16.6.6.1 Conditions and Title 16.6.6.2 Factors for Consideration have been met.

Mr. Leon moved to accept the Findings as read

Mr. Costa seconded

Motion carried unanimously

Conclusion

The Board found that under Title 16.7.3.5.5, Nonconforming Structure Repair and/or Expansion, in both instances an appeal was necessary and the proposed construction was no more nonconforming and granted the miscellaneous appeal.

Mr. Boyle moved to accept the Conclusion as read

Mr. Leon seconded

Motion carried unanimously

Chairman Gardner noted this approval is not the granting of a building permit and any aggrieved person has 45 days to appeal the decision of the Board to Superior Court.

Mr. Wilson noted Title 16.1.5.2.F.4.a. authorizes the Board of Appeals to hear the following miscellaneous variation appeal.

ITEM 2 – Delta Amusement Inc. requesting a miscellaneous variation to the terms of Title 16 Section 8.9.4.M for the joint use parking of a parking facility on property located at 182 State Road, Map 22 Lot 2, zoned Commercial-3.

Joseph Sugden, owner and operator, Navy Yard Bar and Billiards Restaurant, testified he would like to place an outdoor seating area that would take up three parking spaces. He explained there are three businesses at this location:

1. Sunrise Grill – hours of operation – 6 a.m. – 2:00 p.m.
2. Navy Yard Billiards – hours of operation – 2:00 p.m. – 1:00 a.m.
3. Tasty Thai – hours are similar to Navy Yard Billiards, but a lighter business

He noted he provided the square footage of the customer areas and related parking spaces required.

Chairman Gardner asked if there was anyone wishing to speak for or against this project. There being no testimony, the CEO provided:

1. This is a conforming lot with a nonconforming structure and nonconforming parking located in the Commercial-3 zone.
2. Applicant proposes to add a 320 sf patio area to the Navy Yard Bar and Billiards. The patio would take up approximately three parking spaces.
3. The property currently has less than the required parking. The CEO referenced a 1993 BoA approval, a 1993 Planning Board approval, a 1995 occupancy change approval, and a 1996 occupancy change approval for the Navy Yard Bar and Billiards. All approvals reference different required parking spaces.
4. The applicant has provided a summary of the required parking spaces for the three uses. The CEO explained the formula for determining parking spaces. Based on these calculations, the required parking for the Navy Yard Bar and Billiards is 65 spaces (with the patio), with 62 provided (as approved by the Planning Board in 1993). The patio would then reduce the parking spaces available to 59.
5. The applicant stated he reached an agreement with Gerald Mylroie [Town Planner] on the specific details, however, the Planner cannot legally issue such an agreement, and the applicant has not been to the Planning Board.
6. The applicant would like to apply the joint use parking section of the ordinance in order to meet the parking needs of his and the other businesses. However, it appears there are insufficient existing parking spaces to begin with.

Board members discussed the method for calculating parking, including deducting square footage taken up by pool tables. The CEO noted 16.8.9.4.L *The Board of Appeals may, in specific cases of hardship, reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets.*

Mr. Wilson noted there are 65 spaces required for one business, but there are three businesses at this location. The Board must consider the impact on the town. Do we have a parking arrangement that works now? If so, the Board is looking at a reduction of three parking spaces without degrading the parking needs.

Mr. Boyle would like to take under consideration that this business is not a full restaurant and would like to be able to consider Section 16.8.9.4.L.

The CEO reminded the Board they must address the joint use as well as the hardship section.

Mr. Leon asked if there is room to sit 78 people.

Mr. Sugden stated perhaps once or twice a year they fit that many people into the restaurant, but this is never a conflict. The state considers the business a Class A Tavern, not a restaurant.

Mr. Gardner suggested there is no overflow from their business, and asked if they had ever been in violation of having parking overflow into State Road, and how many seats are available in the business? The applicant stated they had not received any violations. There are 62 seats available, but his maximum capacity is 78. Mr. Gardner stated it appears the entire property is deficient by 22 parking spaces. Discussion followed about the number of spaces needed for capacity [26].

Chairman Gardner asked if Mr. Sugden has support and signed authorization from the other tenants.

Mr. Sugden stated he has verbal support, but can receive signed agreements. The landlord is also supportive. Mr. Gardner stated it seems possible to follow the ordinance under Sections 16.8.9.4.L and M.

Mr. Wilson noted the approved site plan from 1993 approved 55 spaces and in the real world there have been no issues, and the Board can grant the request under ordinance guidelines.

Mr. Leon asked about the smoking area.

The CEO stated this area was approved by a former Planner when the law prohibiting smoking indoors was enacted.

Mr. Gardner stated he would like to see letters from tenants agreeing to the joint use of parking spaces, and would like to see a condition stating the hours of operation.

Mr. Gardner asked if the Board is responsible for the approval of the construction of the patio area. The CEO stated the Board's responsibility is to approve the reduction in parking.

Mr. Wilson stated the Board can only review what they have the authority to review. The CEO will review the outdoor area in regard to building permit requirements.

Mr. Costa stated the decision by the Board is binding. The tenants have not been notified as the owner is the person notified. Mr. Gardner stated he would hear the tenants concerns if they were present.

Discussion followed regarding future changes of uses, hours and operation, etc. and conditions of approval.

The CEO recommended tracking the reduction of the parking as discussed under the provisions of Section 16.8.9.4.L and M as follows:

Navy Yard: 26 spaces (1993 approval; and Section 16.8.9.4.L – hardship based on number of seats as this is not a restaurant)

Sunrise Grill: 22 spaces (shared; under Section 16.8.9.4.M)

Tasty Thai: 13 spaces

For a total: 61 parking spaces

With the addition of the proposed patio, the number of parking spaces available would then total 59 (62 existing less 3 for patio area).

Mr. Leon moved to grant Delta Amusement Inc's. request for a miscellaneous variation to the terms of Title 16 Section 8.9.4.L for a reduction in parking based on hardship. The Board found the restaurant designation for the Navy Yard Bar and Billiards does not accurately reflect the parking needs and the Board used the maximum seating capacity of 78, with 1 space for every 3 people, requiring 26 parking spaces as opposed to using the restaurant calculation requiring 62 parking spaces; and per Section 8.9.4.M for the reduction of spaces based on joint use of parking on property located at 182 State Road, Map 22 Lot 2, zoned Commercial-3, with the conditions that before approval is finalized there be a signed agreement from the Sunrise Grill tenant that there will be two parking spaces shared, and the hours of operation by all tenants remain as they are at this date, and any change will trigger a review by the Board of Appeals to review parking.

Mr. Boyle seconded

Motion carried unanimously

Findings of Fact

1. Joseph Sugden, owner of Navy Yard Bar and Billiards, representing Delta Amusement Inc. requested a miscellaneous variation to the terms of Title 16 Section 8.9.4.M for the joint use parking of a parking facility on property located at 182 State Road, Map 22 Lot 2, zoned Commercial-3.
2. The property is a conforming lot with nonconforming structures and parking.
3. The applicant's request is for a reduction in 3 parking spaces in order to construct a 320 sf patio to the south of the building for outdoor seating.
4. There's a murky parking history to the parcel. The Board viewed the 1993 BoA and Planning Board decisions and a 1995 business change approval.
5. Per testimony, the Board determined there was the ability for shared parking due to the hours of operation of the businesses.
6. Testimony was given that there was never any violation related to parking on or off site.
7. The Board discussed the nature of the business and though it has been classified a restaurant for Code purposes, it did not appear to operate as a restaurant.
8. The Board included conditions with the approval. The applicant is required to provide a signed agreement from the Sunrise Grill tenant that there will be two parking spaces shared, and the hours of operation by all tenants remain as they are at this date, and any change will trigger a review by the Board of Appeals to review parking.
9. The Board finds Title 16.6.6.1 Conditions and Title 16.6.6.2 Factors for Consideration have been met.

Mr. Costa moved to approve the Findings as read

Mr. Boyle seconded

Motion carried unanimously

Conclusion

The Board has the authority Title 16.8.9.4.L to reduce parking under hardship, finding the operation of the business was not a restaurant; and under Title 16.8.9.4.M to allow joint use of parking

Mr. Leon moved to approve the Conclusion as read

Mr. Costa seconded

Motion carried unanimously

Chairman Gardner noted this approval is not the granting of a building permit and any aggrieved person has 45 days to appeal the decision of the Board to Superior Court.

The CEO presented:

The Board of Appeals granted a miscellaneous variation to Bill Cullen, Seacoast Builders LLC, on December 11, 2012. The ordinance requires that construction commence within six months and be substantially complete within one year of approval. The six month time period ended June 11, 2013. The building has been removed, but the new building construction has not begun. Typically, construction requires laying a foundation or beginning a well or septic installation. This has not begun.

Will the Board consider demolition of the building as the construction start? If so, the applicant may continue and notice will not be required. If not, the project will have to be re-noticed. There was a delay related to septic design. Mr. Costa stated he felt demolition was a commencement of construction. Mr. Wilson and Mr. Leon concurred.

Mr. Cullen summarized the process to this time, noting the Board's decision required a different septic design and a re-design of the new house. The house design was just received on June 20, 2013.

Board members concurred the applicant had commenced construction within the six-months required, with project completion by December 11, 2013 remaining in effect.

Minutes – May 14, 2013

Mr. Leon moved to accept the changes to the minutes
Mr. Boyle seconded
Motion carried unanimously

Mr. Gardner asked that emails be sent reminding the Board of a scheduled meeting.

The CEO noted there is a scheduled meeting on Tuesday, July 9, 2013 to discuss two appeals.

Chairman Gardner adjourned the meeting.

The Kittery BOA meeting of June 25, 2013 adjourned at 8:30 p.m.
Submitted by Jan Fisk, July 8, 2013