



## COMMUNITY DEVELOPMENT

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### Draft Zoning Board of Adjustment Minutes September 25, 2012

#### **Board Members:**

Mark Samsel, Chairman - Present  
Heath Partington, Vice-Chairman - Present  
Elizabeth Dunn, Member - Present  
Jim Tierney, Member - Present  
Jay Yennaco, Member – Arrived at 8pm  
Mike Scholz, Alternate – Excused  
Mike Mazalewski, Alternate – Present  
Tony Pellegrini, Alternate - Present

#### **Staff:**

Nancy Prendergast, ZBA/Code Enforcement Administrator  
Colleen King, ZBA Minute Taker

#### **Call to Order/Attendance**

Chairman Samsel called the meeting to order at 7:30 pm, introduced the Board Members and staff, and explained the meeting process.

#### **Public Hearings**

The Chairman appointed Mr. Scholz to sit for Mr. Yennaco.

The Chairman stated that first item on the agenda is an Appeal of Administrative Decision, continued from 8/28/12, and reviewed the history of the Appeal.

#### **Lot 18-L-450, Case #32-2012**

Applicant – Cafua Management, LLC  
Owner – Estate of Ruth I. Bohne, C/O Janet Weigel  
Location – 43 Range Road  
District – Professional, Business and Technology District

An Appeal of Administrative Decision had been submitted by Cafua Management, LLC, on behalf of the Estate of Ruth I. Bohne, appealing the ZBA/Code Enforcement Administrator's position in a July 9, 2012 memo, which was submitted to the Planning Board for Case #2012-21, that a Dunkin Donuts without a drive-thru is in violation of Section 614.2.12 of the Zoning Ordinance.

- Chairman Samsel read a letter from Laura Scott, Community Development Director regarding the plans and information from the previous meeting.
- Atty. John Cronin, representing Cafua Management, acknowledged that the July 9 memo referenced no-drive-thru; however Dunkin Donuts has a new business model and building design for a café-style restaurant. Atty. Cronin then asked Ms. Dunn to recuse herself, because of her presence at previous Court cases.
- Ms Dunn stated that there is absolutely no reason for her to recuse herself and that those court appearances were at the request of Chairman Samsel in her capacity as a ZBA member.
- Atty. Cronin stated that a Dunkin Donuts in Chatham, Ma has the same interior design and features, which includes no drive-thru, 25 seats, wifi, TV's and a new café menu. The hours are 6am to 11pm.
- Chairman Samsel asked which unit would house the Dunkin Donuts and what other businesses are planned for the other units.
- Ms. Dunn challenged the relevancy of this line of questioning regarding what other type of businesses might be planned in the other units and made a motion to override the Chairman's question.
- Chairman Samsel stated that any Board member has the right to ask a question and should not have to justify it.
- Mr Partington had no problem with any Board member asking questions. There was no second to Ms. Dunn's motion.
- Mr Peter Zohdi discussed parking calculations and septic loading and also stated that they have not confirmed what businesses are slated for the remaining units.
- Ms. Prendergast, Code Enforcement Administrator, stated that her determinations was based on the July 9<sup>th</sup> information and did not have any information regarding this new design.

The Chairman opened the Public Hearing; hearing no comments, the public hearing was closed.

**Mr Tierney motioned to go into Deliberative Session, seconded by Mr Scholz. Motion passed 5-0.**

- Chairman Samsel reviewed RSA 674.33, Powers of ZBA – Appeal of Administrative Decision.
- Mr Partington clarified that they are to decide based on the information that Ms Prendergast had on July 9. If the applicant has made changes to their plan, they can reapply.
- Mr Scholz stated that based on the July 9 plans, he sees no reason to overturn Ms Prendergast's decision.

**Mr Partington made a motion to “Deny the Appeal of the Administrative Decision for Case 32-2012. The CE Administrator’s position in the July 9 memo, that a Dunkin Donut without a drive-thru is in violation of the 614.1.12 of the Zoning Ordinance, is correct.” Ms Dunn seconded. Motion passed 4-1; Chairman Samsel opposed.**

Chairman Samsel stated, for the record, that he is disappointed that a ZBA Member made a motion to prevent another member to speak and that he hopes it never happens again.

Jay Yennaco was seated for the next hearings.

**Lot 19-B-100, Case #35-2012**

Applicant – Ryan & Jill Bartlett

Owner – Same

Location – 53 Mammouth Road

Zone – Rural District

Variations from the following sections of the Zoning Ordinance are requested to construct a garage attached to the existing dwelling. The following variations are requested from the Zoning Ordinance: Section 702 and Appendix A-1 - to allow a front setback of 34+/- feet where 50 feet is required; Section 401 & 406.2 – to allow for an increase in volume and footprint of the existing non-conforming structure within the building setbacks.

Ms. Dunn recused herself and Mr Pellegrini was seated in her place.

Mr Tierney read the Variance Request and the list of Abutters notified.

Chairman Samsel asked the applicant, Mr Ryan Bartlett to explain his variance request.

- Mr Bartlett introduced Matt Tessier of Land Development Services, who explained that the proposed addition is garage attached to the existing dwelling and located at the south-end of the structure, with 34' off the front lot line.
- Mr Tierney inquired about architectural or elevation plans.
- Mr. Tessier stated they had no plans with them at the meeting and that the intention is to use pre-made trusses, 16" on center, which would not allow for additional storage in the garage. Mr Tessier explained that the existing structure was built in 1860 and the layout of the structure makes it unable to meet the setback requirements. The new driveway will be straight in and out.
- When asked by Mr Yennaco if there was any consideration to moving the addition further back, Mr Tessier explained that it would be very awkward moving the addition further back.
- Mr Tierney stated that the layout of the house, rock wall, septic and well does not seem to lend itself to any other location than the proposed location.
- Mr Scholz inquired about the size of the garage. Mr Bartlett said it is a 3 car garage.
- Mr Tessier addressed the 5 points of the Variance Criteria: 1. Attaching to a structure that is already non-conforming is not contrary to the public's interest; 2. Attached garages are allowed in this zone and will be in harmony and consistent with the spirit and intent of the Ordinance; 3. Providing off-street parking and a safer traffic flow would show substantial justice; 4. The value of the proposed addition will have a positive impact on the surrounding properties by removing cars from sight and improving a rundown farmhouse; 5. Literal enforcement would be a hardship because of the existing character of the structure and the lot.

The Chairman opened the Public Hearing and upon hearing no comments, the public hearing was closed.

The Chairman entertained a motion to go into Deliberative Session.

**Mr. Yennaco made a motion to go into Deliberative Session, seconded by Mr. Tierney.**

**Motion passed 5 – 0.**

- The Chairman stated this was a unique parcel and it met the 5 criteria.
- Mr Tierney had no issue with the application.
- Mr Partington thought there was an excellent tree buffer and was far away from the road.
- Mr Scholz stated that the 34' was consistent with the present structure and saw problem with it.

**Mr Partington made a motion “To Approve the request for the construction of a garage attached to an existing dwelling, to allow a front setback of 34’ where 50’ is required and to allow for increase in volume and footprint of the existing non-conforming structure within the building setbacks, for Case 35-2012, Lot 19-B-100. Mr Yennaco seconded the Motion. Motion passed 5-0.**

The Chairman advised all of the 30 day appeal period.

Ms. Dunn was seated back on the Board.

Ms. Dunn read Case #36-2012 into the record along with the abutters list.

**Lot 3-B-625, Case #36-2012**

Applicant – Mark & Sharon Kearney

Owner – Same

Location – 11 Gertrude Road

District – Rural District

The applicant is proposing to replace an existing deck with a 3-season porch. Variances from the following sections of the Zoning Ordinance are requested: **Section 702 and Appendix A-1** to allow a side setback of 15+/- feet where 30 feet is required; and **Sections 401 & 406.2** – to allow for an increase in volume and footprint of the existing non-conforming structure within the building setbacks.

Chairman Samsel requested that the applicant explain his request.

- Mr Kearney explained that he would like to replace an existing deck on the right side of his house with a 10 x 16 3-season porch, with the back-end flush with the house. Currently the deck is 15.2 feet from the property line. He has spoken to his abutters and there is no problem. Mr Kearney addressed the 5 Points of the Criteria: 1. 3-Season Porch would be a great improvement and is not contrary to the public’s interest; 2. This improvement to the existing non-conforming structure is in harmony and consistent with the spirit and intent of the Ordinance; 3. There is no increase in the footprint and would show substantial justice; 4. The value of the proposed addition will add value to the property and will not be visible to any abutters; 5. Literal enforcement would be a hardship because of the small size of the structure and the placement on the lot.

The Chairman opened the Public Hearing and upon hearing no comments, the public hearing was closed.

The Chairman entertained a motion to go into Deliberative Session.

**Ms Dunn made the Motion to go into Deliberative Session. Motion was seconded by Mr Yennaco, and passed 5-0.**

Mr. Partington stated that the existing structure makes this unique. There was discussion by Mr. Tierney, and Ms Dunn on whether the stairs should be part of the Motion. Ms Prendergast stated that the stairs should be included.

**Mr. Tierney made a Motion “to replace an existing deck with a 3-season porch and to grant Variances from the following sections of the Zoning Ordinance: Section 702 and Appendix A-1 to allow a side setback of 15 feet where 30 feet is required; and Sections 401 & 406.2 – to allow for an increase in volume and footprint of the existing non-conforming structure within the building setbacks, per plan submitted”. The Motion was seconded by Mr.Yennaco and passed 5-0.**

The Chairman advised all of the 30 day appeal time.

### **Review and Approval of Draft Meeting Minutes**

8/28 Amended, 9/11

The Chairman entertained a motion to accept the minutes as amended.

**Motion to approve the minutes of August 28, 2012 was made by Mr. Partington and seconded by Mr. Yennaco. Passed 5-0**

Amendments and edits were made to the minutes of September 11, 2012.

**Mr. Partington made a Motion to approved the September 11, 2012 minutes as amended. Ms Dunn seconded the Motion. Passed 5-0.**

### **Old/New Business**

- Discussion was held on the importance of a watermark on all draft minutes and it was agreed that all drafts will going forward will have a watermark.
- The ZBA received an invitation on October 18 for an Open House at Castle Commons.
- Ms Prendergast explained that the Notice of Decisions will be published in the Windependent newspaper as an article.

### **Adjournment**

The Chairman entertained a motion to adjourn

**Mr. Yennaco made a Motion to Adjourn. Mt Tierney seconded. Motion passed 5-0.**

Meeting adjourned at 9:40pm.

These minutes are in draft form and respectfully submitted for approval by Colleen King, substituting for Cathy Pinette, ZBA Minute-taker.