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TOWN OF ASHLAND MASSACHUSETTS
OFFICE OF
ZONING BOARD OF APPEALS
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John Trefethen, Chairman

Josh Chase, Assistant Town Planner

Special Permit
10 Waushakum Avenue
Map No.: 16, Parcel No.: 136
September 26, 2017
Case#: SP1-18

Applicant: Waldir DeCosta
8 Grant Street
Natick, MA 01760

BACKGROUND AND PROCESS

1. The Zoning Board of Appeals (the "Board") received an Application for a Special Permit on August 15, 2017.
2. The application packet for a Special Permit, stamped in by the Town Clerk on August 16, 2017, contained:
 - a. Completed Application
 - b. Abutters list for 10 Waushakum Ave. dated June 14, 2017.
 - c. Copy of the Property Card for 10 Waushakum Ave.
 - d. Architectural Planset prepared by JC Architect of Quincy, MA titled "Single Residence New Construction", last revision dated August 7, 2017. 9 pages in total.
 - e. Plot Plans prepared by Denny Land Surveying and Engineering of Boston, MA, titled "Proposed Residence Certified Plot Plan" and "Certified Plot Plan", signed and stamped by David E. Denny, Professional Land Surveyor No. 41605, dated August 14, 2017.
3. Additional material submitted after the application was submitted:
 - a. Letter from Catherine D. Jurczyk and Janet M. Platt of 11 Rodman Road, dated September 12, 2017.
4. Materials submitted at the September 12, 2017 Public Hearing:
 - a. Submission by Terrence P. Morris, Esq. of a petition consisting of three pages of signatures.
 - b. Submission by Terrence P. Morris, Esq. titled "Waushakum Avenue Home Size Comparables"
5. Additional Materials submitted after the September 12, 2017 meeting:
 - a. Email from Preston Crow, Rockwood Drive, dated September 17, 2017

- b. Letter from Steven Mitchell, 5 New Castle Road, plus attachment, dated September 18, 2017.
 - c. Letter from William White, 14 Washington Avenue, dated September 19, 2017.
 - d. Letter from Pat Murtagh, 24 Waushakum Avenue, plus 4 page attachment, dated September 21, 2017
 - e. Email from Guilietta Nardone, Eliot Street, dated September 21, 2017.
 - f. Letter from Vilma Brunelle, 10 Rodman Road, dated September 21, 2017.
 - g. Letter from Catherine Jurczyk and Janet Platt, 11 Rodman Road, dated September 22, 2017.
 - h. Memorandum from Terrence P. Morris, Esq., addressed to the Ashland Planning Board, consisting of 4 pages and attached Exhibits A, B, C, D, E, and F, dated September 22, 2017.
 - i. Email from Carl Hakansson, dated September 23, 2015.
 - j. Letter from Ann MacKay, 14 Waushakum Avenue, dated September 25, 2017.
6. Additional Materials submitted at the September 26, 2017 Public Hearing:
- a. Submission by Steven Morgan, Concord Street, titled "Grandfathered Lots & Plan Protections" dated November 30, 2009, published by the Massachusetts Department of Housing and Community Development.
 - b. Submission by Janet Platt of an excerpt of the Ashland Housing Production Plan, pages 39-40, prepared by the Metropolitan Area Planning Council, undated.
 - c. Submission by Janet Platt titled "Cost of Community Services Studies", dated September 2016, published by the Farmland Information Center.
7. A properly noticed public hearing was held on September 12, 2017. The notice was as follows:

Waldir DaCosta, owner, has applied for a Special Permit under Chapter 282 Sections 3.3, 4.1, 9.3, along with any other applicable sections of the Ashland Zoning Bylaws to allow the reconstruction/replacement of a single-family residential structure on a substandard 4,500 sq. ft. lot with fifty (50) foot frontage, and where the proposed structure will encroach into the required thirty (30) foot front setback. Petitioner seeks relief from the minimum 150 ft. frontage, 30,000 sq. ft. lot size, front setback requirements, and to exceed the volume and footprint of the original structure. The property is located at 10 Waushakum Avenue in the Highway Commerce Zoning District. A public hearing will be held on September 12th, 2017 at 7:15 PM in the Board of Selectmen's Room located at Ashland Town Hall, 101 Main Street, Ashland, MA.

Parties wishing to be heard on this matter should appear at the time and place indicated above.

HEARING

The Public Hearing was opened on September 12, 2017 and was continued to September 26, 2017. Present at the Hearing on September 12 was John Trefethen, Stuart Siegel, Smriti Choudhury, and Brian Forestal; with Mr. Trefethen, Mr. Forestal, and Tom McNulty present at the Hearing on September 26. As Mr. McNulty was not present at the September 12th Hearing, the Chair asked if he had watched the proceedings of the previous meeting. Mr. McNulty stated that he had, and so was able to vote on the matter on September 26th as per M.G.L. Ch. 39 Section 23D.

Terrence P. Morris, Esq., for the applicant, described the proposal for a Special Permit to allow the construction of a new Single Family Home at 10 Waushakum Avenue. The proposed structure is 2.5 stories tall with 1,983 square feet of livable floor area. The front edge of the structure

would encroach 9 feet into the front setback, but as the current structure on the parcel was also 9 feet into the same setback, the non-conformity is not being increased. The lot is undersized at 4,500 square feet and has insufficient frontage at 50 feet, but as the Waushakum Park neighborhood was subdivided in 1909, these nonconformities are pre-existing. Current zoning states that lots in the Highway Commerce district require 30,000 square feet in size and have at least 150 feet of frontage.

Comparisons were made to several other houses and developments in Ashland.

Many residents of Waushakum Park expressed concerns that the proposed home was too large and would not fit the character of the neighborhood, both at the Public Hearings and in written submissions.

Several residents voiced support for the proposal, both at the Public Hearings and in written submissions.

A modified proposal was submitted before the Public Hearing on September 26th by the applicant's counsel with an alteration to the placement of the parking to respond to concerns about Ashland Zoning Bylaw Section 5.1.3 which states, in part, that parking cannot be within 10 feet of the edge of the street. Attorney Morris also stated that there would be a sub-surface drainage system to alleviate any stormwater concerns.

The current character of the neighborhood, and the impact the proposal would have, was discussed at length, as well as the relevance of the size of the proposed structure on a lot of 4,500 square feet. The applicant's counsel and the Board discussed the possibility of a reduction of the size of the proposed house. The applicant suggested reducing the total living area to 1,683 square feet. The Board requested 1,200 square feet, to which the applicant countered with 1,400 square feet. The Board also requested a reduction in height to 1.5 stories. All parties could not agree on a size that would satisfy both the Board and the family's needs.

FINDINGS

The parcel, identified as Parcel 139 on Map 16, has an area of 4,500 square feet, or 0.10 acres. The current structure is a mobile home with a small structure attached, a total of 336 square feet.

After a presentation by the applicant's counsel, questions from the Board, and comments from the public, the Board found that:

1. The neighborhood in question, Waushakum Park, was subdivided in 1909 into many undersized lots.
2. The lots in the neighborhood vary in size from 2,011 to 18,255 square feet, with house sizes ranging from 336 to 3,436 square feet in size. Most of the parcels are located in the Residential B zone, while some are located in the Highway Commerce zone.
3. The Parcel in question is located in the Highway Commerce (CH) district, and is also located in the Pond St. Overlay District. The setbacks are as follows:
 - a. Front and Rear Setbacks: 30 feet.
 - b. Side: 10 feet.
4. The current structure is located 21 feet from the front lot line, encroaching 9 feet into the front setback, and is 8.3 feet from the east side lot line, encroaching 1.7 feet into the side setback.

5. The proposed structure would be located 21 feet from the front lot line, encroaching 9 feet into the front setback, on the same lot line as the current structure. The proposal would correct the 8.3 foot side setback to the required 10 feet.
6. The proposed structure would be 1,983 square feet in living area, and 2.5 stories tall.
7. The Board found that the proposed structure was both too large and too tall for the lot in question, especially given the small lot size.
8. The Board found that the proposed structure would be substantially more detrimental than the current non-conforming structure, as per Ch. 282 Section 3.3.3 of the Ashland Bylaws.

DETERMINATION AND DECISION

Mr. McNulty made a motion to deny the request for a Special Permit for a 2.5 story home with 1,983 square feet of living area based on a finding that such a structure would be substantially more detrimental than the existing non-conforming structure to the neighborhood because the lot is one of the smallest lots in that neighborhood and that the proposed structure would be significantly larger than most of the structures in the neighborhood and not in keeping with the other structures of the neighborhood. The motion was seconded by Mr. Forestal.

The following members sat and voted on this hearing:

John Trefethen, Chair, voted to deny the Special Permit as stated.


Tom McNulty, Member, voted to deny the Special Permit as stated.


Brian Forestal, Associate Member, voted to deny the Special Permit.


Pursuant to Section 9.4.17 of the Zoning Bylaw, any appeal of this decision shall be made in accordance with G.L. c. 40A, § 17 within 20 days of the date this decision was stamped by the Town Clerk's Office.

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Town of Ashland Zoning Board of Appeals

By: 
John Trefethen, Board Chair

By: 
Tom McNulty, Vice Chair

By: 
Brian Forestal, Associate Member

Filed with the Town Clerk on:

Date: October 11, 2017


Tara M. Ward, Town Clerk

I HEREBY CERTIFY THAT TWENTY DAYS HAVE ELAPSED FROM THE DATE THIS DECISION WAS FILED IN THE TOWN CLERK'S OFFICE AND THAT NO APPEAL HAS BEEN FILED.

Date: _____

Tara M. Ward, Town Clerk