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TOWN OF ASHLAND MASSACHUSETTS
OFFICE OF
ZONING BOARD OF APPEALS
101 MAIN STREET

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John Trefethen, Chairman
Josh Chase, Assistant Town Planner

Hearing per M.G.L. Ch. 40A Section 16
10 Waushakum Avenue
Map No.: 16, Parcel No.: 136
January 9, 2018
Case#: SP3-18

Applicant: Waldir DaCosta
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 November 30, 2017.
2. The application packet for a Special Permit, stamped in by the Town Clerk on December 4, 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", revised on August 7, 2017, August 10, 2017, September 21, 2017, October 13, 2017 and on October 30, 2017, 9 pages in total ("The Plans").
 - e. Plot Plan prepared by Denny Land Surveying and Engineering of Boston, MA, titled "Proposed Residence Certified Plot Plan" signed and stamped by David E. Denny, Professional Land Surveyor No. 41605, dated November 13, 2017.
 - f. A letter from VTP Associates, Inc. regarding a proposed subsurface drainage system, dated November 29, 2017.
3. The applicant previously applied to the Zoning Board of Appeals for a Special Permit 2017 for a 1,983 sq. ft. single family home on a non-conforming 4,500 sq. ft. lot in the Waushakum Park neighborhood. The application was ultimately denied on September 26, 2017. According to Commonwealth law, the applicant is not allowed to reapply with the same application for the same permit for two years.
M.G.L. Chapter 40A Section 16 allows for parties to reapply with a similar application within those two years if the project has "specific and material changes" as deemed by both the Planning Board and the ZBA.

The Planning Board must decide if the new application has the "...specific and material changes in the conditions upon which the previous unfavorable action was based,...". The merits of the Special Permit itself are not part of the question, only the question of "specific and material changes" from the previous application.

If the Planning Board gives its consent, the application then moves on to the ZBA for a Section 16 hearing. If both Boards consent, then, and only then, can the ZBA hear the application itself.

4. Additional Materials submitted before the January 9, 2018 Public Hearing:
 - a. Submission by Terrence P. Morris, Esq. of a memorandum consisting of 2 pages, received on January 5, 2018.
 - b. Letter from Preston Crow, Chairman of the Ashland Planning Board, dated January 3, 2018 and received on January 8, 2018 stating that the Ashland Planning Board "...by a vote of 4-0-1 found that the new plan contains "specific and material changes" that differ from the original special permit application as required by M.G.L. Chapter 40A Section 16."
5. Additional Materials submitted at the January 9, 2018 Public Hearing:
 - a. Spreadsheet of home and lot sizes in the neighborhood submitted by Terrence P. Morris, Esq.
6. A Public Hearing was held by the Planning Board on December 14, 2017. The Planning Board voted to consent that the required standards in M.G.L. 40A Section 16 were met.
7. A properly noticed Public Hearing was held consecutively before the Zoning Board of Appeals on January 9, 2018. The notice was as follows:

Per M.G.L. Chapter 40A Section 16, Waldir DeCosta is seeking confirmation from the Ashland Zoning Board of Appeals that a new proposal for 10 Waushakum Avenue contains "specific and material changes" that differ from the original Special Permit application, SP1-18, which was denied by the Zoning Board of Appeals and then was stamped by the Town Clerk on October 11, 2017. The Public Hearing will be held at 7:05 PM on January 9, 2018 in the Board of Selectman's Room located in Town Hall 101 Main St, Ashland MA.

The following Public Hearing will take place if the ZBA finds the application has the required "specific and material changes".

Waldir DaCosta, owner, has applied for a Special Permit under Chapter 282 Sections 3.3 and 4.1, 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. Petitioner seeks relief from the minimum 150 ft. frontage, 30,000 sq. ft. lot size, 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 at 7:30 PM on January 9, 2018 in the Board of Selectmen's Room located in Town Hall 101 Main St., Ashland MA.

Parties wishing to be heard on this matter should submit comments to the ZBA ahead of time and/or appear at the time and place indicated above.

Materials may be viewed at Town Hall during normal business hours or at ashlandmass.com/543/projects.

John F. Trefethen, Chairman

HEARING

Because the applicant was submitting an application for a Special Permit within two years of a previously denied application, the Board held this first hearing to determine if the new application contained "...specific and material changes in the conditions upon which the previous unfavorable action was based..." as required in M.G.L. Ch. 40A Section 16.

The Chairman opened the Public Hearing on January 9, 2018. Present at the Hearing were John Trefethen, Chairman; Stuart Siegel, Member; Brian Forestal, Associate Member; and Martin Garvey, Associate Member; with Mr. Trefethen, Mr. Siegel, and Mr. Forestal sitting on this matter.

Terrence P. Morris, Esq., attorney for the applicant, compared the new application before the Board to the previously denied application and detailed the specific changes made in the new application. In listing these changes between the two submissions, Atty. Morris argued that the new application satisfied the requirements of Section 16.

Two residents expressed concerns. One resident about the size of the proposed home, and one about the process followed by the Planning Board and Zoning Board of Appeals.

Board members discussed at length the proposal and whether the requirements of M.G.L. Chapter 40A Section 16 were satisfied.

FINDINGS

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

1. The Parcel in question is located in the Highway Commerce (CH) Zoning District, and is also located in the Pond Street Overlay District. The dimensional requirements are as follows:
 - a. Lot Size: 30,000 Square Feet.
 - b. Frontage: 150 Feet.
 - c. Front and Rear Setbacks: 30 feet.
 - d. Side Setback: 10 feet.
 - e. Height: 35 feet.
2. The proposed structure outlined in the new application is located 30 feet from the front lot line as required by the zoning. The structure described in the previous application was 21 feet from the front lot line and therefore encroached 9 feet into the required front setback.
3. The newly proposed structure reduces the footprint from 1,170 sq. ft., as outlined in the previous application, to 900 sq. ft., a reduction from 26% to 20% of the total lot coverage.
4. The newly proposed structure reduces the living space from 1,983 sq. ft. to 1,537 sq. ft., a reduction of 22.5%.
5. The height of the newly proposed structure is reduced from 31 feet to 26 feet.
6. The newly proposed structure accommodates the second level into the roof line.
7. The Board found that the new application did contain specific and material changes and, given the above findings, satisfies the requirements of M.G.L. Chapter 40A Section 16.

DETERMINATION AND DECISION

Mr. Forestal put forth a motion that there are significant changes to the application from the previous application. Mr. Siegel seconded the motion, and the motion passed 3-0-0.

Mr. Trefethen then listed the specific and material changes as follows:

- the front setback increased to 30' from the front lot line,
- the reduction in the footprint of the house from 1,170 sq. ft. to 900 sq. ft. (from 26% to 20% in total lot coverage),
- the reduction in the living area to 1,537 sq. ft. as opposed to 1,983 sq. ft.,
- the reduction on height from 31' to 26', and
- the second level being accommodated into the roofline.

Mr. Forestal put forth a motion to enter those changes into the record as the relevant findings. Mr. Siegel seconded the motion, and the motion passed 3-0-0.

A roll call vote was taken as follows:

I, John F. Trefethen, so find.

I, Stuart Siegel, so find.

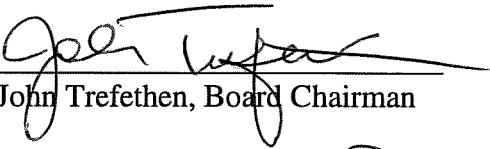
I, Brian Forestal, so find.

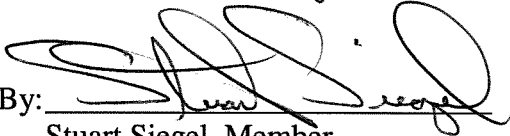
With M.G.L. Chapter 40A Section 16 satisfied by both the Planning Board and the Zoning Board of Appeals, the application for a Special Permit was heard immediately following the close of this Hearing.

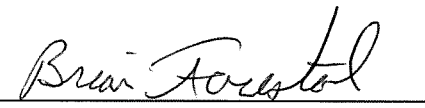
Pursuant to Section 9.4.17 of the Zoning Bylaw, any appeal of this decision shall be made in accordance with M.G.L. c. 40A, § 17 within 20 days of the date this decision was stamped by the Town Clerk's Office.

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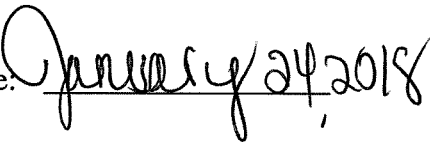
Town of Ashland Zoning Board of Appeals

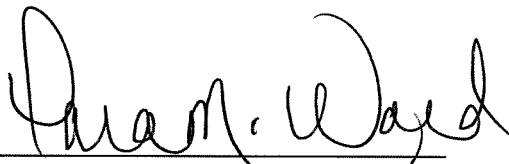
By: 
John Trefethen, Board Chairman

By: 
Stuart Siegel, Member

By: 
Brian Forestal, Associate Member

Filed with the Town Clerk on:

Date: 


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