

Town of Easton
BOARD OF APPEALS

Minutes
June 18, 2008

The Easton Board of Appeals held a business meeting and (1) one public hearing on Wednesday, June 18, 2008 at Easton Town Offices, Selectmen's Office, 1st Floor, 136 Elm Street, North Easton, Massachusetts.

At 7:00 p.m. the meeting was called to order by Chairman Walter Mirrione.

Members in attendance were: Chairman Walter Mirrione, Vice Chairman Thomas Pursley, John Tupper, Christopher Pike, Scott Erlich, and Paul Prew.

During the business meeting, Vice Chairman Thomas Pursley opened discussion concerning the extension request for Special Permit 06-22. After review of Christina Mirrione's request on behalf of the Applicant, Mayflower Estates, the Board, on a motion by Scott Erlich, seconded by Christopher Pike, voted unanimously (5-0) (Pursley, Tupper, Pike, Erlich, Prew) to extend Special Permit 06-22 for six months.

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On a motion by John Tupper, seconded by Christopher Pike, the Board voted (5-0) (Pursley, Tupper, Pike, Erlich, Prew) to approve and release the Minutes of May 28, 2008.

Chairman Walter Mirrione congratulated Thomas Pursley and Paul Prew on their reappointments by the Board of Selectmen to the Board of Appeals. Mr. Pursley was appointed to a five year term which will expire on June 30, 2013 and Mr. Prew was appointed as an Alternate to a two year term due to expire on June 30, 2010. Chairman Mirrione announced that at the July meeting, members will vote on a reorganization of the Board. Alternate members to the Board cannot vote but may certainly participate in any discussions.

At 7:15 p.m. the first hearing was announced.

Comprehensive Permit 08-07 Easton Shovel Shop, LLC
For property located at 26, 28 & 34 Main Street and 13 Oliver Street, Easton

Board members present and qualified to sit for this hearing included Chairman Walter Mirrione, Vice Chairman Thomas Pursley, John Tupper, Christopher Pike and Scott Erlich.

Also present at the hearing was Attorney Jason Talerma, on behalf of the Town, Geoffrey Engler, John Thomas and Jerry Preble, Consultants to the Applicant.

Chairman Walter Mirrione read the new correspondence received.

Chairman Walter Mirrione began the hearing. The process tonight is that a brief overview of the project will be presented. The Board hires consultants, at the expense of the Applicant, to review the Application and make sure the interests of the Town are protected. The Town has retained the services of Woodard and Curran and Beta Engineering for the 40R Application. Given their familiarity with the project, our Board will contact them and request that a Scope of Work describing their reviews be returned. If Applicant is in agreement with the Board using their services, a contract will be executed and an escrow account established. It is our hope to have this done prior to the next meeting and at that meeting, have a civil engineering presentation. Mr. Mirrione further stated that he encourages the Applicant to deal directly with the consultants. Nothing generated will become part of the record unless the Board is copied on the matter. No questions are taken from the public this evening because it is necessary to first have the consultants for the Town hired.

On a motion by Vice Chairman Thomas Pursley, seconded by Scott Erlich, the Board voted unanimously (4-0) (Pursley, Tupper, Pike , Erlich) to authorize Chairman Mirrione to handle all administrative aspects on behalf of the Board which pertain to the project.

At this time, Attorney Jason Talerma provided a brief overview regarding 40Bs. It is a nearly 40 year old statute that was designed to promote affordable housing. You come to one Board for most of your permits, the Zoning Board of Appeals. Applicant can seek a waiver of any local by-laws. What the Board must wrestle with is the request for waivers versus the underlying zoning by-laws. The Board must also negotiate with the Applicant to determine whether the project makes sense.

Geoffrey Engler, on behalf of the Applicant, continued. What is being proposed is 182 rental units on a 6.5 acre site. There will be 55 one bedroom units and 127 two bedroom units. 25% of the units have been designated affordable. Unlike most 40Bs, this is slightly different in that we have worked collaboratively with the Town in conjunction with preparing the Application.

Mr. Engler introduced Gerry Preble, Applicant's civil engineer. He stated that Easton Shovel Shop is a high end redevelopment project. This project is in a Zone 2 of a public water supply which dictates an additional level of treatment for sewerage disposal. Sewerage disposal will be done with an onsite system as well as an onsite treatment facility. It will meet reclaimed water standards. This enables water to be reused for irrigation purposes. We plan to replace the existing infrastructure on site.

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Jay Thomas, design consultant, stated that Shovel Shop left Easton many, many decades ago. Applicant is looking to use the buildings in a residential manner, keeping in mind the need for historic preservation.

Chairman Mirrione concluded by addressing the date for the next meeting and reiterated that it is the Board's intent to proceed with a civil presentation by both the Applicant's and Town's consultants, to be followed by any questions or concerns from the public. If necessary, we will continue with additional meetings until this portion of the proceedings are concluded.

On a motion by John Tupper, seconded by Vice Chairman Thomas Pursley, the Board voted unanimously (5-0) (Mirrione, Pursley, Tupper, Pike, Erlich) to continue the public hearing for Comprehensive Permit 08-07 to Wednesday, July 16, 2008 at 7:15p.m. in the Selectmen's Office.

Special Permit / Variance 08-08 John J. Hurley
For property located at 29 Howard Street, South Easton

Board members present and qualified to sit for this hearing included Chairman Walter Mirrione, Vice Chairman Thomas Pursley, John Tupper, Christopher Pike, and Scott Erlich.

Also present at this hearing was Attorney Michael Sites, representing the Applicant, and John J. Hurley.

Acting Clerk Thomas Pursley read the new correspondence.

Attorney Sites began his presentation. Applicant resides at 25 Howard Street and is the owner of the premises at 29 Howard Street. He seeks a Variance to construct a single family home on said parcel, to exist in combination with the existing business use of the premises as a motor vehicle repair facility. The proposed dwelling would be directly in front of the existing building. Automobile repair shops are prohibited in residential zones. However, this particular repair shop was in existence prior to the adoption of the Easton Zoning By-Laws and is therefore an existing non-conforming use. A residential use of a single family home is a use permitted as of right in a residential zone. In addition, the only section of the by-law which speaks to multiple use addresses uses in a business zone which does not apply to the instant matter as this parcel is in a residential zone. The subject locus has been in the Hurley family for many years. The structure located on the premises, while suitable for the business use which has gone on at this location for many years, is not suitable for additional use as a residence. Applicant denies the Building Inspector's contention that a residence has been maintained here. A literal enforcement of the provisions of the zoning by-law would result in hardship in that it would prohibit Applicant's ability to earn his livelihood, along with his ability to construct a suitable residence for himself. The construction of the residence would be a substantial benefit to the public good by rendering the visual nature of the property more in keeping with those in the neighborhood. Alternatively, should the Board so choose,

Applicant would request that the Board entertain this Application as one for a Special Permit for the extension / alteration of an existing non-conforming use. Single family residences are uses as of a right in a residential zone and this would be an enhancement to the neighborhood. Additional traffic generated by one single family residence would be minimal and the water system is designed to handle additional single family residential use. The requested use would be an amenity and enhancement to the district and adjoining zones.

At this time, Chairman Walter Mirrione asked the Board Members if they had any questions.

Christopher Pike questioned Applicant about the existence of an apartment which was discovered during an inspection conducted in April by the Building Inspector and asked whether it was still being used. Applicant responded by denying that there had ever been an apartment and further stated that everything has been removed from there. He further responded that at the present time, there was no second means of egress there. Mr. Pike also asked for a description of the residential home which Applicant seeks to build. He was told that it would be two stories high and would shield the existing building behind it. Applicant intends to maintain that building and use it for both repair and restoration of automobiles.

Vice Chairman Thomas Pursley asked about the present use in the existing building. Applicant responded that no big business is going on there. It is mainly being used for his hobby of restoring antique cars. Vice Chairman Pursley also asked and was told that Applicant would like to build his house in front of the existing building on the property. The plan submitted with the Application existed before the issues arose with the Building Inspector.

John Tupper stated that he is troubled by the preexisting nonconforming use. Just because the building is marked garage and there is a deed to a business that does service work, Mr. Tupper is not sure how that applies as an exception to a nonconforming use. Attorney Sites responded that Applicant should be given the opportunity to describe the use of the property over the years. Applicant stated that in the 1960s, his father conducted a general repair and welding shop from this location. Scott Erlich asked when it became a restoration shop. Applicant responded that general repairs have been performed here and so it has been one all along. When Applicant was younger, he was heavily into repairing cars. He has since taken a job with the MBTA and working on vehicles is now his part time job. Since the early 70s, he has been doing restorations for a very long time. Railings for houses were also being made from this location. Attorney Sites asked and was told by Applicant his father was doing this too in the 1960s. Mr. Erlich was told by Applicant that he does have pictures which would evidence these services.

Chairman Walter Mirrione asked how old Applicant was in 1960. Applicant stated he was 10 years old. In 1967, he would have been 17. In 1967, when the By-law was enacted, Applicant stated that the use of the property was for general repair.

John Tupper stated that he has a problem with this being disconnected from the existing building. Applicant responded that he is trying to hide the building with this new structure. Mr. Tupper also commented on the fence which surrounds the property. Applicant states that he erected this to address comments being made that his property was an eye sore. Mr. Tupper asked Applicant whether he was aware of the pending litigation. He stated yes. Attorney Sites stated that should the Board not grant the relief requested, this will certainly work its way through the court system. Should it be granted, the expense incurred by the Town to this point would be discussed and an effort made to address this issue.

Scott Erlich asked how we get by the dimensional requirements contained in Section 6-2 of the Zoning By-Laws. Attorney Sites responded due to the location of the wetlands on the lot. Applicant is therefore asking for a Variance. Mr. Erlich also addressed the issue of the nonconforming use. Attorney Sites stated that we could leave the repair shop and it would remain a lawful nonconforming use. We could demolish the repair shop and build a residence as of right. The combination of the two we are stating constitutes an enlargement of the nonconforming use because we are intending for the nonconforming use to remain. There would be no residential use of the garage structure.

Chairman Walter Mirrione opened questions to abutters.

Joseph Ivanoski, 25 Howard Street, stated that he has no problem with Applicant doing what he wants to do.

Michael Keith, 3 Howard Street, has lived here for approximately 10 years. The existence of the business has been a negative factor in what is exclusively a residential area by having heavy equipment up and down that street. Up until this point there has been a concern about the general appearance of this place. Putting a fence around it has been an improvement to some degree. He also expressed environmental concerns with respect to petroleum products at the garage. All terrain vehicles have been used there. Now, with the addition of another building, this compounds the concerns generated out of there.

Cynthia Goncalves, 21 Howard Street, would like to see a residential home built on this lot. However, to leave the existing building is not good for the neighborhood. She stated that her backyard abuts Applicant's backyard and the things that are kept in Mr. Hurley's backyard cause an eye soar. Pictures were produced. The amount of items stored on the property has increased. She also has environmental concerns with what is seeping into the ground and is aware of people living on the property.

Attorney Sites responded that an effort has been made to address the debris and clean up the property.

Ron Sales, 119 Howard Street, has lived at this location for 30 years. Over the years, a once country atmosphere has turned into more of a built up area with bigger and bigger

homes. He states that Mr. Hurley has been a good neighbor and he has no issue with a home being built here.

Stephen Alves, 32 Howard Street, lives right across the street. He feels that the neighborhood would be better served if a house is built and Mr. Hurley lives there as opposed to just conducting a business from this location. The site would probably be kept cleaner.

Michael Keith, 3 Howard Street, states that this property presents an eye soar. There has been a history of noncompliance. There was a residence in the garage. There has been a trailer and motor home there too. He feels that no one at this location has cared about their neighbors and wonders whether what Applicant is proposing to do will in fact be done. He is open to the possibility that this will become a vastly improved area.

Attorney Sites stated that what he is hearing from the abutters is that a residence will improve the area. If the Board grants the Application, the Conservation Commission will make sure that environmental concerns previously voiced which fall under their jurisdiction are addressed.

On a motion by John Tupper, seconded by Scott Erlich, the Board voted unanimously (5-0) (Mirrione, Pursley, Tupper, Pike, Erlich) to close the public hearing for Special Permit / Variance 08-08.

The Board elected to deliberate.

Chairman Walter Mirrione clarified that for a Special Permit Applicant must establish the existence of a lawful, preexisting nonconforming use and if expanded or intensified, the result will not be substantially more detrimental to the public than what presently exists. Mr. Mirrione noted that he is proposing an entirely new building.

Vice Chairman Thomas Pursley states that Applicant had to establish that he was using that garage for business before the adoption of the By-law. There was a general repair sign out there but the evidence was hearsay. Scott Erlich commented that what should be reviewed is the weight of the evidence.

Chairman Mirrione stated that Applicant changed the use over the years when he described what the location was being used for. Christopher Pike and John Tupper agreed.

On a motion by Vice Chairman Thomas Pursley, seconded by Scott Erlich, the Board voted (5-0) (Mirrione, Pursley, Tupper, Pike Erlich) to Deny Special Permit 08-08.

Scott Erlich stated that with respect to the request for a Variance, Applicant is looking to establish two primary uses on one lot and have two structures within 40 feet of each other.

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John Tupper questions whether a hardship was established. Christopher Pike agreed.

Chairman Walter Mirrione stated that applicant's request raises density and congestion concerns. Vice Chairman Thomas Pursley stated Applicant is proposing two separate buildings.

On a motion by Vice Chairman Thomas Pursley, seconded by Christopher Pike, the Board voted (5-0) (Mirrione, Pursley, Tupper, Pike, Erlich) to Deny Variance 08-08.

At 9:00 p.m. on a motion by Vice Chairman Thomas Pursley, seconded by John Tupper, the Board voted unanimously to adjourn.

Submitted by:

Approved by:

Ellen Weene, Secretary

Walter Mirrione, Chairman