

MINUTES
Town of Hubbardston Board of Appeals
Meeting Held August 25, 2011
Senior Center, Slade Building, 7A Main Street

Members Present: Chairman Edward Blanchard, Scott Janssens, William Homans, John Prentiss, William Fernekees, Andrew Baum (7:07pm), and Secretary Joyce Green.

Also Present: Applicant Cindy Phillips, Applicant Michael Goguen, 1 other interested party and 6 abutters.

7:05pm Meeting was called to order by Chairman Ed Blanchard. Introductions were made by the Board and an explanation of the hearing process was given.

Variance Application; Applicant **Cindy Phillips, 55 Old Boston Turnpike**; Variance sought for an existing roof overhang without the required side yard setback.

Motion to open the public hearing on a variance application from Cindy Phillips for property at 55 Old Boston Turnpike was made by William Homans, **seconded** by William Fernekees and so moved with a **vote of 5-0 in favor**.

Mr. Blanchard asked the applicant to come forward and explain her variance request. Mr. Blanchard asked Ms. Phillips if she would like him to recuse himself as he had attended many of the hearings held by the Planning Board in regard to her Special Permit application. She stated that she was fine with him staying on the Board.

7:07pm Andrew Baum arrived and Mr. Blanchard introduced him to those present. Mr. Blanchard also explained that a super majority (i.e., 4 of 5 members) is required to grant a variance.

Ms. Phillips showed 2 photographs of a roof with branches on it covered in ice, dated December 2008. She stated her mother had put up the original roof around 1988 without a building permit. She has been granted a Special Permit for a kennel and needs a variance for the existing roof that protects her dogs from the weather.

Mr. Blanchard noted that the application was incomplete. Among the responses that were missing were answers to question 8 a-d which asks about the topography, hardships, detriment to the community, and how a variance would not substantially deviate from the zoning bylaws. Ms. Phillips said there were no issues with the soil.

Mr. Blanchard asked about the owner of the property as he had a concern about the validity of the application. Ms. Phillips stated it was in a trust with Patricia Dakota Brown (her mother), Ken Brekka, and David Dakota (her uncle) as Trustees. Mr. Blanchard asked if all 3 were trustees or if there was a sole trustee. Mr. David Dakota said he was the sole trustee and that he could provide a copy of the trust. Mr. Blanchard asked Mr. Dakota if he supported the variance application and Mr. Dakota shook his head in the negative. The Board will check with legal counsel regarding a variance application without the signature of the owner.

Mr. Blanchard described the roof in question for Board members who had not had the opportunity to visit the site. There is an older section under the newer section in question. It is considered a permanent structure. He asked Ms. Phillips if there was another place on the property where the roof structure could be moved. She stated the lot is 100' x 100' and there really isn't another place where it could be moved. Mr. Blanchard stated that he believes a variance may be required on the rear lot line as well as the side lot line. He asked Ms. Phillips how long it would take to move the roof structure to another location on the property. She replied that financially it would take a long time as it would cost a lot to move it and she doesn't have the money right now. She further stated there is not another place on the property where it could be moved.

John Prentiss asked about the letter from the Building Inspector dated May 16, 2011 regarding the violations of the Special Permit issued on December 2, 2009. Ms. Phillips stated that all conditions have been met and the Animal Control Officer has inspected the kennels and she is in compliance now.

Mr. Blanchard read a letter sent to the Board from abutter Michael Seaborne who was not present at the hearing stating his objections to the granting of the variance. Ms. Phillips responded with an abuttal to some of the points in the letter saying that there are no dog bites on record, no complaints of dogs barking on record, and that her dogs have never gotten loose.

Mr. Blanchard asked for comments from the abutters. Resident Nancy Driscoll asked to be recognized not as a direct abutter but a neighbor at 63 Old Boston Turnpike. Ms. Driscoll stated that she has had an altercation with dogs from the subject property and that they have been in her yard but not since the fence was

installed. [The fence was installed as a condition of the Special Permit given by the Planning Board on December 2, 2009.]

Abutter Chris Barnard owns the property directly behind the subject lot. He stated that when the roof in question was originally built in 2009 it extended 20' onto his property and there were kennels on his property. Ms. Phillips was required to cut the roof structure back to her property line. Ms. Phillips said she had verbal permission from Mr. Barnard's mother to have the kennels on the Barnard property. She also stated that the roof was cut and moved back once already. Mr. Barnard brought up other issues not relevant to the variance request regarding compliance issues with the Special Permit and Mr. Blanchard stated that this Board was not here to discuss those issues. Mr. Barnard stated he is very much against the granting of this variance because of the non-compliance history that Ms. Phillips has shown all through the permitting process for the kennel.

Mrs. Martha Hawley stated she is totally opposed and she submitted into the record a letter dated August 12, 2009 from the Building Inspector telling Ms. Phillips that the structures in question must be taken down by August 29, 2009. She presented the letter as evidence of Ms. Phillips' non-compliance with requests by town authorities. Mrs. Patty Barnard also expressed concern that Ms. Phillips has not come into compliance with the conditions of any other permits that were issued.

Patricia Dakota spoke on behalf of David Dakota who is a trustee of the property. She asked if the kennel that is currently on the East side of the house will have a roof put on it. Ms. Phillips said no.

David Dakota stated he has concerns about the pond next to the property and the chemicals being washed into it.

Ms. Phillips wanted to make it clear to those present that if the roof has to be removed, the dogs will still remain.

Mr. Blanchard returned to the issue of the incomplete application. He asked Ms. Phillips about topography issues that may affect the decision of the Board. She stated that the soil would not be affected by the roof remaining. Mr. Blanchard asked about Question 8b, what substantial hardships would occur if the variance were denied and Ms. Phillips said she did not have the money to move the roof. In answer to Question 8c on the application, Ms. Phillips said the roof is not on anyone else's property and she does not believe that granting the variance would be detrimental to the public good. She stated the roof looks better than the tarps that used to be there and the tarps would devalue the property. She also does not believe that there would be any environmental impact from allowing the roof to remain.

Mr. Blanchard said the variance runs with the property and the application does not have a signature of the owner (i.e., David Dakota) so the question as to whether the application can be considered will have to be asked of Town Counsel.

Other questions from Board members: Scott Janssens questioned why the fence took so long to put up after the Planning Board granted the Special Permit with conditions. Ms. Phillips said she was delayed financially. Mr. Janssens asked if she went back to the Planning Board to explain that she was delayed and ask for an extension and she replied that the Building Inspector took too long to get back to her with an answer and then her time was up. She has been to Land Court with the Building Inspector and was given 30 days to complete the conditions imposed which she has done except for the variance.

Mr. Blanchard reiterated that the Board needs an answer regarding the legality of the application. He also stated that the deed submitted with the application does not describe the correct lot or is incomplete and a drawing of the lot with the locations of septic, well, and all buildings including the kennels is needed. Ms. Phillips said she would provide those documents.

Motion: William Homans, **to continue** the hearing to a date of September 22, 2011 at 7:00pm in the Senior Center to allow for more information to be presented. **Second:** John Prentiss. **Vote: 6-0 in favor.**

Mr. Blanchard thanked those present for attending and for maintaining order and civility.

8:15pm Associate member William Fernekees exited the meeting.

Variance Application; Applicant Michael & Diane Goguen, 2 New Westminster Rd
--

Motion: William Homans; to open the public hearing

Second: John Prentiss. **Vote: 5-0 in favor.**

Board members made their introductions and the hearing process was explained to the applicant.

Mr. Goguen stated his reasons for requesting a variance. He wants to build a 4-car garage in the area where he currently parks his vehicles and his plan brings the garage within 11 feet of the side lot line. His septic system is in the front of the house and the backyard rises in elevation quite a bit and there is ledge there. He had completed a land swap with the previous owner to his East side in order for his property line to follow an existing stone wall.

There were no abutters present and no objections were heard.

Motion: William Homans; to grant a 19 foot variance to the East side line to allow construction of a detached garage. **Second:** Andrew Baum. **Vote: 5-0 in favor.**

An explanation of what comes next was given to Mr. Goguen including the 20-day appeal period and the filing of the variance along with the letter of no appeal from the Town Clerk.

A draft of the decision was printed, reviewed by the Board, and signed.

General Business

Election of Officers for FY11

Motion: William Homans, to keep same officers as last year. **Second:** John Prentiss

Vote: 5-0 in favor to elect Ed Blanchard, Chairman; John Prentiss, Vice Chairman; Scott Janssens, Clerk.

- Minutes from February 22, 2011 were reviewed by the Board. Motion to approve by Homans, seconded by Janssens; Vote: 5-0 in favor.
- Executive Session minutes from September 22, 2009 (Russo case) were reviewed. **Motion:** William Homans to release and approve said minutes. **Second:** John Prentiss. **Vote: 5-0 in favor.**

Additional discussion on the Phillips case ensued. The secretary will send a "Request for Legal Services" to the Town Administrator and will follow up with Town Counsel regarding the legality of the application.

8:45p.m. Motion to Adjourn made by William Homans, seconded by John Prentiss, and so voted.

Correspondence referred to at this hearing:
Letter from Michael Seaborne to Board of Appeals dated August 17, 2011
Letter from Hubb. Building Insp. to D. Dakota dated August 12, 2009

Respectfully Submitted,
Joyce Green, Secretary

Approved by vote of the Board on September 22, 2011