

**ZONING BOARD OF APPEALS
December 3, 2018 Meeting Minutes**

Board Members Present: Shane O'Connor, Daniel Flanagan, Douglas Glazier and Ronald King

Town Staff Present: Jennifer Rodriguez, Town Planner

The meeting was called to order at 7:03 pm

Board roll call was taken.

MINUTES:

Chairman O'Connor referred to the November 5, 2018 meeting minutes and asked for any corrections or changes. There were none. Mr. King moved to approve the November 5, 2018 meeting minutes as published. Mr. Glazier seconded the motion. All were in favor. The vote was 4 – 0, the motion was approved.

BILLS & CORRESPONDENCE:

None

OLD BUSINESS:

None

NEW BUSINESS:

a. DMV Applications

1. Public hearing on Application #FY18-19-03, Owner: J. Sales, Applicant: Thomas Hillery for a Motor Vehicle License location approval for the property located at 465 Spring Street, Unit F.

Chairman O'Connor noted that the Board had four members present that evening and that that was enough for a quorum, but that any motion made by the Board would need to be unanimous in order to pass. He went on to say that typically there were five Board members present for which a majority vote was sufficient for approval. Mr. O'Connor then asked the applicant, Thomas Hillery, if he wanted to move forward with the public hearing that evening or if he wanted to postpone the hearing until such time that five Board members could be present. Mr. Hillery replied that he wanted to move ahead with the public hearing that evening.

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Thomas Hillery of 229 Sutton Drive addressed the Board and stated that his business was located at 465 Spring Street. He explained that he was looking to move his business from Unit F at 465 Spring Street to Unit B in the same building. He then noted that it would be the same exact use as was previously approved for the Unit F location. Mr. Hillery stated that the Department of Motor Vehicles (DMV) only had a General Repair License; they did not specify various types of repair licenses. He then explained that under his previous approval the Town had put some restrictions on his location approval stating that he could only work on classic vehicles, which was what he did. Mr. Hillery then noted that those restrictions were carried over to his DMV License Application and that the DMV had told him that they did not want to see restrictions on their applications.

Mr. Hillery explained that he restored classic cars and the vehicles that he worked on were at his facility for long periods of time; he did not have a lot of customers coming and going from his facility and there was not a lot of waste such as oil, etc.

Chairman O'Connor asked Ms. Rodriguez for any comments. Ms. Rodriguez commented that, aside from her report/memorandum dated December 3, 2018, there was a checkbox on the State DMV form to indicate that there are restrictions to be affixed to the application. She went on to explain that, when Mr. Hillery's application had previously went before the Planning and Zoning Commission, auto repair was not permitted in the zone and was specifically not permitted in the building. Ms. Rodriguez stated that the Planning and Zoning Commission had felt that Mr. Hillery's particular use of classic car restoration and his particular volume of customers was more of a personal service than auto repair and thereby approvable. Therefore the restrictions were necessary in order for the Commission to give their approval.

Ms. Rodriguez noted that the DMV had stated that the restrictions on volume or type, etc. had not been the issue, but rather the Commission in the making of their motion and printing of the minutes had said "not to be a general repair use". She went on to say that she felt that it was necessary to have the restrictions otherwise the use was not approvable. She then stated that the Board would need to continue the restrictions forward as stated, but the advice was to not say that Mr. Hillery could not obtain a General Repair License, because that was the license that he needed to have.

Chairman O'Connor asked the Board members for any questions. Mr. King asked Ms. Rodriguez if the Planning and Zoning Commission had determined that Mr. Hillery's business was a "personal use". Ms. Rodriguez replied that the Commission had declared that it was more of a "personal service" than a General Repair License. Mr. King asked that if, the Board were to approved a "General Repair License for a personal service", that would circumvent the restriction issues. Ms. Rodriguez replied that she did not think that it was about circumventing and would not be necessary. She went on to say that the Board could just state General Repair License

granted with the following description. She then referred to her report/memorandum which suggested that the Board inquire about the exact use of the unit. The applicant had communicated with staff that while he needed a DMV license, the use of the unit would be solely to work on classic car restoration, not open to the public as a drive up service and that clarification be made for the record, and should the location be approved, the exact use should be made as part of the motion to be carried forward on the State DMV's application form. Ms. Rodriguez suggested that the Board and the applicant have a discussion to determine the specifics regarding his business and the language that would make sense.

Mr. Flanagan clarified that the applicant's business was currently located in Unit F and that he was looking to move to Unit B. Mr. Hillery replied that that was correct. Mr. Flanagan then asked if the units were similar in size. Mr. Hillery responded that they were very similar in size. Mr. Flanagan noted that the move from Unit F to Unit B would get the applicant closer to the main street. Mr. Hillery stated that that was correct. Mr. Flanagan commented that he was a little confused as to why the applicant wanted to move closer to the main street and as such the public. Mr. Hillery explained that he had taken over the retail space in the front of the building in Unit A. He went on to say that he was selling specialized parts out of the retail space and that it would be nice to have both aspects of his business close to each other.

Chairman O'Connor clarified that the applicant's business would be located in Units A and B. Mr. Hillery replied that that was correct. He then explained that the repair/restoration work would take place in Unit B and his showroom would be located in Unit A. Mr. Flanagan asked if his showroom was open to the general public. Mr. Hillery responded that that was correct; for the parts.

Ms. Rodriguez clarified that the applicant was proposing to move from Unit F to Units A and B. Mr. Hillery stated that that was correct; Unit B would be used for the restoration work and Unit A for the retail store.

Mr. Glazier asked what the difference was between Unit F and Unit B. Mr. Hillery replied that Unit B was a little smaller, about 4 feet shorter than Unit F.

Mr. Hillery noted that no vehicles would be stored outside. He went on to say that he may put a vehicle outside for the day if he needed some room inside, but that the vehicle would be moved back inside. He also stated that there were no parts or tires, etc. stored outside.

Mr. Flanagan asked if a Stormwater Permit for runoff, etc. would be required. Ms. Rodriguez replied that stormwater and drainage had been approved when the building had been constructed. A brief discussion followed and Mr. Hillery reiterated that no vehicles or parts were stored outside and that nothing came apart outside; all work was done inside the building.

Mr. Glazier commented that Mr. Hillery was going to be operating the same business just in a new location and then asked why he needed a new permit. Chairman O'Connor stated that it was required by the DMV. Ms. Rodriguez explained that the DMV required that local approval happen for any change in location.

Mr. Glazier asked where the restrictions were listed. Ms. Rodriguez stated that the restrictions were listed on the Planning and Zoning Commission approval and also affixed to the previous DMV paperwork. Mr. Glazier asked if the Planning and Zoning Commission's restrictions would affect the application before the Board. Ms. Rodriguez stated that the restrictions would just need to be carried forward. She then suggested that the Board have a conversation with the applicant in order to get the specific information such as how many vehicles he typically worked on, the hours of operation, etc. or that the Board could just generally refer to the Planning and Zoning Commission's approval and stipulate that those restrictions be carried forward. Ms. Rodriguez reminded the Board members that the Board was acting separately as an agent of the State and advised them to be somewhat detailed in their motion.

Mr. Glazier asked what was being done with the application before the Board that evening that required the Board's approval and what were they actually approving. A brief discussion followed and Ms. Rodriguez explained that the State General Statutes requires that all towns that have a Zoning Board of Appeals be the agent of the State. In that capacity the Board could hear applications for variances or special exceptions of the regulations and as a separate role, the Board was asked to be an agent of the State and review DMV license applications.

Mr. King asked, for the purposes of the application before the Board that evening, if the Board should completely disregard the retail/parts aspect of the applicant's business. Ms. Rodriguez stated that that was correct, retail was allowed in the zone in question and, therefore no approval is required.

Chairman O'Connor asked the Board members for any further questions. They had none.

Chairman O'Connor asked for any public input either in favor of or in opposition to the application. There was no public input.

Chairman O'Connor asked the Board members for a motion. Mr. Glazier moved to approve Application #FY18-19-03, Owner: J. Sales, Applicant: Thomas Hillery for a Motor Vehicle License location approval for the property located at 465 Spring Street, Unit F where it is in the same general building but moving his business operation from Location F to Location B and the same restrictions as stipulated by the Planning and Zoning Commission are carried thru this Board's approval as well. Mr. King asked if the Board should state those stipulations in the motion. Ms. Rodriguez referred to her

report/memorandum dated December 3, 2018 and stated that there was verbiage in Item 8 that the board could state as part of the motion. She then read the following from Item 8 of her memorandum: “that the specific volume/type of vehicles being worked on at one time, that no vehicles should be stored or worked on outside and that no materials are to be stored outside”. Mr. Glazier then added Item #8 from Ms. Rodriguez’ report/memorandum dated December 3, 2018 to the motion and those restrictions be carried over. Mr. King seconded the motion. Mr. O’Connor asked the Board members for any further discussion. There was none. All were in favor. The vote was 4 – 0, the motion was approved.

b. Public Hearings

1. Public hearing on Application #FY18-19-02, Owner/Applicant: Margaret and Aspin Morgan for a variance for the property located at 16 Ross Way to locate a deck within 15 feet of the side yard property line where 25 feet are required.

Margaret Morgan of 16 Ross Way addressed the Board and stated that her husband Aspin was also present that evening.

Chairman O’Connor asked the Board members for any questions. Mr. King referred to page two of the application submitted and noted that the sketch did not show the location with regard to the buildings on adjacent properties and the dimensions nor did it indicate where the deck was being proposed to be built on the home. He then stated that he had printed off a copy of a rendition of the property as the Assessor’s Office had it listed from the Town Assessor’s website. He proceeded to show that rendition to the applicant and other Board members. Mr. King asked the applicant where the deck was going to be located. Mrs. Morgan replied that the deck was going to be built to the back of the house. Mr. Glazier stated that the deck was going to be attached to the back of the house. He then noted that he had visited the applicants at their home prior to the meeting and that the deck was going to be attached to the back of the house with the beginning of the deck coinciding with the side of the house and then running 10 feet along the back of the house.

Mr. King noted that, according to the rendering of the property that he had printed, there was a screened-in porch in the back of the house. He then asked if the screened in porch was on the opposite side of the house or on the side of the house where the deck was being proposed. Mrs. Morgan replied that it was on the same side of the back of the house. Mr. King asked if the screened-in porch was 15 feet by 7 feet as indicated on the rendering he had. Mrs. Morgan replied that that was correct. The discussion continued and it was determined that the deck would be 15 feet long (the same as the screened-in porch) and go out 10 feet from the house.

Mr. King referred to the diagram that had been submitted with the application and asked if the wooded area shown on that diagram was located behind the applicant's home. Mrs. Morgan replied that that was correct. Mr. King asked if the wooded area was part of the condominium complex that the applicant's home was part of. Ms. Rodriguez replied that she was not sure.

Chairman O'Connor presented an aerial photograph of the area that he had obtained and asked the applicant to verify which lot her home was located on. Mrs. Morgan then did so. A discussion then followed amongst the Board members while they reviewed the map of the condominium development verifying the location of the applicant's home within the condominium development. Ms. Rodriguez pointed out that there was a note on the approved development plan that stated that the existing vegetation needed to remain in place.

Mr. King asked the applicant if they proposed to do any landscaping behind their home as part of the deck construction, especially along the existing tree line. Mrs. Morgan replied that they would not be doing any landscaping; everything was going to remain the same. Mr. King then asked how close the proposed deck was going to be to the existing tree line. Mrs. Morgan replied that she was not sure. Mr. King noted that the tree line was intended to be a buffer and not to be disturbed according to the original development plan. Mrs. Morgan reiterated that they were not going to encroach on that buffer.

Mr. Glazier clarified that the hedges in question were located on the applicant's property and that the property line was behind those hedges. Mrs. Morgan stated that that was correct.

Mr. King asked the applicant if they intended to alter those hedges at any time in the future. Mrs. Morgan replied that they did not intend to alter those hedges.

Mr. Flanagan asked if that was actually part of the original approval. Ms. Rodriguez stated that it was.

Mr. King then asked Ms. Rodriguez if the Board could require that the existing hedges be maintained as part of the Board's approval. Ms. Rodriguez replied that it could.

Mr. Flanagan clarified that the proposed deck was going to be 15 feet long along the house and go out 10 feet from the house reducing the setback from 25 feet to 15 feet from the property line. Mrs. Morgan stated that that was correct. A brief discussion then followed regarding the screened-in porch and Mrs. Morgan confirmed that the screened-in porch had been closed in and was now part of the house. Mr. King then asked if there was going to be a door to access the deck. Mrs. Morgan replied that

there was an existing sliding door from the home (where the screened porch had been) out to the deck.

Mr. Glazier pointed out that the second and third homes from the applicants had the same thing that the applicant was proposing. Mr. King asked if those homes had had decks added to them. A brief discussion followed and it was determined that the decks had been added.

Mr. Flanagan commented that the question was “what was the hardship”; it could not be just because everyone else had added a deck.

Chairman O’Connor reminded the applicant that there were only four Board members present that evening and that that was enough for a quorum, but that any motion would have to have a unanimous vote in order to pass. He explained that typically there were five members present and that with five Board members the vote did not need to be unanimous. He then asked the applicant if they wanted to continue with the public hearing or put it off until another time when there could be five Board members present. Mrs. Morgan stated that they wanted to move forward with the public hearing that evening.

Mrs. Morgan stated that their hardship was that they did not have anywhere else to put their proposed deck and she did not see how their deck would be a problem since the other similar decks in the development had previously been approved.

Chairman O’Connor pointed out that every case was unique and the Board needed to address each case individually, therefore every applicant needed to show their particular hardship. He then asked if there would be an issue that the applicant was deprived without having a deck on their home. Mrs. Morgan replied that there was not, but that they just wanted to have a deck.

Mr. King asked if the condominium association would have to approve the proposed construction of the deck. Mrs. Morgan stated that the president of the condominium association had said that it would be okay to build their deck. Ms. Rodriguez noted that in past cases when the decks were approved the Board had received a letter of approval from the association. She went on to say that in this particular case where they had not received an approval letter she suggested that, if the Board were to motion to approve the application, the approval be conditional on receiving an approval letter from the condominium association prior to the applicant obtaining any building permits.

Mr. Glazier asked the applicant if they would get the approval letter if they were given the variance. Mrs. Morgan stated that they would.

Chairman O'Connor asked the applicant if there was any other access to the home other than their front door; somewhere that they could get out of their home. Mrs. Morgan stated that they had a finished basement with a hatchway and the garage access.

Mr. King referred to the sketch that had been submitted with the application and noted the wooded area behind the home and asked if the 15.1 feet indicated on the sketch was to the boundary line. Mrs. Morgan replied that that was not to the boundary line. A discussion then followed regarding the sketch and it was determined that whomever drew the sketch had not taken into account any trees that were on the property. Mr. King then noted that the sketch had been less than fully informative.

Mr. King asked Ms. Rodriguez if the original development had been done under some sort of condominium regulations. Ms. Rodriguez explained that typically a single family unit was built on one lot, but that in the instance of the home in question it was one lot with many units on it. She went on to say that they were considered more like a condo even though they were single family detached dwellings. She then stated that it was a shared common lot. Ms. Rodriguez noted that it had been approved under the Multi-Family Special Development, therefore instead of each unit having its own rear, side and front yards the entirety of Windgate Mews which encompassed all of the units on Ross Way with all of the those units having one front yard as you enter Windgate Mews and all of the units side by side all having the same side yard of the 25 feet that was required.

Mr. Flanagan pointed out that the sketch that had been submitted was identical to the sketch that had been submitted four years prior. Mrs. Morgan explained that they were using the same contractor.

Mr. Flanagan commented that he was still questioning what the hardship was. He then asked if there had been any correspondence with the abutting property owners behind the applicant's home. Mrs. Morgan stated that the Town office staff was going to take care of that. Chairman O'Connor noted that the Board was concerned because the abutter to the rear of the applicant's home were not listed on the Abutters List that was submitted as part of the application. The Recording Secretary explained that of the three abutters submitted with the application two were located on Ross Way and the third did not list the street address. She went on to say that she was able to obtain the abutter's address from the Building and Land Use Office staff. She went on to say that that abutter's address was 9 Meg Way and that all three of the abutters were mailed an Abutter's Notification informing them of the public hearing taking place that evening. She noted that the Abutters Notification was essentially the same as the Meeting Agenda, it contained all of the same information.

Mr. Glazier stated that he had walked the applicant's property with the applicant prior to the evening's meeting and that the hedges in the back were huge and had almost grown completely together. He went on to say that you could not even see the house behind the applicant's home. He then pointed out that the abutter behind the applicant's home would not be able to see the proposed deck once built.

Chairman O'Connor asked the Board members for any further questions. Mr. Flanagan commented that he wanted to go over the hardship again. He went on to say that the hardship that the applicant had stated earlier was that it was the only side of the house where the deck could be built. Mr. Flanagan stated that, if he were to go by that, he did not see a hardship.

Mr. Glazier stated that based upon the definition of a hardship they could not deprive the property owner of all reasonable use of their property. Mr. Flanagan asked Mr. Glazier to repeat his comment regarding the hardship definition. Mr. Glazier then stated "hardship would occur if the zoning variance were not approved as it would deprive the property owner of all reasonable uses of this property".

Chairman O'Connor asked for any public input in favor of the application or in opposition to the application. There was none; no members of the public were present.

Chairman O'Connor asked for a motion regarding Application #FY18-19-02. Mr. Glazier moved to approve Application #FY18-19-03, Owner/Applicant: Margaret and Aspin Morgan for a variance for the property located at 16 Ross Way to locate a deck within 15 feet of the side yard property line where 25 feet are required. The motion would be granted only on condition that Mr. and Mrs. Morgan receive a permit from the condominium association for the deck construction and granting this variance is for the improvements proposed in this application only, permitting an exception to the requirements of the Zoning Regulations Section 403, to construct a deck within 15 feet of the side property line where 25 feet are required. A hardship would occur if this zoning variance were not approved as it would deprive the property owner of all reasonable uses of his property. This variation will be in harmony with the surrounding residents. It will not be detrimental to public health, public safety or general welfare of the neighborhood. The footnote so stated is that the hardship stated is in the legal definition of hardship that anyone go on the internet and look for this information. Any changes to this site plan may require a return to this Board. This is not a permit to build. Please see the Building and Land Use Office for permit requirements. Mr. Flanagan seconded the motion. Mr. King suggested that the board amend the motion to be in line with the initial intentions of the property condo association development that the landscape remain as it is without any modifications in the future. Mr. Glazier then added the following to his motion, that the hedges that are in the backyard of Mr.

Morgan's property, that those hedges will remain there as they provide an excellent buffer zone between the two abutting properties. All were in favor. The vote was 4 – 0, the motion was approved.

Mr. Glazier moved to adjourn the meeting. All were in favor. The vote was 4 – 0, the meeting was adjourned at 8:13 pm

Respectfully submitted,

Diane Ferrari
Recording Secretary

THIS IS A DRAFT

Please check the following month's meeting minutes for official approval of these minutes and any amendments or corrections that were made.