

Town of North Andover
ZONING BOARD OF APPEALS

Approved 01/12/2016

Albert P. Manzi III, Esq. Chairman
Ellen P. McIntyre, Vice-Chairman
D. Paul Koch Jr. Esq.
Allan Cuscia
Doug Ludgin



Associate Member
Deney Morganthal
Nathan J. Weinreich
Alexandria A. Jacobs Esq.
Zoning Enforcement Officer
Gerald A. Brown

Tuesday November 10, 2015 at 7:30 PM
Town Hall 120 Main Street, North Andover, Massachusetts

Members present: Ellen P McIntyre, Allan Cuscia, and D. Paul Koch Jr Esq.
Associate Member: Deney Morganthal and Nathan Weinreich
Also in attendance: Gerald A. Brown
Excused absence: Albert P. Manzi Esq., Alexandria Jacobs Esq., and Doug Ludgin.

Pledge of Allegiance

E. McIntyre called the Special Meeting to order at 7:34pm

Acceptance of Minutes October 13, 2015

A. Cuscia made a motion to approve

D.P. Koch second the motion

Those voting in favor to approve the minutes were McIntyre, Koch, Cuscia, Weinreich and Morganthal.

Committee Reports

Housing Partnership Committee

McIntyre had nothing to report on the Housing Partnership.

Discussion

E. McIntyre stated that there was nothing on the Agenda for discussion.

Continued Public Hearing

Finding Zoning District I-2 Gregory Smith 146 Main Street (Map 40.A Parcel 4)

Petition 2015-007

New Public Hearing

Variance Zoning District R-4; John Bartlett, 101 Prescott Street (Map 82 Parcel)

Petition 2015-008

Request for a Finding

Finding Zoning District I-2 Gregory Smith 146 Main Street (Map 40.A Parcel 4)

Petition 2015-007 **Sewer Pump Station-located at 146 Main Street**

Attorney Peter Kutrubes stated that he is representing Gregory Smith applicant for this matter at 146 Main Street.

P. Kutrubes stated that the last meeting ended with a request from the board to P. Kutrubes and Gregory Smith to present to the board what authority the North Andover Zoning Board of Appeals have in this matter.

P. Kutrubes stated that the board has authority over the Building Inspector and that there are permits that have been issued and problems with inspection and enforcement of said permits. P. Kutrubes stated that this has been an ongoing problem with permits and enforcement since 2005.

P. Kutrubes stated that the structure is now out of compliance according to the building codes, which that permits should not have been issued if the there are issues with Zoning and Waste Water.

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A. Cuscia asked P. Kutrubes what year these permits were pulled.

P. Kutrubes answered that the permit for the structure (pump shed) was 2005. P. Kutrubes also stated that they are looking for the enforcement and inspection of said permit citing any violations.

A. Cuscia asked if the Building Inspector already arbitrated a settlement between the two parties.

P. Kutrubes stated that no the Building Inspector did not arbitrate a settlement.

E. McIntyre stated that the Commonwealth of Massachusetts had.

P. Kutrubes stated that no the Commonwealth did not.

E. McIntyre asked if this was still in Litigation then.

G. Brown stated that the North Andover Board of Selectman informed him that this matter has already been adjudicated more than ten (10) years ago, but that the matter is still ongoing since both parties are unhappy with the outcome. G. Brown referred to his letter to P. Kutrubes dated October 2, 2015.

The ZBA discussed amongst themselves how a sewer pump station comes under the purview of the Zoning Board.

P. Kutrubes stated that its falls under the Chapter 40A section 14 Regulations for the Town of North Andover that the ZBA has the right to review appeals of a request for enforcement under Sub-Section 8 of Chapter 40A.

D.P. Koch requested a copy of the Section from P. Kutrubes.

P. Kutrubes stated that he has not submitted it to the Board; He stated that Section 7 was however submitted to the Board in the power point presentation.

The Board requested to see the slide in which the Section 7 language is cited.

P. Kutrubes stated that he has put together a presentation that includes the law, history and condition of the structure itself which was never inspected. P. Kutrubes also stated that they are looking for a decision tonight either rejection by the board or a decision by the Building Inspector to condemn it. P. Kutrubes stated that many people agree with him that the structure is out of code compliance which includes the Department of Environmental Protection as well as Director Eric Kfoury of the Town of North Andover's, Community Development and Economic Development.

Ellen McIntyre requested P. Kutrubes to explain how Section 7 pertains to the Zoning Board and this request.

P. Kutrubes stated that Section 7 covers the powers of the Building Inspector and what he can and cannot inspect and the Boards oversight of him.

D.P. Koch asked for clarification on what is being designated as "the building", P. Kutrubes stated that "the building" refers to the pump shed or pump structure.

A. Cuscia asked for clarification on what this structure is and if it just houses the pump mechanics.

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P. Kutrubes stated the yes it houses the pump mechanics, built in 2005.

A. Cuscia asked for clarification on what P. Kutrubes is looking for in regard to the Zoning Board.

P. Kutrubes stated that they are requesting the ZBA to either enforce the code or reject our appeal.

E. McIntyre asked who owns the property that the structure (pump shed) is located on.

P. Kutrubes stated that the property is owned by Sutton Pond, but that the structure (pump shed) is attached to G. Smith's building, and that G. Smith foundation is porous so when the pump fails and freezes and back flows into G. Smith's foundation and outside into the wetlands because underneath the structure is gravel stone.

The Board requested clarification on the Arbitration agreement.

Kutrubes stated that the Agreement specifies that the structure (pump shed) shall be constructed according to building codes. It does not state what type/size building materials are to be used. The enforcer of the code is Mr. Brown.

E. McIntyre asked the P. Kutrubes why he included a police report in his documentation.

P. Kutrubes stated that he enter the information to show that G. Smith was look to have some kind of resolution from the town regarding this issue.

The Board discussed amongst themselves the validity of the case being brought before the board, when an Arbitrator and the Town Counsel of North Andover have already made a ruling.

P. Kutrubes stated that they are looking for the board to enforce the building codes as well as the Towns Bylaws.

D.P. Koch asked about the 10 year time constraint (statute of limitations) language in Chapter 40a and whether or not it pertains to this case.

P. Kutrubes stated that no it did not, based on a code enforcement requests continuing up to and including 2012. P. Kutrubes also stated that the structure (pump shed) was not constructed until December of 200 and was not fully retro fitted until May or June of the following year. P. Kutrubes also stated that this is still an on-going issue and has not been resolved, so the statute of limitation has not expired.

G. Brown asked the board to review the documentation presented by Starr Vander Linden Attorneys at Law that the request was back in 2002 and it was with the former Town of North Andover's Building Inspector. G. Brown also stated that he along with the Town of North Andover's Board of Health Director/ Inspector Susan Sawyer went to the site with G. Smith.

E. McIntyre asked the Board if there were any other questions.

A. Cuscia made a motion to close the hearing.

E. McIntyre asked P. Kutrubes if he had any other information that he would like to present to the board.

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P. Kutrubes stated that he had the slide show (Power Point) presentation he would like to present which includes a letter from Lincoln Daley and the Town that show that no permits were pulled and what the procedures are to have something built. There are also engineered drawings on how the structure was to be built. He also stated that the Arbitration is a binding agreement but that it does not abdicate the Town's police powers to have something appropriate and safe constructed in conjunction with the building inspector.

D.P. Koch requested clarification citing the letter submitted by Starr Vander Linden from Norfolk Ram dated September 07, 2012 which describes the pump system states that they inspected the upgraded portion of the sewerage pumping system that serves the Granite Building that has been completed on the date by United Compressor & Pump Services Inc., and have observed that the completed work conforms to the requirements of the pumping system installation outlined in the October 18, 2005 Award of Arbitrator and the May 12, 2006 Disposition of Application for Clarification of Award. Unless there is other documentation from another expert that states otherwise, this system seems to be compliant with the Arbitrator's Award.

P. Kutrubes stated that he submitted the Stantec Letter dated 06/26/2007 written by Victor Olsen, Senior Project Manager. G. Smith also subsequently hired Hancock and Associates to inspect the pump system, and both state that this system is out of compliance.

P. Kutrubes make mention of the letter he sent to Eric Kfoury, Director, Community and Economic Development, Town of North Andover dated 04/09/2015. P. Kutrubes states that the system is out of compliance and that the Town and the Department of Environmental Protection agree.

E. McIntyre asked if the system was in compliance after the Arbitration at any time.

P. Kutrubes stated that no that the system has never been in compliance.

E. McIntyre asked if during Arbitration was an Engineered was agreed upon.

P. Kutrubes stated that no, it was not part of the Arbitration Award. The Award does say that both parties would have a say in the design and construction of this structure and system. P. Kutrubes then stated that Sutton Pond then went ahead and hired Norfolk Ram Group and that this was built without consulting G. Smith. Kutrubes stated that what they did built was a pump shed over the existing system that was never designed, engineered or permitted. Then over time since 2002 to the present have updated every time it failed.

E. McIntyre asked why this was not in front of the Planning Board since they originally granted the Special Permit for the pump system.

P. Kutrubes states that the Planning Board said that this is for the Appeals Board.

E. McIntyre asked the Board if there are any other questions. E. McIntyre also asked P. Kutrubes if there was anything else he wanted to present.

P. Kutrubes stated that he would like to present the slide show (Power Point) presentation. P. Kutrubes then goes thru the slide show (Power Point) presentation describing each slide.

E. McIntyre asked if there are any other questions from the Board. The Board had no other questions.

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P. Kutrubes stated that the system does not currently look like the photographs included in the slide show (Power Point) presentation but when there is a failure there are fluid spewing out of the coupling.

D.P. Koch asked for clarification on what prevents G. Smith on repairing or fixing the pump system.

P. Kutrubes stated that this is not G. Smith's property or land, and that G. Smith has tried to do so by pulling Permits and have been denied by Sutton Pond.

A. Cuscia asked why then is Sutton Pond not fixing it.

P. Kutrubes stated that Sutton Pond say it is G. Smith's problem.

E. McIntyre asked if G. Smith if there was any other location or land to build his own pumping station on.

P. Kutrubes stated that no there is not that he owns the building not not the land it sits on. The G. Smith has a land use lease and that the land is only the size of the building itself.

D.P. Koch requested clarification on some of the materials submitted to the Board that stated Sutton Pond turning ownership of the Structure and the pump system to G. Smith. He also asked if Sutton Pond and G. Smith are at a stalemate on how/when to repair this system and why aren't they going back to the Arbitrator for resolution.

P. Kutrubes stated that the Arbitrator gave two (2) clarifications and considered the matter settled. He also stated that G. Smith would have to go back into litigation or an order from the Court in order to settle this.

D.P. Koch requested clarification on what happens next hypothetically if the board approves the finding request what happens next.

P. Kutrubes stated that the Building Inspector and the other Town Enforcement offices could then issue enforcement orders, would then force the system and structure be brought up to code.

A. Cuscia moved to close the meeting

D.P. Koch seconded.

All in favor to close A. Cuscia, E. McIntyre, D.P. Koch, N. Weinreich and D. Morganthal
5-0 in favor to close

The Board deliberated on what they heard tonight.

A. Cuscia entertains a motion on the **application of Stone Mill Realty Trust/ Gregory Smith and Linda VanDeVoorde for property located at 146 Main Street (Map 40.A Parcel 4), North Andover, MA 01845.** Petitioner is requesting a Finding from the Zoning Board of Appeals under Section 4 Paragraph 4.135, and Section 10, of the Zoning By-law in order to appeal the Inspector of Building's failure to act upon the petitioners request for enforcement action of alleged Zoning By-law violation by Sutton Pond Condominium(s) 148 Main Street, fix a sewer pump station that is allegedly in failure and the applicant alleges that the station is out of compliance with all laws, regulations and permits. Cuscia referenced all the plans, pages, and maps that were submitted by the applicant, along with the associated dates and person/business that prepared the plans.

A. Cuscia referenced all drawings, plans, letters and written materials that were in front of him, along with all associated dates and those that prepared and/or created the plans and drawings

N. Weinreich seconded the motion.

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All in favor for a Finding for the applicant:

Not in Favor: E. McIntyre, D.P. Koch, A. Cuscia, N. Weinreich, and D. Morganthal.

0-5 denied

Variance Zoning District R-4. John Bartlett, 101 Prescott Street (Map 82 Parcel) Petition 2015-008

A Variance for the R-4 Zoning District is needed; The Petitioner is requesting a Variance for minimum setback area pursuant to Section 7.3, 7.3.2 and Table 2 of the Zoning Bylaw (Dimensional Requirements for Setback Area) The applicant is requesting an addition of a two car garage and a Master Bedroom in the R-4 Zoning District. The Variance proposed is 7.6 feet (left side), the required is 15 feet.

John Bartlett of 101 Prescott Street, the applicant walked up to the podium. J. Bartlett spoke about the plans and reason for the Request for a Variance, which is to build a two (2) car garage and a master bedroom. There is an existing garage which will be demolished in order for the new addition to be constructed. J. Bartlett stated that out immediate Abutters sent in letters (92 Prescott Street, 93 Prescott Street, & 111 Prescott Street) of support for the Variance we are requesting. J. Bartlett made mention that the proposed addition is consistent with the other homes in the neighborhood.

D.P. Koch made a motion to close the hearing.

E. McIntyre asked if anyone else had any questions or comments.

G. Brown said that he is in favor of the request.

A. Cuscia seconded the motion.

D.P. Koch moved to close the meeting

A. Cuscia seconded.

All in favor to close E. McIntyre, A. Cuscia, D.P. Koch, N. Weinreich and D. Morganthal

5-0 in favor to close

D.P. Koch made a motion to **Grant a Variance** for 101 Prescott Street under Section 7.3, 7.3.2 and Table 2 of the Zoning Bylaw (Dimensional Requirements for Setback Area) for minimum setback area pursuant to The applicant is requesting an addition of a two car garage and a Master Bedroom in the R-4 Zoning District. The Variance proposed is 7.6 feet (left side), the required is 15 feet.

D.P. Koch referenced all drawings, plans, letters and written materials that were in front of him, along with all associated dates and those that prepared and/or created the plans and drawings.

A. Cuscia seconded the motion to grant the Variance.

All those in favor of this Variance: E. McIntyre, D.P. Koch, A. Cuscia, D. Morganthal and N. Weinreich, 5-0 **GRANTED**.

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Miscellaneous Correspondence :

None

Adjournment: 8:42

A. Cuscia made a motion to adjourn the meeting.

D.P. Koch second the motion

All were in favor to adjourn the meeting: E. McIntyre, D.P. Koch, A. Cuscia, N. Weinreich and D. Morganthal.

Meeting Materials

November 10, 2015 Zoning Board of Appeals Agenda

October 13, 2015 Meeting Minutes

a). Finding Zoning District I-2 Gregory Smith 146 Main Street (Map 40.A Parcel 4) Petition 20015-007

- Town of North Andover Division of Public Works letter to the Town of North Andover Planning Board dated 12/01/1992.
- Elm Mill Realty Trust letter to the Town of North Andover Planning Board dated 12/08/1992
- Town of North Andover Planning Board Notice of Decision dated December 22, 1992 BK3675
- Division of Water Pollution Control application dated 12/28/1992
- Department of Environmental Protection letter to Ernest Gralia dated 03/10/1993
- Town of North Andover Division of Public Works letter to J. Daly Esq. dated 2/29/2000
- Town of North Andover Building Department Permit Application dated 11/19/2004
- Norfolk Ram Group letter dated January 16, 2006
- Commonwealth of Massachusetts Department of Fire Services application for permit to perform electrical work dated 02/06/2006 and 04/25/2012.
- Stantec letter dated June 26, 2007, File 195111296
- Town of North Andover Complaint for Investigation dated 1/13/2015, 1/14/2015 and 1/21/2015.
- Peter L. Kutrubes, Esq. letter dated 04/09/2015, which includes Town of North Andover Office of Planning Community Development and Services Division letter dated 06/23/2005, a Town of North Andover Police Incident Report dated 03/17/2015, Commonwealth of Massachusetts Department of Fire Services application for permit to perform electrical work dated 02/06/2006.
- Peter L. Kutrubes, Esq. letter dated 07/15/2015
- Peter L. Kutrubes, Esq. letter to Appeal Decision not to Enforce- Letter of Authorization dated 08/03/2015
- Peter L. Kutrubes, Esq. Proof of Service- Letter of Request for Enforcement dated 09/09/2015; included is United Compressor letter dated 01/10/2006, Stantec report dated 06/26/2007 and Town of North Andover Planning Board Notice of Decision dated December 22, 1992 BK3675, and The American Arbitration Association, Award of Arbitrator dated October 18, 2005.
- Gerald Brown, Inspector of Buildings Town of North Andover letters dated September 17, 2015 and October 02, 2015
- PowerPoint presentation printout
- Starr Vander Linden packet dated 10/15/2015 which includes; Town of North Andover Office of Planning Community Development and Services Division letter dated 08/30/2002, Town of North Andover Office of the Zoning Board of Appeals Community Development and Services Division Notice of Decision dated 06/14/2004, Commonwealth of Massachusetts County of Essex The Superior Court Notice of Docket Entry dated 08/04/2004 Settlement Agreement, The American Arbitration Association, Award of Arbitrator dated October 18, 2005, The American Arbitration

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Association, Disposition of Application for Clarification of Award dated 12/06/2005, The American Arbitration Association, Disposition of Application for Clarification of Award dated 05/12/2006, Perkins & Ancil, P.C. Attorney at Law Letter dated 02/10/2006, Norfolk Ram letter dated 09/07/2012, and Starr Vander Linden letter dated 07/22/2014 & 07/24/2014.

b). Special Permit Zoning District R-4. John Bartlett Street (Map 82 Parcel 2), Petition 2015-008.

- Site Plans/ Plot Plan prepared by from David P. Terenzoni, PLS of Peabody, MA. 01960 09/02/2015 revised 09/30/2015. P15-076
- Letters of support from 111 Prescott Street North Andover, 93 Prescott Street North Andover and 92 Prescott Street North Andover.