

GLOCESTER ZONING BOARD OF REVIEW MEETING

September 24, 2020

The Gloucester Zoning Board of Review meeting took place on September 24, 2020 via electronic communication (remote ZOOM Video Conferencing). Chairman Gregory Meinertz called the meeting, holden in and for the Town of Gloucester, to order at 7:02 p.m.

Members in attendance: Chairman Greg Meinertz, Vice-Chairman Steve Winsor, Members Cyril “Ed” Crawley, Tracey Donnelly, Joseph Trunzo, Alternate Member Joseph Fogarty. Also present were Town Solicitor William Bernstein, Town Building Official Ken Johnson, and Town Planner Karen Scott; Zoom technical co-host Matthew Floor.

Members Absent: Replacement for Adam Muccino

Present to take Minutes: Recording Clerk, Judi Rix

Guests: Approximately 13 additional attendees, some of which were Gloucester residents logged in to the video meeting.; most of their names are recorded in the minutes below.

Chairman Greg Meinertz stated for the record that for tonight’s meeting the voting members will be himself, Vice-Chairman Winsor, Members Crawley, Donnelly, and Trunzo.

**A. RER Energy Group, applicant and Rhode Island Episcopal Convention Inc., owners,** property located off Reservoir Road, further described as Assessor’s Plat 10, Lot 44 and Assessor’s Plat 7, Lot 1, both lots are in an A-4 zone. Applicant seeks an extension to their Special Use Permit which was granted on February 28, 2019 and recorded on March 29, 2019.

Chairman Gregory Meinertz invited Attorney Joelle Rocha of Kelly, Souza, Rocha & Parmenter, to make a presentation for the applicants regarding their request for an extension. The applicant is waiting on their permit approval from the DEM. The Chairman asked Town Solicitor William Bernstein if the applicants even needed to ask for an extension at this time since we are experiencing extenuating circumstances. Town Solicitor Bernstein believes that if the applicant is actively moving the project forward the previous extension granted does not expire. At this point the delays are beyond the control of the applicant.

Chairman Meinertz suggested the applicants save their last extension request for a time they really may need it and asked if the Board needed to take any action to make this

happen. Town Solicitor Bernstein said that no formal vote needed to be taken, but the Chairman should ensure the rest of the Board is okay with this decision. The additional members of the Board were polled: Agree with Decision – Meinertz, Winsor, Donnelly, Trunzo and Crawley. All 5 voting members agreed to proceed this way.

**B. Michael and Susan Barnes, applicants and Kimberly W. Burgess and Barbara Burgess-Maier, owners**, property located at 0 Old Quarry Road, further described as Recorded Plat PI, Lot 15 in an A-3 zone (pre-existing A-2 with 2.09 acres). Applicants seek a Dimensional Variance in accordance with the Gloucester Code, Chapter 350, Article III, §350-13, Table of Dimensional Regulations, Minimum Setbacks, which required 35 feet for side yard and 100 feet for rear yard, according to the regulations applicable at the time the lot was legally created. Applicants seek approval to construct a new single-family home 18 feet from the side property line and 60 feet from the rear yard depth. Requesting 17 feet of relief from the side yard and 40 feet of relief from the rear yard depth.

Chairman Gregory Meinertz swore in Attorney Stephen J. Angell representing the applicants Michael and Susan Barnes and Kimberly W. Burgess and Barbara Burgess-Maier, owners, and invited him to make his presentation. Attorney Angell stated that his clients are looking for relief from the side and rear lot footage requirements on an existing lot of record, and he has several witnesses to provide testimony as to why this relief should be granted; he would like all of his witnesses to be accepted as expert witnesses. After reviewing the list of witnesses, their resumes, and the fact that a few have appeared before the Board previously, it was noted that all would be sworn in as experts.

Attorney Stephen J. Angell called upon land surveyor Mr. Anthony E. Muscatelli of Industrial Drive, Smithfield, RI as his first witness. Chairman Gregory Meinertz swore in Mr. Muscatelli and invited him to make his presentation. Mr. Muscatelli was hired in 2005 to do a Class 1 Survey and Class 3 Topography on this lot. Attorney Angell asked what the physical restrictions were on this property. Mr. Muscatelli indicated that there is quiet a bit of ledge on this property and it was challenging to find a location for the dwelling that would fit between the ledge, the wetlands, and the water. They did attempt to locate the dwelling at the front of the property but ran into ledge that would not make it financially sensible to place it there. Member Ed Crawley asked about the distance from the proposed dwelling to the neighbor's existing well; he is concerned about maintaining an appropriate distance. Mr. Muscatelli responded that the distance from the bottomless sand pit septic system at the new location is 100 feet from the existing well. Attorney Angell asked Mr. Muscatelli if he believed that his opinions expressed tonight were within a reasonable degree of certainty and Mr. Muscatelli stated he did believe they were.

Attorney Stephen J. Angell called upon land surveyor Mr. Norbert Therien of Hamlet Avenue, Woonsocket, RI as his second witness. Chairman Gregory Meinertz swore in Mr. Therien and invited him to make his presentation. Mr. Therien was hired by the Barnes family to find a suitable location for a dwelling. When attempting to find a

location for a new dwelling and wetlands are involved, DEM is on site when finding a location for a septic system and then evaluates the possible impact that location would have on the wetlands. Mr. Therien wanted to point out that this is the second permit the DEM has approved for this property to be developed. In his opinion, this location is the best spot to construct the new dwelling taking into consideration the physical characteristics and limitations of the property and the DEM gave their approval for the bottomless sand pit septic system and the location today. Member Ed Crawley asked if other than the septic drain location and the ledge location is there any other reason why the dwelling could not be built in another location that had already been identified. Mr. Therien stated that it would impact the aesthetics and value of the property to build elsewhere on the property. Attorney Angell asked Mr. Therien if he believed that his opinions expressed tonight were within a reasonable degree of certainty and Mr. Therien stated he did believe they were.

Attorney Stephen J. Angell called upon wetland scientist Mr. Scott Rabideau of Tinkham Lane, Harrisville, RI as his third witness. Chairman Gregory Meinertz swore in Mr. Rabideau and invited him to make his presentation. Mr. Rabideau was retained in 2016 by Mr. Burgess to conduct a wetlands delineation and complete the DEM wetlands permit request (8/29/16). When considering a possible dwelling location, the DEM requires that all possibilities that will not impact and/or cross wetlands be looked at. There was no acceptable location toward the front of the property to have a suitable septic system; there may have been room for a house but not a septic system. Mr. Rabideau submitted the permit modification to relocate the home and believes the current proposed location is the best alternate location that could receive DEM approval. Attorney Angell asked Mr. Rabideau if he believed that his opinions expressed tonight were within a reasonable degree of certainty and Mr. Rabideau stated he did believe they were.

Attorney Stephen J. Angell called upon Mr. Thomas O. Sweeney of Sweeney Real Estate & Appraisers of Providence, RI as his fourth witness. Chairman Gregory Meinertz swore in Mr. Sweeney and invited him to make his presentation. Mr. Sweeney was engaged by the Barnes family to determine the impact on the surrounding properties if the lot was to be developed. Mr. Sweeney familiarized himself with the property in question and the surrounding properties and determined that the proposed development would be consistent with and complementary to the surrounding properties. Mr. Sweeney believes the current proposed location is the only one that would work since the lot has significant environmental limitations.

Attorney Stephen J. Angell called upon the applicants Michael and Susan Barnes of West Butterfly Way, Lincoln, RI. Chairman Gregory Meinertz swore in both Mr. and Mrs. Barnes and invited them to make their presentation. Attorney Angell asked the applicants why they want to build a home and move to this community. Mr. and Mrs. Barnes have ties to Foster/Glocester and Mr. Barnes has been teaching in the school system since 1998. He held various positions until he was appointed Superintendent of Schools in the Foster-Glocester Public School System in October 2008. They have both grown to love this community, have many friends here and their daughter also attended Ponaganset High School. Mr. Barnes will be retiring in a few years and they would like

to retire to the community they love. Attorney Angell asked if there was anything they would like to add to what has already been said tonight. Mr. Barnes had a conversation with the Bomars who would become their neighbors, and in response to the Bomar's concerns asked to relocate the dwelling from 12 feet from the property line to 18 feet from the property line in an attempt to be a good neighbor. Town Solicitor William Bernstein wanted it on the record that all documents submitted were accepted and will become a permanent part of the application.

Chairman Gregory Meinertz opened the meeting up to the public at 7:55 pm; several people wished to speak:

1. Attorney David D'Agostino of Gorham & Gorham – Attorney D'Agostino asked to speak on behalf of the Bomar family and wanted to ensure the three documents he submitted were part of the record (Alternate house location needing no relief, 1972 map of property with alternate house location and original wetlands plan); Chairman Meinertz acknowledged that they were. Attorney D'Agostino argues this application is not the plan that requires the least relief because the previous plan required no relief from the ordinance.
2. Bethany Bomar of Powers Lane, N. Scituate/Glocester – Ms. Bomar is a neighbor to the property. Her parents purchased the lot before she was born and she lives in her own home on that lot year round. She will be overlooking the new house and they will be able to see her deck, bedroom windows and other recreational areas; it will be very close to her house. Chairman Meinertz asked her if she would have similar objections if the house kept the current footprint at the alternate location previously identified. Ms. Bomar indicated that yes she would have the same objections, but it would be better because they would be further away and every foot they can move away from her property is better since she can't completely keep them from building on it.
3. Keith Heroux of Powers Lane, N. Scituate/Glocester – Mr. Heroux lives several properties down from the applicant's lot and was wondering if the building could be smaller. Why putting such a large footprint? He believes Ms. Bomar's property will be negatively impacted and so will the other properties on the street.
4. Barbara Powers of Powers Lane, N. Scituate/Glocester – Ms. Powers' family was one of the original families that purchased the property and then split it up. She is concerned with the number of variances being granted in the town and feels the lake is getting crowded with homes that are too big and squeezed onto properties that are too small. She was under the impression that the applicant's lot could never be built on.
5. Liz Viall of Powers Lane, N. Scituate/Glocester – Ms. Viall shares Ms. Powers concerns about the number of variances being granted in the town. She owns a 3 acre lot that has a lot of ledge and there is only room for a small house to be built on that property; she will not be trying to fit a large house on it because it won't fit. She is concerned that granting this request will set

precedent; why not build smaller. She also believes it will change the character of the area.

6. Barbara Burgess-Maier the landowner – Ms. Burgess-Maier’s mother purchased the land and then divided it up, selling some of the lots to the Powers family. She is not aware that her mother ever said the lot would never be built upon. She would love to see the Barnes’s get to build their home on the property.

Chairman Meinertz closed the public portion of the meeting at 8:23pm. The Chairman then asked the recording clerk about the notification mailings for the property, and the Planning Board decision. Twelve notification letters were mailed to abutting property owners, and two were not returned; the Planning Board gave a positive recommendation for this project to move forward.

MOTION was made by Vice-Chairman Steve Winsor to approve the application of Michael and Susan Barnes, applicants and Kimberly W. Burgess and Barbara Burgess-Maier, owners, property located at 0 Old Quarry Road, further described as Recorded Plat PI, Lot 15 in an A-3 zone (pre-existing A-2 with 2.09 acres). Applicants seek a Dimensional Variance in accordance with the Gloucester Code, Chapter 350, Article III, §350-13, Table of Dimensional Regulations, Minimum Setbacks, which required 35 feet for side yard and 100 feet for rear yard, according to the regulations applicable at the time the lot was legally created. Applicants seek approval to construct a new single-family home 18 feet from the side property line and 60 feet from the rear yard depth. Requesting 17 feet of relief from the side yard and 40 feet of relief from the rear yard depth.

In making this decision the Board makes the following findings:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the land and not due to the surrounding area, nor due to physical or economic disability of the applicant.
2. The requested variance will not alter the general character of the surrounding area, nor impair the intent or purpose of this Chapter 350, Article III, §350-13, Table of Dimensional Regulations, Minimum Setbacks, which required 35 feet for side yard and 100 feet for rear yard, according to the regulations applicable at the time the lot was legally created.
3. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize financial gain.
4. The relief being granted is the least relief necessary, and if the variance was not to be granted, denial would amount to more than a mere inconvenience.

MOTION was seconded by Member Joseph Trunzo.

DISCUSSION: None

VOTE: Ayes – Unanimous, 5-0 (Meinertz, Winsor, Donnelly, Crawley, Trunzo).

**Correspondence:** None

**Approval of Minutes – August 27, 2020**

MOTION was made by Member Joseph Trunzo to accept the meeting minutes, as presented, of the Gloucester Zoning Board of Review meeting on August 27, 2020.

MOTION was seconded by Alternate Member Joseph Fogarty.

DISCUSSION: None

VOTE: Ayes – Unanimous, 5-0 (Meinertz, Winsor, Fogarty, Donnelly, Trunzo).  
Member Crawley Abstained from voting due to his absence at that meeting.

**Next Scheduled Meeting Date: October 22, 2020**

A Gloucester Zoning Board of Review meeting is scheduled for October 22, 2020 at 7:00pm in Gloucester Town Hall.

**Adjournment**

There being no further business for this evening, a Motion to adjourn was made by Member Joseph Trunzo seconded by Member Tracey Donnelly, and unanimously approved at 8:28pm.

**Minutes Approved:**

Respectfully Submitted,  
Judi Rix