



CITY OF GLOUCESTER

ZONING BOARD OF APPEALS

August 24, 2017

PETITIONER: J. DENNIS MORGAN, 12 Souther Road, Gloucester

LOCUS (hereafter, the "Site"): 12 SOUTHER ROAD (Assessors Map 69, Lot 22)

RELIEF REQUESTED: special permit to alter a non-conforming structure (Sections 1.9 and 2.4.3 of the Zoning Ordinance)

PURPOSE OF PETITION: to enable petitioner to expand his residence by construction of an addition to the first floor and a new second floor

ZONING DISTRICT: R-20 (Low/Medium Density Residential)

HEARING DATE, TIME AND PLACE: as advertised, July 27, 2017, 7:00 PM; Gloucester City Hall, Gloucester, Massachusetts; continued to and decided on August 24, 2017

BOARD MEMBERS PRESENT ON THE PETITION

FRANCIS S. WRIGHT, CHAIRMAN
DAVID B. GARDNER
MICHAEL NIMON
JOSEPH PARISI III
KRISTOPHER HOWARD

PETITIONER REPRESENTED BY: his attorney, Joel Favazza, Esq.

APPEARING IN FAVOR OF THE PETITION:

Steven McMann, 44 Lexington Avenue
Vincent Orlando, 93 Atlantic Road
Kenneth Steiner, 37 Beacon Street
Betsy Works, 15 Briar Road
Henriette McNiff, 7 Tragabigzanda Road

APPEARING IN OPPOSITION TO THE PETITION:

Martin Del Vecchio, 11 Tragabigzanda Road
Michelle Del Vecchio, 11 Tragabigzanda Road
Maureen Quarta, 4 Souther Road
Michael Stelluto, 21 Briar Road
Laura Flessel, 460 El Centro, Hillsboro, CA

PLANS, ELEVATIONS, ETC. SUBMITTED IN SUPPORT OF THE PETITION (HEREINAFTER, THE "PROJECT PLANS"):

Existing floor plans, existing elevations, proposed floor plans and proposed elevations, entitled

CITY CLERK
GLOUCESTER, MA
2017 OCT 13 AM 11:22

“Additions for Dennis Morgan”, dated June 14, 2017, prepared by Taormina Architects, LLC, consisting of sheets EX1 - EX4 and A1 - A6;

Revised floor plans and elevations, entitled “Additions for Dennis Morgan”, dated July 26 2017, prepared by Taormina Architects, LLC, consisting of sheets A2, A3 and A6;

Site Plan, entitled “Plan of Land, 12 Souther Road”, dated May 30, 2017, prepared by North Shore Survey Corporation, showing intrusion of first floor addition into left side yard setback;

Sketch plan of Site, showing above-referenced intrusion pulled back out of setback, untitled, undated, unattributed

FACTUAL FINDINGS BY THE BOARD:

Based on the Project Plans, the testimony of petitioner and those in support of or in opposition to his application, the representations of their attorneys and site visits by individual board members, the board finds that:

1. Petitioner’s single story house is nonconforming, in that it is situated on an undersized lot and intrudes by 15.8 feet into the 30 foot rear yard setback.
2. Thus at its southeast corner petitioner’s house is 14.2 feet from the rear property line. At this point of measurement, the house of abutter Martin Del Vecchio, at 11 Tragabigzanda Road, is +/-13 feet from that property line, for a combined distance between the two houses of +/- 27 feet. Under Section 2.3.1, the nominal required distance between principal structures in R-20 zoning districts is 60 feet.
3. The present height of petitioner’s house is 14.25 feet above average grade.

Prior Proceedings

4. This is the second time that petitioner has sought to add a second story to his house. In 2004, his house was 1,100 square feet in size, and consisted of only the back half of the present structure. In that year, petitioner applied for a special permit to add a second floor of roughly the same dimensions as the addition that is at issue in the present proceeding.
5. The same abutters who oppose the present application appeared at the 2004 hearing, and raised the same objections: that the proposed second floor was too high and too close to the rear property line, thus overshadowing their houses, impairing their views and invading their privacy. Testimony was also offered at that time and this to the effect that the addition would not be in keeping with the general character of the neighborhood. After closing the hearing, the board advised petitioner that in all likelihood it would not approve the second floor addition. At the suggestion of Mr. Del Vecchio, the abutter at 11 Tragabigzanda Road, the board directed petitioner to consider a lateral, single-story expansion at the front of his house. Away from the abutters and a single story in height, such an addition would obviate the problems caused by doubling the house height in such close proximity to the rear property line.
6. At a subsequent hearing petitioner submitted revised plans to the board, showing an addition at the front of his house, with no increase in its overall height. As characterized by the board, the revised plans add a kitchen, living and dining area to the enlarged first floor, allowing for the original structure to be renovated for three bedrooms. The revised plans showed that while the living area was increased by approximately 100% percent, the larger footprint containing approximately 1917 square feet of floor space, nevertheless, met the minimum front and side yard requirements of the [R-20] Zoning District, without increasing the height (approximately 14 feet three inches) of the original structure.

Decision of the board, p. 3, recorded on June 4, 2004

7. By a 4-1 vote, the board found that petitioner's house, as enlarged in accordance with the compromise plans, would not be substantially more detrimental to the neighborhood than his existing house and granted the special permit.

Present Proceeding

8. Petitioner has now applied, once again, for a special permit to construct a second floor on his house. The new second floor will be 21' by 52' in size (1092 square feet), and will be 29 feet in height above average grade, an increase of 14.75 feet over the existing structure. The addition will sit on the rear half of the present house, and thus will extend by an equal amount (14.2 feet) into the rear yard setback. Petitioner also proposes to add an enclosed exterior stairway between the first and second floors, which will increase the lateral size of the house from 52 feet to 60 feet and the size of the second floor to +/-1200 square feet.

9. On August 12, 2017 three members of the board conducted a site visit, at which they viewed the exterior and interior of petitioner's house, as well as those of abutters Martin and Michelle Del Vecchio at 11 Tragabigzanda Road and Maureen Quarta at 4 Souther Road.

10. At the hearings on this matter, the board took testimony from five persons in favor of the project and four persons against. Of those speaking in favor, three lived in areas of Gloucester far removed from petitioner's neighborhood. The other two lived closer, but were nevertheless far enough away that they could neither see petitioner's house nor be affected by the proposed increase in height.

11. Two of those speaking in opposition testified that the present structure's offbeat design, when coupled with the dropping of a box-like second story on the roof, would be totally out of keeping with the setting and architectural character of the general area.

12. The other two neighbors in opposition are abutters: the Del Vecchios and Ms. Quarta. In particular, the impact on the Del Vecchio home will be significant. Site visits by board members and the numerous photographs placed in evidence demonstrate that petitioner's second story will overshadow the Del Vecchio home and seriously impinge upon their privacy. As to this latter concern, the board notes that the windows on petitioner's proposed second story will be more or less in line with the Del Vecchio's first story windows and only 27 feet away. To a somewhat lesser extent, Ms. Quarta will be subject to the same adverse impacts.

13. Site visits by individual board members revealed that petitioner's lot is small for the general area and the style of his present house is in marked contrast with nearby homes. The boxy nature of the proposed second story will only accentuate this disparity.

14. Because of his small lot, petitioner's house already extends to the very edge of the front and left side yard setbacks and intrudes into both the rear and right side yard setbacks. As noted above, its intrusion into the rear yard setback is not inconsequential, and addition of a second floor that will extend an equal distance into the setback will make it that much more so, especially as it affects petitioner's backyard neighbors.

15. Mr. Del Vecchio also suggested that petitioner's present application is contrary to the compromise that was reached in 2004, when at Mr. Del Vecchio's suggestion and the board's urging petitioner met with his neighbors and subsequently withdrew the two story plan in favor of doubling the size of his house by building a single story addition at its front. Mr. Del Vecchio testified that he withdrew his opposition in 2004 because the compromise eliminated the second floor, but acknowledged that he did speak against detail of the compromise plan, that which called for a deck on the roof. At that time he was fearful of the party noise that such a deck might generate, and testified in the present proceeding that in fact roof deck parties have turned out to be a constant nuisance during the summer months.

DECISION OF THE BOARD:

Pursuant to GL c. 40A, §6, in considering whether to grant a special permit to alter or expand a non-conforming structure the board must find that the proposed structure will not be substantially more detrimental to the neighborhood than the existing structure. Petitioner's building is clearly nonconforming, in the particulars noted above. The question then becomes the effect of the proposed expansion on the neighborhood, but the board must first decide what is meant by "neighborhood" in the context of this case.

Of necessity, the contours of a neighborhood for Section 6 purposes will vary from case to case, ranging from two houses isolated in a forest to a fully built out street in downtown Gloucester. Board members have spent considerable time driving through the streets of the general area to the east and upgradient of the Bass Rocks Country Club. This part of Gloucester is primarily characterized by spacious homes from another era, sitting on large and well-tended lots.

Obviously, if a tannery were to be proposed for the far end of Souther Road, all of its residents, plus those of Brier and Tragabigzanda roads, would be considered a neighborhood for Section 6 purposes, for they all would be potentially affected by impacts ranging from noxious odors to increased truck traffic. In contrast, petitioner's home is one of three clustered together in virtual isolation from the other houses in the area. If there is any direct impact on these other homeowners it will not be overshadowing or loss of privacy; it will be limited to the minor and transient nuisance of having to drive past a construction site.

For the term to have any meaning in this case, the board concludes that the relevant neighborhood for Section 6 purposes is the three abutting and cheek-by-jowl properties: those of petitioner and his two backyard neighbors. There are no houses across Souther Street from petitioner's property; it is all Bass Rocks Country Club. On petitioner's side of the street, there are the close-by homes of the Del Vecchios and Ms. Quarta; beyond that, it is all spacious grounds and set back houses, none of which have an intimate or even visual connection with petitioner's house. It would dilute the "substantially more detrimental" language of Section 6 if all these remote and unaffected homeowners were included in the class called neighborhood.

The board's findings of fact detail the manner in which the Del Vecchios and Ms. Quarta will be adversely affected by a second story addition to petitioner's house. Given the close proximity of the three houses, of particular concern to the board is the fact that the second floor windows of the proposed addition will align with the first floor windows of the other houses, thus impinging upon their privacy. Furthermore, at least with respect to the Del Vecchios the board finds that petitioner's addition would significantly overshadow their first floor, especially during the winter months.

This is not to say that the extended neighborhood will be unaffected by petitioner's project. As noted above, the general area is one of stately older homes on large lots. With all due respect to petitioner, his house is crammed onto a small lot (12,300 sf vs. an R-20 minimum lot size of 20,000 sf), and intrudes into two of the setbacks and extends to the very edge of the other two. In particular, both the existing house and the proposed second story extend a little more than halfway into the rear yard setback. Petitioner's plans, which call for the placement of a large boxlike shape on the present roof, demonstrate that his house will once again grow in an incongruous style that can't help but have a detrimental effect on the dominant appearance and character of the larger neighborhood.

Finally, in reaching its decision the board has found it hard not to attach some relevance to the 2004 compromise that the board fostered, that petitioner agreed to and that his abutters relied on in withdrawing their opposition.

For all of the above reasons and by a vote of three in favor of petitioner's application and two opposed, the board finds that petitioner's house, as expanded by the proposed second story, will be substantially more detrimental to the neighborhood than his house as it presently exists. Accordingly the application is denied.

VOTE OF THE BOARD

In favor of granting a special permit:


FRANCIS S. WRIGHT, CHAIRMAN


JOSEPH PARISI III


KRISTOPHER HOWARD

Opposed to granting a special permit:


DAVID B. GARDNER


MICHAEL C. NIMON