



ZONING BOARD OF APPEALS

Town of Chelmsford
50 Billerica Road
Chelmsford, MA 01824

MEETING MINUTES **June 2, 2022**

TIME: 7:00 PM

LOCATION: Town Offices, 50 Billerica Road, Chelmsford, MA

ROOM: 204

Members Present: Brian Reidy, Chair
Jamie Outland-Brown
Charles Wojtas
Erin Drew
Steven Mendez

Members Not Present: Nancy Morency
Peter Casserly
Glenn Diggs

Others Present: Jose Negron, Building Commissioner
Becky DaSilva-Conde, Departmental Assistant

ADMINISTRATIVE REVIEW:

None

CONTINUED PUBLIC HEARING(S):

- 1) OFF Westford Street, Lot 4 Donovan Family Trust – Variance, 195.15.B & D for creation of rear lot and construction of a dwelling that will not meet the required setbacks and frontage, and any other relief deemed necessary.**

The Board conducted a site on Saturday, May 21st. Chair Reidy read an email from Town Counsel into the record stating that the case law does not prohibit the Board from approving the rear lot Variance, however the Decision would not hold up in Land Court, if appealed.

The Board cannot grant the 8-foot frontage relief as a Special Permit. If the Board grants it as requested, as a Variance, it does not have legal standing per case law as expressed by Town Counsel.

Applicant Douglas Shaw requested that the Chair informally poll the Board before a vote is taken. All members expressed opposition to granting a Variance. After doing so, Mr. Shaw formally requested to withdraw his application without prejudice.

Motion: by Mr. Wojtas to withdraw the application for Lot 4 off of Westford Street, without prejudice. Seconded by Ms. Drew. **Motion carries, unanimous, 5-0.**

- 2) **70 Hunt Road**, Jon Glennie – Special Permit - Variance, sections 195-8.C and/or 195-9 for the construction of a front vestibule and porch that will not meet the required 40-ft front yard setback. Parcel is in the Residential B district, Map 100, Block 402, Lot 3.

Mr. Glennie submitted a revised plan to reduce the depth of the porch by 1.5 feet in order to meet the requirements for a Special Permit, versus Variance as initially requested.

The Board expressed gratitude for the Applicant's willingness to revise his proposed porch dimensions to meet the requirements for a Special Permit instead of a Variance.

No additional departmental comments were received.

Motion: by Mr. Wojtas to close the Public Hearing for 70 Hunt Road. Seconded by Ms. Brown. **Motion carries, unanimous, 5-0.**

Motion: by Ms. Brown to APPROVE Special Permit for 70 Hunt Road under Section 195-9 (B), as discussed and revised. Seconded by Ms. Drew. **Motion carries, unanimous, 5-0.**

- 3) **72 Parkerville Road**, KellyMarie Burke – Variance, section 195.9 A for the construction of a detached garage that will not meet the rear yard setback and any other relief that is deemed necessary. Parcel is in the Residential B district, Map 23, Lot 471, Lot 1.

Owners KellyMarie and Kevin Burke submitted a revised plot plan to qualify for a Special Permit instead of the initial request for a Variance. The revised plan increased the proposed garage back yard setback to 24-feet which is 20% of the 30-foot rear setback requirement

Mrs. Burke also submitted the recorded easement plot plan (a copy of the recorded easement agreement between Mrs. Burke and the owners of 74 Parkerville was submitted at the last meeting). An easement agreement between two neighbors is legally binding and does not pertain to original Variance granted to subdivide the two lots.

Public Comment:

Abutter Gary Baker, 24 Seventh Lane – expressed concern and was upset that the builder indirectly changed the access points to this property by adding a driveway easement. The Board clarified that the

easement agreement is between the two homeowners, and is legally binding and allowable, just as Mr. Baker has a driveway easement to access his own property.

Ms. Brown noted that the subdivision Variance limited the builder to two single-family dwellings instead of the proposed three, which satisfied Mr. Baker's and the other neighbors' concern regarding increased population/density to the lot and area. The proposed garage is an accessory structure which does not increase density, in her opinion. The lot is already cleared so there won't be any vegetation clearing either. Ms. Brown wanted to understand why Mr. Baker is so upset by the driveway easement and proposed garage. Mr. Baker clarified that any structure (livable or not), in his opinion, increases the density.

Chair Reidy explained that it is within the homeowners right to request a garage and seek relief for a special permit, just as any other resident has the right. Additionally, if they moved the garage another 6-feet toward their home, they can build it by right because it would meet all of the setback requirements. Therefore, the Applicant wouldn't even need a Special Permit from this Board.

Abutter Maureen Baker, 24 Seventh Lane – She noted that at this Board's last meeting, Town Counsel did state that the Board cannot issue a special permit.

Chair Reidy read Town Counsel's email submitted to the office the day after the Board's last meeting. This stated that the original Variance needs to be modified. A new Variance needs to reference that it is a modification to the original Variance.

Ms. Brown clarified that the case study that Town Counsel presented in his email to the Board references a change in plan to a granted variance (the original permitted structure in a variance was a one-story garage that was being changed to a two-story garage). Therefore, this case study is not representative of the Ms. Burke's proposal/request which is to install a new garage. Ms. Drew stated that she believes it is indeed a change to the granted Variance because the builder did not propose a garage on this property.

Ms. Burke stated that having a homeowner request to add a garage or a shed cannot qualify as a change to the original builder's variance, otherwise every homeowner in Town would not be allowed to ever add a structure to their property. She specifically stated that her property deed does not limit her from adding accessory structures. If it then, then that would have been disclosed to her by the seller/builder's agent during her purchase.

Chair Reidy asked Mr. Negrón what the procedure is for permitting such a structure if it met all of the setbacks requirements. Mr. Negrón responded that he would issue the permits. Ms. Drew asked how does Mr. Negrón know if a variance exists for a particular property. Mr. Negrón replied that he conducts a property file review, inquires with Evan Belansky (Community Development Director) for recent property/permitting history. Since this particular property predates Mr. Negrón's tenure with the Town, he is not aware of all the property history and permit details. Therefore, he suggested that the Board consult with Town Counsel before voting on a decision tonight.

Chair Reidy expressed concern that this Board has not had to modify a variance. He does not know the procedure for doing so. However, the revised plan now qualifies for a Special Permit. Chair Reidy suggested that the applicants move the garage an additional 6-feet closer to their home so that they can build it by right. But if they choose not to, then he suggests continuing this public hearing to next month so that he may further consult with Town Counsel. Chair Reidy apologized to the applicants for not having Town Counsel present tonight.

Ms. Drew stated that the Board cannot act in opposition of what Town Counsel advised. It's better to continue to distinguish between whether the Board needs to modify the original Variance, or issue a new variance or special permit that includes language/reference to modify the original Variance.

Mr. and Mrs. Burke expressed their frustration over the hearing process and the Board's unwillingness to permit their proposed garage. Ms. Burke stated that she will return with her attorney to address the Board. Furthermore, she expressed that the Board is giving the Bakers preferential treatment. She strongly feels she is getting the run around over something that most other residents easily get approval/permits for. Chair Reidy clarified that the Board is trying to act in the best possible way to address the uniqueness of this property's situation. He does not know if he needs to reopen the original Variance public hearing in order to vote and grant a decision. He reiterated that he wants to act in the best possible way to avoid this case being appealed to Land Court.

Mr. Negrón suggested calling Town Counsel on speaker phone tonight. Atty. Paul Haverty texted the Board that he was finishing up another legal meeting and would dial in soon.

Mrs. Baker asked to speak to the Board once more. She expressed her concern that the proposed garage is a very large structure and that in her opinion it adds to the density of the neighborhood. She wanted to make it clear that she is opposed to a large 1,000-foot structure, not the simply adding a shed to a property. Mrs. Baker stated that she is aware that although the proposed garage comes close to the maximum allowed, it will not exceed the allowable percentage of lot coverage.

Chair Reidy expressed to all that the Board is trying their best to make a decision based on rule of law.

Town Counsel phoned in to address the Board's inquiries. Town Counsel stated the modification to the existing Variance is conducted by simply stating it in their motion and approval process and the new decision document. Even if issuing a special permit for this garage, the new decision needs to state that this approval modifies the existing Variance on the property to allow such structure as proposed on such plan. Chair Reidy asked if the statement is in fact is to acknowledge a change in plan. Town Counsel stated that would be correct, because the right to build the home was based on a variance granted with a specific set of plans. By adding a structure(s) to the property afterwards constitutes a change to the original plans. Hence, requiring a modification to the original Variance granted to build the property.

Even if the proposed project complies with all of the zoning setback requirements, which typically would be deemed a build-by-right project, in this particular case this property still requires Board approval for a modification to the original Variance, because the right to construct the house was granted through a

variance. The Board may point out in its Decision that such special permit and modification to the Variance does not increase any non-conformities, if applicable.

Ms. Brown asked Town Counsel if such an existing variance limits a homeowner from adding additional structures to their property. Town Counsel confirmed that it does limit future structures in perpetuity unless a modification is issued. The right to build in this case is: the right to build the structure shown on the original plans approved by the original Variance. Ms. Brown questioned whether owners of older properties would be aware of such property limitations. Ms. Drew explained to the Board that when purchasing a new home, a title search is conducted for the prospective home buyer that would inform them of such limitations. Therefore, buyers should have been made aware of these limitations by their agent, including the Applicant.

Mr. Baker spoke in opposition of the modification to the existing Variance because it took a lot of time and resources by all parties involved to reach agreement of the conditions and granted by the Variance.

Mr. Wojtas suggested the applicants and the opposing neighbors come up with the list of wants and do-not-wants such and a compromise be made to appease all parties.

The Burkes have already revised their proposal to move the proposed garage an additional nine feet further way from the rear property line. They do not want a private discussion with the Bakers to reach any additional compromises. Their goal is to make the garage aesthetically pleasing to match the existing home, and it will be built to code; no higher than 20-feet in height. Ms. Burke stated that she wants to continue to beautify her property with landscaping, etc. Her desire for this garage is for car and personal storage. She does not have an attic storage space in her home. She has severe asthma attacks that are stress and allergy induced, dust mites in particular. Therefore, she needs the additional storage space to keep her home clean and uncluttered for health reasons. That is why they are proposing a two-story garage.

Mr. Baker requested that if the Board grants a modification to the existing Variance, that a special condition be added for landscape screening on the back side of the garage. Given Ms. Burke was already planning to plant trees and ornamentals, the Board agreed this would be a gesture to appease all parties. The Board will not specify specific plants in the special condition, rather leaving that to the homeowners' discretion. In addition, Mr. Baker requested that the new driveway easement's stormwater runoff be directly away from his property. Chair Reidy stated that homeowners are required to keep runoff on site and not redirected to an abutter's property.

Ms. Drew pointed out bylaw Section 195-11 regarding accessory buildings: "An accessory building with a footprint greater than 900 square feet, or with building height in excess of 20 feet, or of two stories or greater shall be subject to a Planning Board special permit." Ms. Drew questioned if this was applicable in this case because this Board is essentially modifying the existing variance. In this case, the proposed garage is just under the 900-ft threshold (32'x28'=896 sq.ft.). However, it is a two-story structure. It has not been clarified if the second floor is a full story or a loft. The applicants would need to keep any loft space height at below 7-feet tall in order to avoid triggering the Planning Board special permit requirement. Mr. Negron wanted this bylaw pointed out to the applicants so they may plan ahead

accordingly when finalizing their garage design and before applying for a building permit through his department, to avoid further permitting delays.

Motion: by Mr. Mendez to close the Public Hearing for 72 Parkerville Road.
Seconded by Ms. Brown. **Motion carries, unanimous, 5-0.**

Motion: by Ms. Brown to APPROVE a Special Permit for 72 Parkerville Road for the construction of the proposed garage as presented in the revised plans, with special condition for landscape screening along the rear lot line to obscure the view of the garage, and to state that this permit creates a modification to the existing Variance granted to the builder of this home lot.
Seconded by Mr. Mendez. **Board voted 3-2. Members Reidy, Mendez and Brown voted in favor of the motion. Members Wojtas and Drew voted in opposition.**

Chair Reidy believed the motion carries as 3-2 vote because the Board is issuing a Special Permit. Ms. Drew believes a super majority vote is required because they are modifying a Variance; super-majority votes are required for variance approvals (in this case 4-1, with five voting members).

Chair Reidy telephoned Town Counsel to clarify the super majority requirement.
Town Counsel confirmed that BOTH Special Permits and Variances require a super-majority vote.

THEREFORE, THE MOTION DOES NOT PASS.

NEW PUBLIC HEARING(S):

255 Boston Road, Joseph Xavier – Special Permit Special Permit, section 195-9(B) for the construction of a new garage which does not meet the required side setback and any other relief deemed necessary. Parcel is in the Residential B district, Map 112, Block 425, Lot 18.

Chair Reidy read the Applicant's email stating he could not be present for Public Hearing due to contracting Covid and being symptomatic. Mr. Xavier requested that the Board review his application in the absence. He also stated that he cannot relocate the proposed garage due to lot topography which would causes financial hardship. His lot drops significantly behind his house.

Ms. DaSilva clarified that Mr. Xavier specifically requested in an email to her earlier in the week that the Board proceed with his Hearing instead of continuing/postponing to the following month. The Applicant provided his phone number to connect with the Board due to the meeting not being on Zoom.

Board Discussion:

No letters of opposition were received. No departmental comments received. The Building Department did submit a copy of the initial denial letter but did not submit further comments.

The application is straightforward for a Special Permit, however the Board was not comfortable voting without a discussion with the Applicant. Therefore, Chair Reidy called Mr. Xavier via speaker phone so the Board could communicate directly with him.

The project proposes to build a standard 24x24 attached garage 20-feet from the side setback, versus 25-feet as required. A detached garage would require retaining walls. The lot drops off so much so that the house builder almost made it a walk-out basement. Mr. Xavier is the original owner of the house.

Chair Reidy noted that although a hardship is not required for a Special Permit, one does exist due to lot topography.

Motion: by Mr. Mendez to close the Public Hearing for 255 Boston Road.
Seconded by Ms. Drew. **Motion carries, unanimous, 5-0.**

Motion: by Mr. Mendez to APPROVE a Special Permit for 255 Boston Road, as presented.
Seconded by Ms. Drew. **Motion carries, unanimous, 5-0.**

NEW BUSINESS

None

MEETING MINUTES TO APPROVE: April 7 and May 5, 2022

The Board postponed minutes review and approval until next month.

NEXT MEETING: JULY 7, 2022

ADJOURN

Motion: by Mr. Mendez to adjourn the meeting at approximately 8:32 p.m.
Motion carries, unanimous, 5-0.

Respectfully Submitted,

*Becky DaSilva-Conde, Departmental Assistant
Community Development Office*