

**Town of Westwood
Zoning Board of Appeals
Selectmen's Meeting Room, Town Hall
Meeting Minutes – March 28, 2018**

Members Present: David Krumsiek, Chairman, John Lally, Douglas Stebbins

Staff Members Present Nora Loughnane, Director of Community & Economic Development

Ch. Krumsiek gave a brief description of the proceedings. All those present for the meeting who anticipated giving testimony were sworn in.

Applications

Address: 178 Alder Road

Petitioner: Tom Kilgarriff

Project: Application for Special Permit pursuant to § 4.3.3.2

Ch. Krumsiek stated that the initial public hearing on this matter was opened on February 28, 2018 and continued to this date. He reminded the board that the application involved a request for a special permit to allow the storage of more than three cars on the property. Ch. Krumsiek noted that the Board's review is related to the use of an existing structure, rather than to the structure itself. He said that a special permit is required in order for the existing detached structure to be used as a garage. He noted that the structure could remain without a special permit, but could not be used for the storage of vehicles. Ch. Krumsiek noted that the Board had received information from Building Commissioner Joe Doyle that the Petitioner would be required to physically alter the structure to prevent its use as a garage if the special permit was not granted.

The property owner, Tom Kilgarriff, presented emails from neighbors in support of his special permit request. He also presented a letter from an appraiser stating that the detached garage adds value to the property. Mr. Kilgarriff reiterated his desire to market the property for sale with a special permit that permits continued use of the existing detached garage.

Mr. Kilgarriff also presented a plot plan and photographs showing the proximity of the detached garage to the former house that was demolished. He said that the distance between the former house and the detached garage was approximately 22' or 23'. He said that the distance between the new house and the detached garage is 16'. Mr. Kilgarriff added that the garage has been painted to match the new house. He said that is not visible from most angles. He also noted other properties in the neighborhood that have detached garages in addition to attached garages, including one property with a 10-car detached garage.

Mr. Kilgarriff explained that the garage was constructed in 1976 to accommodate four cars, but the size of the door only allows one car to enter or exit at a time. He suggested that buyers may want to use the right side of the garage for storage of a boat or similar items.

Mr. Stebbins questioned Mr. Kilgarriff's measurement of the distance between the house and the garage. He said that he measured the nearest point of the garage to be only 14'3" from the house. He said that it would be impossible to back a car out of the right side of the garage without hitting the house. Mr. Kilgarriff said that a car parked on the right side of the garage would not be able to back out of the garage if a car was also parked on the left side of the garage. He said that only one car could be moved in or out at a time, and that the car on the right side would not be backed straight out, but could easily be backed into the driveway at an angle.

Mr. Lally asked for the width of the garage door. Mr. Kilgarriff said that he believed the garage door was 8'-9' high and 14'-15' wide. He said that it is an oversized single-bay door, but is not as wide as a double-bay garage door. Mr. Lally asked if the garage had a side door. Mr. Kilgarriff showed a photograph of a man door on the side of the garage.

Mr. Kilgarriff said that he would not object to a limitation on the number of cars that could be stored in the garage. He said that the garage is currently described as a 4-car garage but that he would accept limiting it to a 2-car garage with storage area.

Mr. Stebbins stated that he believes the detached garage detracts from the value of the property and that its continued presence may have discouraged buyers from purchasing the property because of the potential expense of demolishing the structure. He noted that the detached garage is not visible in marketing photographs on Realtor.com. Mr. Stebbins said that he thinks buyers might find the house attractive in the photographs but would be disappointed when they see the garage behind the house. Mr. Kilgarriff said that he had listed the property in late August and removed the listing before Thanksgiving. He said that he had not yet painted the garage to match the house when those photographs were taken, and that there was still a dumpster in the driveway. He noted that the detached garage was described in the ad.

Mr. Kilgarriff stated that some buyers might prefer to have the garage or to use the structure for some other purpose, such as a storage room, playroom or pool house. Mr. Stebbins said that he was concerned that potential buyers who were attracted by the garage might be looking to use it to operate a landscaping company or similar business.

Mr. Stebbins asked if Mr. Kilgarriff had always intended to keep the detached garage. Mr. Kilgarriff said that he had not made a decision whether or not to keep the garage until after completing the house. He said he wanted to see what it would look like after the house was built and to get advice from real estate professionals. He said that everyone he spoke to thought the garage was an attractive feature and that no one had suggested he take it down.

Mr. Stebbins asked if the original house had an attached garage. Mr. Kilgarriff said that it had an attached garage on the right side of the house which was converted to an accessory apartment in 1999. He said that prior to the conversion, the property had garage space for six cars. He said that he would be willing to limit the number of cars if the board was concerned about an increase to seven cars. Ch. Krumsiek said that a special permit would be needed for more than three cars, whether the number of cars in the detached garage was limited or not. Ch. Krumsiek said that the Board is only concerned with the use and not with the structure. He said that the structure can remain and be used for other purposes if the special permit is not granted. He said that he has no concern with the use, but expects that a future buyer will be more interested in using the structure for storage or living space.

Ch. Krumsiek opened the hearing to public comment.

Chris O'Brien, 175 Alder Road, asked why the Petitioner did not request the special permit before building the new house with a 3-car garage. He said that the Petitioner should have known he would need the special permit and should have either applied for the special permit or not designed the house to include three additional garage bays. Ch. Krumsiek explained that the detached garage was existing, and that it is permitted to remain as an accessory structure but could not be used for the storage of cars unless the special permit is granted. Mr. O'Brien said that this seems to have been an oversight. He said the special permit should have been required before the building permit was issued. Ch. Krumsiek said that the Board asked that question of the Building Commissioner and they were told that the structure would be allowed to remain if the special permit was denied, but that the structure would then have to be altered to prevent the storage of cars.

Mr. O'Brien said that if the special permit request had been brought to the ZBA before the new house had been constructed, the ZBA would have had an opportunity to consider the design of the new structure and the proximity to the existing garage. He said that the designs could have been redrawn to better incorporate the existing detached garage into the new home. He said that because that was not done, the new house was built without any relationship to the existing garage. Mr. O'Brien submitted a document which explained the design principles of scale and balance. He said that the existing situation at 178 Alder Road is like a crooked picture, which is jarring and unsettling.

He asked if the residential zoning would permit a landscaper or contractor from using the garage for a business. Ms. Loughnane responded that certain businesses are permitted in residential districts if they meet the Zoning Bylaw definition for a Home Occupation. Mr. O'Brien said that he would be concerned about noise from trucks with back-up

alarms. Ms. Loughnane read the Home Occupation requirements in the Zoning Bylaw. She noted that the business owner would have to live in the house and that the appearance of the property would have to remain consistent with that of a residential property. She said that a landscape or construction business could not store vehicles or materials outside of a structure unless another special permit was issued by the ZBA for outdoor storage.

Mr. Lally asked if Mr. O'Brien believes the new house has devalued his property. Mr. O'Brien said that he did not know the effect on the property value but he believed the balance of the property has changed and that it feels like a crooked picture. He said that he would like to see the Board deny the special permit and require that the detached garage be demolished, but he now understood that the structure will be permitted to remain. He asked that the Board limit the use to prevent the storage of boats or trailers.

Ch. Krumsiek said that the issue before the Board is limited to the storage of motor vehicles. He said that a special permit is only needed for storage of more than three motor vehicles. He said the Board does not have the authority to restrict the storage of other items. Ch. Krumsiek reiterated that the Board is solely concerned with the use of the building for the storage of motor vehicles. He said that the Board cannot order the demolition of the accessory structure.

Brian Dumais, 205 Alder Road, spoke in favor of Mr. Kilgarriff's petition. He said that he believes the new house positively affects his property value. He said he is in favor of granting a special permit to allow motor vehicle storage in the existing detached garage. Mr. Stebbins asked where Mr. Dumais lives in relation the Subject Property. Mr. Dumais said his home is across the street and three houses away.

Ch. Krumsiek noted that the Board had received expressions of support from several other neighbors, including Jim Glynn of 215 Briar Lane, Peter Diomede of 195 Alder Road, Kerry and Todd Solomon of 130 Alder Road, and David Horsfall of 49 Margery Lane.

Ann Dumais said she drives by the house at 178 Alder Road every day. She asked what the structure would look like if the garage door had to be removed and replaced by a smaller door. She said that she thinks it would look worse. Mr. Dumais said that he believes the structure was built to be a garage and should remain a garage. He added that he would rather see cars, boats, trailers, etc. stored in the garage than stored in the driveway.

Mr. O'Brien said that Mr. Kilgarriff violated the Zoning Bylaw by constructing the new home with a 3-car garage without removing the detached garage. He said this should not have happened. He believes the garage should be sealed off.

Joseph Garcia of 206 Alder Road spoke in favor of the special permit petition. He said that he would like to have a detached garage on his own property.

Mr. Kilgarriff said that he would have preferred to resolve this issue many months ago, but he was not aware that he needed a special permit to use the detached garage for the storage of motor vehicles. He said that he is not currently considering any purchase offers, and is waiting to market the property until this issue is resolved. Mr. Kilgarriff added that he believes the special permit is necessary to maintain the value of the property.

Mr. Stebbins asked Mr. Kilgarriff how much it would cost to demolish the garage. Mr. Kilgarriff responded that he did not know how much that would cost. He added that he would not have invested in the property if he thought he would have to demolish the garage.

Mr. O'Brien asked the Board to consider limiting the number of vehicles that could go in the garage. He suggested that a partition could be built inside the garage to prevent the storage of more than two cars or more than one car and a trailer.

Mr. Stebbins said that he appreciated Mr. O'Brien's crooked picture analogy. He said that if the petition had come to the Board before the new house was built, he would never have voted in favor of a special permit that would allow the new home to be so close to the existing garage. He said he believes the detached garage is a detriment to the property.

Mr. Stebbins proposed a condition to the special permit requiring Mr. Kilgarriff to advertise the property with an offer to tear down the garage at his expense if a potential buyer does not want to keep the garage. Mr. Kilgarriff said that every property sale involves a negotiation. He said that the cost of demolition might be part of that negotiation, but he would be concerned about a special permit condition because it would result in delay associated with obtaining a demolition permit and would also require the placement of a dumpster on a newly paved driveway.

Ch. Krumsiek said that he would not be in favor of such a condition. He said that he believes the Board should limit its attention to the use and should not involve itself in negotiations between a buyer and a seller. He added that he believes the structure will be valuable to a buyer, but thinks it is most likely that it will be converted to an accessory apartment or other living space.

Mr. Stebbins said that he would prefer to see the garage demolished. He said that if Mr. Doyle had said that denial of the special permit would require demolition of the garage he would have voted against the special permit so that the garage would be torn down. He said that he believes the existence of the garage is a detriment to the sale of the property.

Mr. Dumais again spoke in favor of the special permit. He said that he believes it improves the value of neighborhood properties.

Mr. Lally said that he does not believe the use of the garage would be at all detrimental to the neighborhood. He said he would vote in favor of the special permit. Ch. Krumsiek agreed.

Ms. Loughnane noted that a unanimous decision was needed to grant the special permit. She said that Mr. O'Brien seems particularly concerned with the appearance of the garage. She suggested that the Board consider allowing a special permit if the appearance of the structure is improved. She said that other properties in town have 3-car garages and accessory barns, and suggested that the appearance of the detached garage might be more acceptable if it looked more like a barn than a garage with an off-center door. She said that the Board could grant the special permit with a condition requiring the buyer to return to the Board with plans to change the oversized garage door to a standard garage door, balanced by a false garage door on the right side. She said that the Board could reserve design review approval to ensure that the altered structure is keeping with the character of the new house so that it doesn't appear off-balance. Ch. Krumsiek said that he would be in favor of granting the special permit with such a condition.

Mr. Stebbins said that he would not want to approve the special permit without first seeing plans for specific alterations. He said he would be concerned that it might look worse. He said that he would rather deny the special permit and then letter a potential buyer come back and try again. Ms. Loughnane reminded the Board that if the special permit is denied, Mr. Doyle would not issue a Certificate of Occupancy until the garage door is removed. She noted that the Board would then have no opportunity for input into how the structure would look without the garage door. Mr. Stebbins said that he wants the structure to be demolished. He understands that he cannot order this, but he believes his suggested condition will make it clear that demolition is an option. Mr. Kilgarriff said that the sale of the property will involve a negotiation. He said he doesn't know now if the cost and timing of a demolition would make one offer more attractive than another. He said that he would need to speak to Joe Doyle to see how he would tee things up to offer a demolition option. He said he wants the greatest possible flexibility. Mr. Kilgarriff said he would have those conversations with potential buyers but would not want to put that in his marketing materials.

Mr. O'Brien asked the Board to disallow final paving of the driveway until after the property is sold. Mr. Kilgarriff said the work is nearly complete and that he could repair any damage to the driveway if necessary.

Ch. Krumsiek said that he would be willing to limit the use of the garage to two cars. He asked Mr. Kilgarriff how he felt about a condition for design review. Mr. Kilgarriff said that he would not want to burden a buyer with the need to return to the Board. He said he was looking for a more definitive approval so that he could sell the property. Mr. Lally agreed that requiring a potential buyer to return to the board would add too much uncertainty.

Ch. Krumsiek suggested a condition limiting the garage to two cars with a suggestion that Mr. Kilgarriff state in his marketing materials that demolition of the garage is negotiable. He said that he would not want that to be a condition because he does not believe the Board should interfere with buyer-seller negotiations. Mr. Stebbins said that he would only agree to the special permit if the marketing language is a condition, not a suggestion. He said that he would be willing to give up on requiring Mr. Kilgarriff to pay for the demolition, but would want to see language in the marketing materials that says demolition of the detached garage is negotiable.

Ms. Loughnane noted that a condition limiting the use of the garage for two cars without any physical change to the garage would be difficult to enforce. She said that she did not know if the Building Commissioner would be able to issue the Certificate of Occupancy without some way of physically preventing the garage from being used to store more than two cars. Ch. Krumsiek said that Mr. Doyle would have to make that decision and that the petition could come back to the Board if necessary.

Mr. Stebbins asked if Mr. O'Brien was satisfied with those conditions. Mr. O'Brien said he was not. He said he would like the Board to order the construction of a partition to prevent the garage from being used for more than two cars. Ch. Krumsiek said that he was not willing to require the construction of a partition. He called for a vote.

On a motion by Mr. Stebbins which was seconded by Mr. Lally, it was voted unanimously to grant the Special Permit pursuant to Section 4.3.3.2 with the following conditions:

- 1. No more than two vehicles shall be parked or stored in the detached garage; and*
- 2. Language shall be included in all marketing materials, including Multiple Listing Service (MLS) notices advertising the sale of the Subject Property, to read as follows: "Removal of the detached garage is negotiable".*

Vote to Adjourn

On a motion by Mr. Stebbins which was seconded by Mr. Lally, it was voted unanimously to adjourn the meeting.

The hearing adjourned at 9:05 PM.

List of Documents:

178 Alder Road

- Zoning Board application; plans, photographs and associated attachments
- Expression of Support from Jim Glynn – 215 Briar Lane
- Expression of Opposition from Chris O'Brien – 175 Alder Road
- Expression of Support from Peter Diomedede – 195 Alder Rd
- Expression of Support from Kerry and Todd Solomon – 130 Alder Road
- Expression of Support from David Horsfall – 49 Margery Lane
- Commentary from Real Estate Appraiser Dominic Monziona