

**Town of Westwood
Zoning Board of Appeals
Carby Street Municipal Office Building
Meeting Minutes – January 18, 2017**

Members Present: David Krumsiek, Chairman, David Belcher, Doug Stebbins

Staff Members Present Sarah Bouchard, Housing & Zoning Agent

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

Applications

Address: 94 Oak Street

Petitioner: 94 Oak Street LLC

Project: Request for Variance under 6.3.10

Dan Merrikin, of Merrikin Engineering LLP introduced the project. The petitioner seeks to obtain a variance to construct a retaining wall and fence exceeding 8' in height.

Mr. Merrikin described the existing lot as on top of the hill with garage doors facing north. The project proposes to build a driveway with a sufficient turning area and needs a retaining wall built to do so, due to the existing slope on the north side of the property. Mr. Merrikin stated that at its highest point, the proposal allows for a 5 foot wall with either 36 or 42 inch fence situated on top. Mr. Merrikin stated that although the petitioners would accept any zoning relief, ideally they would prefer the increased flexibility allowed by a variance for a taller fence.

Derrick Fitzgerald, the petitioner, stated that he had worked with the most affected neighbor to agree on adequate landscaping but that no planting plan has been formally made or submitted. The neighbor was not in attendance. Mr. Krumsiek proposed a possible approval conditioned upon receipt of landscaping plan, signed by the neighbor. Mr. Merrikin and Mr. Fitzgerald agreed that could be possible.

Mr. Krumsiek inquired about the relevant hardship necessary to obtain a variance. Mr. Merrikin replied that there would be no other way to create access to the site garage due to the shape and topography of the land.

No one else spoke either in favor of or in opposition to the project.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to grant a Special Permit under Section 6.3.10 for a combined retaining wall and fence not to exceed 8 feet in height with the following condition:

- 1. Petitioner must provide to the Building Commissioner a landscaping plan that has been approved and signed by the neighbor located at 88 Oak Street.*

Address: 471 East Street

Petitioner: Bechara Demien

Project: Special Permit under Section 4.5.6 to construct a second story addition

Mr. Krumsiek read the legal notice pertaining to this application.

Bechara Damien, petitioner and homeowner, introduced the proposal.

Joe Doyle, Building Commissioner, commented on the zoning relief required. He stated that since the lot size is nonconforming, the proposal will require relief to raise the structure's height in the 10 foot setback.

Mr. Krumsiek addressed a question regarding the builder's calculation for proposed average height. Mr. Doyle confirmed that the builder had not calculated the average height accurately so the proposed average height was not clear.

Mr. Stebbins sought to confirm that the home addition is a modular system, and Mr. Demien confirmed that it was. Mr. Stebbins stated concern about the architectural and aesthetic appeal of the proposal.

No one else spoke either in favor of or in opposition to the project.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to continue the hearing until February 15 2017 at 7:00 pm in the Champagne Meeting Room, 50 Carby Street in order to allow the Applicant to provide plans that improve the appearance of the house and are scaled to establish the properly calculated average building height.

Address: 18 Buckmaster Road

Petitioner: Peter & Mary Cuozzo, 17 Sexton Road

Appeal: Appeal of decision by Building Commissioner not to pursue zoning enforcement under Section 10.1.7

Peter Cuozzo, homeowner of 17 Sexton Road, an abutting property to 18 Buckmaster Road, introduced the appeal. He stated that his neighbors replaced a shed illegally. He referred to a plot plan showing an original shed, dated August 2006, which was provided to the Building Commissioner in advance of demolition and replacement of the primary dwelling, for which they received a special permit. Mr. Cuozzo alleges that a larger shed is now located there. Mr. Cuozzo stated that the petitioners believe that the homeowners at 18 Buckmaster Road are in violation of the special permit, and he believes the law allows him 10 years to contest that violation.

Mr. Cuozzo responded to documentation submitted to the Board prior to the meeting, including comments from the Building Commissioner. Mr. Cuozzo disputed the applicability of the court case provided by the Building Commissioner (Massachusetts Supreme Judicial Court, *Connors v. Annino*, 460 Mass. 790) in his comments. Mr. Cuozzo stated that he did not feel the issue had been heard objectively by the Building Commissioner. Mr. Cuozzo submitted his own letter to the Board in response to a letter submitted by the homeowner, Ms. Colby.

Joy Colby, 18 Buckmaster Road, introduced herself as the homeowner. She stated that her family had obtained a special permit from the Board to demolish and rebuild her home in 2006. Ms. Colby confirmed that the plot plan provided at that time documented the shed's original dimensions. She confirmed that the shed had also been rebuilt.

Mr. Krumsiek asked Ms. Colby if the new shed dimensions were increased. Ms. Colby confirmed that they were.

Mr. Krumsiek asked Mr. Joseph Doyle, Building Commissioner, if a building permit was needed for the shed. Mr. Doyle confirmed that a structure under the 200 square foot threshold would not require a building permit. Mr. Doyle confirmed that the certificate of occupancy was awarded in June of 2007.

Ms. Colby stated that there were no complaints about the shed until she trimmed tree branches extending over the property line in 2015.

Mr. Doyle offered an explanation of his decision. He stated that the applicants waited at least 8 years to submit a complaint. He believes *Connors v. Annino* applies, where the ruling finds that a grieved party must register their

complaints within 30 days in response to new construction. He stated that the intent of the ruling was to prevent parties from delaying complaint in order to further the grievance to the neighboring party.

Ms. Cuozzo stated that she feels the shed reconstruction is either a violation of the special permit issued for the house or a violation of the bylaw.

Mr. Krumsiek asked Mr. Doyle if, irrespective of timing, the grievance is legitimate. Mr. Doyle responded that while the homeowner would not have been in violation of the special permit granted for the house, any potential reconstruction of the shed within the setbacks would have required zoning relief. He further stated that at this time, he is relying solely on verbal testimony regarding the current shed.

Mr. Krumsiek asserted that the sole issue before the Board at this time is whether the complaint is timely.

Mr. Doyle stated that appeal windows vary based on whether the appeal is based on the issuance of a building permit (6 years) or special permit (10 years). He stated that neither of which apply to this particular situation. He believes the court case submitted as comment is the most applicable determination on appeal timing.

Mr. Belcher reminded the Board that Town Counsel had provided a statement agreeing with Mr. Doyle's position.

Mr. Belcher added that upon his own initial review of the court case, he might disagree with the interpretation that it applies, because the case was relative to a building permit issuance.

Mr. Cuozzo stated that if the screening (trees) had been then as it was today, he would have submitted a timely complaint. He stated that he started to look into it when the screening changed and that is when he learned of the alleged violations.

Mr. Doyle stated even if the nonconformity were fixed by moving the shed within setbacks, it would not have an appreciable difference on the visibility of the shed from the neighboring property.

Mr. Krumsiek stated that he felt it necessary for the Board to have more time to review the pertinent laws, including the aforementioned court case, to determine what appeal time should apply. Mr. Belcher and Mr. Stebbins agreed.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to continue the hearing until February 15 2017 at 7:00 pm in the Champagne Meeting Room, 50 Carby Street in order to allow the Board to conduct further research on applicable legal precedent.

Vote to Approve Minutes

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to approve the minutes for the meeting held on December 12, 2016.

The hearing adjourned at 9:17 PM.

List of Documents:

94 Oak Street

- Zoning Board application; plans and associated attachments
- Planning Board's comments

471 East Street

- Zoning Board application; plans and associated attachments
- Building Commissioner's comments

18 Buckmaster Road

- Zoning Board application; plans and associated attachments
- Letter from Ms. Joy Colby, 17 Sexton Road
- Building Commissioner's comments
- Town Counsel's comments