

**Town of Westwood
Zoning Board of Appeals
Remote Participation, Zoom Video Conference Call
Meeting Minutes – September 22, 2021**

Members present: Chair John Lally, Michael McCusker, and Linda Walsh.

Staff Members Present: Director of Community & Economic Development Nora Loughnane.

The meeting was called to order by Chair John Lally at 7:09 pm. Ch. Lally gave a brief description of the proceedings, including a description of instruction for remote participation by the public. All those present for the meeting who anticipated giving testimony were sworn in.

Applications

Address: 44 Baker Street

Petitioner: Donald L Grose on behalf of Jessica Clinton

**Project: Application for Variance pursuant to the Westwood Zoning Bylaw Section §4.5.3.3
[Variance Required for New or Expansion of Nonconformity]**

Ch. Lally read the legal notice into the record. He stated that the Petitioner is requesting a Variance to allow the construction of a porch that would encroach into the front yard setback. He stated that the property is located in the Single Residential D (SRD) zoning district.

Property owners Brian and Jessica Clinton appeared before the Board. Mr. Clinton introduced Architect Donald Grose before presenting the proposed plans. Mr. Clinton explained that his mother-in-law, Elizabeth Hill, who suffered from a stroke three years ago, is now living in the home. He told the Board that the proposed construction is intended to create conditions that are more suitable for Ms. Hill's independence and improved accessibility. Mr. Clinton noted that Ms. Hill does not wish to have any handicap ramps installed on the property. He said that she is proud of her independence and ability to navigate appropriately designed steps. Mr. Clinton said that the proposed covered porch is needed for Ms. Hill to remain shaded from the sun for medical reasons, and the proposed new stairway is designed with wider and less steep risers to make it easier for Ms. Hill to navigate the stairs on her own. Ms. Clinton read a statement from Ms. Hill explaining her desire for the proposed alterations to the home.

Ch. Lally asked Mr. Grose to explain the setback dimensions of the proposed plans.

Mr. Grose replied that the home is on a corner lot with the Baker Street side of the property having been determined to be the front yard. He said that the existing home already intrudes into the front setback and that the proposed porch would be setback 17.9' from the front lot line, not including the steps which would be 12.5' from the front lot line where 20' is required.

Mr. Grose explained that the Church Street side of the parcel is considered a side yard and the proposed addition would have a conforming setback of 18.4 on the Church Street side of the property. Ch. Lally asked if the lot area is also non-conforming. Mr. Grose stated that the property has 12,500 square feet of lot area where 15,000 square feet is required. Mr. Grose noted that the proposed addition would also create a new non-conformance by increasing the building coverage to 27.1% where a maximum of 25% is permitted. He noted that the house was previously remodeled on the original foundation. Ms. Clinton said that addition was previously added to the rear of the structure in compliance with setback requirements.

Mr. Clinton stated that he believes their proposal meets the hardship requirements of the Westwood Zoning Bylaw. He stated that the homes in the surrounding area experience similar non-conformities and said his neighbors are in support of this proposal.

Ch. Lally said that the proposed construction requires a Variance, as opposed to a Special Permit. He asked Mr. Clinton to explain how the subject property meets the Zoning Bylaw standards for uniqueness. He noted that the Board must make a finding of uniqueness related to lot shape, soil, or topography to favorably consider an application for a Variance.

He asked Mr. Clinton to describe specific circumstances of the property that would lead to this required uniqueness finding. Mr. Clinton said that he considered the property's corner unique. He also said that the amount of funding that has been spent on the previous renovation project leads to hardship, as do the slopes of the land toward Baker and Church Streets. Mr. Clinton noted that other homes in the neighborhood have structures that are closer to the street on the side yards than his project proposes for the front yard.

Ch. Lally asked if the Clintons had considered other alternatives such as an addition at the rear of the house? Mr. Clinton responded that the contours of the land at the rear of the house would require more significant construction with walls to address the grade changes.

Ms. Clinton said that they wished to maintain the rear yard for their children and noted that her mother has trouble walking on grass so they want to provide her direct access to the driveway on the right side of the house.

Ch. Lally asked Mr. McCusker and Ms. Walsh if they had any comments or questions. Mr. McCusker confirmed that the application required Variances for the front setback and building coverage requirements of the SRD district.

Ms. Walsh asked if the Clintons had considered adding a handicap ramp for access to the driveway. Ms. Clinton said that Ms. Hill preferred stairs to a ramp and said that she can navigate properly designed stairs to reach the driveway.

Mr. Clinton said that there would be a stigmatizing effect to installing a handicapped ramp and Ms. Hill does not want a ramp. Mr. Clinton said that the slope of the land is greater than it appears.

Ms. Walsh said that she had visited the property and saw a ramp on the property. Ms. Clinton said that the ramp which Ms. Walsh saw on the property is being used by her children to ride their bicycles. She said that the ramp had been used by Ms. Hill earlier in her recovery but she does not use it for handicap access currently.

Ch. Lally opened the hearing to the public for comment. Paul Tucceri of 82 Fisher Street spoke in favor of the application. He said that he believed the proposed construction would be an improvement to the home and the neighborhood. He also complimented Ms. Hill on her recovery and continued independence. He noted that the side of his home is set back 16 feet from Baker Street.

Ch. Lally asked if there were any other public comments. Ms. Loughnane stated that there were no raised hands among the attendees and no other comments in the Question & Answer queue.

Mr. Grose spoke further in favor of the application as a Certified Aging in Place Specialist. He stated his opinion that the Board had the authority to grant the requested Variance. He raised an example of 26 Westview Terrace where he believed the Board had granted a Variance to allow construction of a deck under what he believed were similar conditions.

Ch. Lally declared the hearing closed. He stated that he considered this a difficult application but he did not believe the Petitioner had met the standards of uniqueness that are necessary for the Board to favorably consider a Variance. He again asked the Petitioners if they could reconfigure the porch to avoid the need for a Variance. Mr. Clinton said that they could not reconfigure the deck. Mr. McCusker noted that Section §4.5.3.2.3 of the Westwood, Zoning Bylaw allows for the Board's issuance of a Special Permit to construct a porch that extends no more than 4 feet into the setback area.

He said that he would support an application for a Special Permit under Section §4.5.3.2.3, but did not believe the Petitioner has met the requirements for a Variance.

Ms. Walsh asked Ms. Loughnane to confirm the provisions of Section §4.5.3.2.3 [Special Permit Alterations of Nonconforming Structures – Overhang, Porch or Portico]. Ms. Loughnane confirmed that a Special Permit for a 4' deep porch could be granted pursuant to Section §4.5.3.2.3. She also read Section 10.4.3 of the Zoning Bylaw about uniqueness and hardship findings that must be made before a Variance could be granted.

Mr. Grose asked if the application should be withdrawn and resubmitted for a Special Permit. Ms. Loughnane responded that the application was advertised to allow any appropriate form of relief, and said that the Board could continue the hearing to allow time for the plans to be revised to show a reduced porch that would extend no more than 4 feet further into the existing setback. She noted that the Building Commissioner had previously suggested that the Clintons consider a 4-foot porch. Ms. Clinton stated that she did not understand why the Board could allow a 4-foot porch but could not allow a 6-foot porch. Ch. Lally explained that the Zoning Bylaw places restrictions on the Board's authority to grant Variances.

Ms. Loughnane suggested that the Board vote on the proposed Variance, and if that vote is not unanimously in favor of granting the Variance, the Board could then continue the hearing to allow for revised plans to be considered for a Special Permit at a future hearing. Ch. Lally asked if the Clintons wished to withdraw the application or if they would like for the Board to vote on the Variance.

Mr. Clinton asked about the Variance that was granted for 26 Westview Terrace. Mr. McCusker responded that he recalled the application for 26 Westview Terrace. He stated that he believed the Petitioner in that application met the standards of uniqueness that are necessary for the Board to favorably consider a Variance. He recalled the extreme topography of that property that justified the granting of a Variance. Mr. McCusker said that he did not believe a similar finding could be made in the case of 44 Baker Street.

Mr. Grose suggested taking a vote on the Variance and continuing the hearing. Ms. Loughnane noted that the Board already had five hearings scheduled for the October meeting and said that the Board should also vote to allow the continuance of this hearing to that date as a sixth application

Mr. McCusker moved that the Board denies the Petitioner's request for a Variance pursuant to Westwood Zoning Bylaw Section §4.5.3.3 [Variance Required for New or Expansion of Nonconformity]. The Motion was seconded by Ms. Walsh. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to deny the Petitioner's request for a Variance.

Mr. Lally moved that the Westwood Zoning Board of Appeals continue the hearing to October 20th at 7:00 pm via Zoom, to allow for consideration of a Special Permit pursuant to Section §4.5.3.2.3 [Special Permit Alterations of Nonconforming Structures – Overhang, Porch or Portico], which would be a sixth item on the Board's agenda. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to continue the public hearing until October 20th at 7:00 pm via Zoom.

Address: Various undetermined sites throughout Westwood

Petitioner: Ben Slayden of Carmyn, Inc.

Project: Application pursuant to Westwood Zoning Bylaw Section 10.1.7 [Appeals], relative to a decision of Building Commissioner Joseph Doyle, provided in an email dated July 2, 2021, that the proposed mobile fuel dispensing services would constitute a use not permitted in the Town of Westwood's Zoning Bylaw

Ch. Lally read the legal notice into the record. He stated that this hearing was an appeal of the Building Commissioner's decision that the proposed mobile fuel dispensing services would constitute a use not permitted in the Town of Westwood's Zoning Bylaw.

Ben Slayden made a presentation to the Board describing his proposed mobile fuel dispensing service. He explained that he was interested in establishing this business in several towns in Massachusetts.

Ch. Lally asked if the proposal would also involve recharging electric cars. Mr. Slayden responded that the initial rollout would be limited to mobile refueling with future recharging services. He said that he would be willing to operate only outside of the Water Resource Protection Overlay Districts and was focusing his initial attention on the Roche Bros. parking lot.

Ch. Lally asked if Mr. Slayden was currently operating in any other towns in Massachusetts. Mr. Slayden said that he was not yet operating anywhere but had received a business license from the state three months ago. He said that he was the first mobile fuel dispensing service licensed in Massachusetts. Also was currently pursuing services in Merrimack, NH, and Framingham, MA. He said that he understands that this use was not contemplated by the Westwood Zoning Bylaw.

Ch. Lally asked Ms. Walsh and Mr. McCusker if either had any questions or comments. Ms. Walsh asked if the Roche Bros. parking lot was zoned to allow this use. Ms. Loughnane clarified that the request was for the Board to overturn Building Commissioner Doyle's decision that the proposed use is not allowed anywhere in Westwood at present.

Mr. McCusker asked if Mr. Slayden was operating a mobile fuel dispensing business anywhere else in the United States. Mr. Slayden said that he was not but that his competitors are operating in California, Texas, New Jersey, New York, Washington DC, and the state of Washington. Mr. McCusker said that he would defer to Town Counsel's advice and will vote to uphold the Building Commissioner's decision.

Ch. Lally opened the hearing to the public for comment. He asked if there was any public comment. Ms. Loughnane stated that there were no raised hands among the attendees and no other comments in the Question & Answer queue. Ch. Lally declared the hearing closed.

Ms. Walsh moved that the Board uphold Building Commissioner Joe Doyle's decision, pursuant to Westwood Zoning Bylaw Section 10.1.7 [Appeals], that the proposed mobile fuel dispensing services would constitute a use not permitted in the Town of Westwood's Zoning Bylaw. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to uphold Building Commissioner Joe Doyle's decision.

Vote to Approve Meeting Minutes

Ms. Loughnane stated that the minutes of the August 18, 2021 meeting were not yet ready for consideration. She said that she would try to provide draft minutes to the board before the October meeting.

Vote to Adjourn Hearing

On a motion by Ch. Lally, seconded by Mr. McCusker, the Committee voted unanimously on a roll call vote to adjourn the meeting at 8:39 pm.

44 Baker Street

- Zoning Board application; plans and associated attachments
- Carmyn, Inc. - Various undetermined sites throughout Westwood
- Zoning Board application; plans and associated attachments