

**Town of Westwood
Zoning Board of Appeals
Remote Participation, Zoom Video Conference Call
Meeting Minutes – April 15, 2020**

Members Present: Jack Lally, Doug Stebbins, Mike McCusker

Staff Members Present: Sarah Bouchard, Housing & Zoning Agent

Mr. Lally gave a brief description of the proceedings, including a description of revised instruction for remote participation by the public. All those present for the meeting who anticipated giving testimony were sworn in.

Ms. Bouchard introduced a written request from the applicant for 405 Washington Street

Address: 405 Washington Street

Petitioner: Westwood Brookside LLC

Project: Application for Special Permit Under 4.5.2.2

Ms. Bouchard introduced a written request from the applicant to continue the hearing to June 17, 2020.

On a motion by Mr. Lally and seconded by Mr. Stebbins, the Board voted unanimously to continue the hearing to June 17, 2020.

Applications

Address: 101 Willard Circle

Petitioner: Michael and Sonya Burke

Project: Application for Special Permit Under 8.5 and Variance Under 5.2

Mr. Lally read the legal notice into the record.

Carl D'Angio, attorney for the applicant, introduced the proposal to construct an accessory apartment unit in an attached addition to the existing single family home. He described the lot and property as unique due to wetlands and flood zone parameters, and stated that the addition would be necessary to accommodate the medical needs of the family. He introduced the builder, Dave Flynn, and the architect, David Sharff. He stated the unit would continue to resemble a single family home, the addition would be inhabited by the family, and that the addition was in scale and keeping with the neighborhood.

Mr. Sharff described the proposal as in keeping with the scale of the neighborhood. It includes a 2 car garage for near access to parking, and behind the garage is a family room accessible to the existing home. Stairs access the accessory unit above the garage.

Mr. Lally asked if there would only be one accessory unit on the premises. Mr. Sharff confirmed yes.

Mr. Lally asked if there would be homeowner residency on the premises. Mr. and Ms. Burke confirmed yes.

Mr. Lally asked if the square footage, parking and egress meets the definitions in the bylaw. Mr. Sharff confirmed yes.

Mr. Lally asked the applicant team to discuss the hardship of the property. Mr. Sharff described the flood plain issues on the property and the limited square footage on the parcel available for expansion of the home due to the non disturbance line.

Mr. D'Angio introduced the letter from Nora Loughnane about the flood plain and history of surrounding development and discussed the uniqueness of the evolution of the parcel in respect to water issues. He also introduced case law that was submitted before the board establishing what he described as precedent for a board to use wetlands as basis for consideration of a variance.

Mr. Stebbins asked to describe the square footage of the home. Mr. Sharff replied about 2200 feet. Mr. Stebbins asked about average height. Ms. Bouchard stated that Joe Doyle had provided comment that the addition would have an average height of 15 feet. Mr. Stebbins stated his concern about the significant threshold for qualifying for a variance and asked if it was possible to reduce the height of the addition.

Mr. McCusker asked about the possibility of reducing the footprint of the addition. Mr. Flynn said the proposed 2 car garage is already too small for 2 actual cars. Ms. Burke said the garage was really a one car garage with extra access for wheelchairs and chairlifts, and that the size of the addition was necessary to meet the minimum square footage requirements for the accessory apartment.

Mr. McCusker expressed concerns about the size of the unit and placement on the lot.

Ms. Burke described their efforts to meet every restriction set forth by wetlands, flood plain, zoning setbacks, and family needs.

Mr. Stebbins asked about the placement of the addition in relation to the flood plain. Mr. Sharff and Ms. Burke reviewed the plans to clarify where the buildable area is.

Ms. Burke further stated that the proposal is the only possible option given the uniqueness of the lot.

Mr. D'Angio restated hardship with respect to the confines of the lot and unique property.

Mr. Lally asked Ms. Bouchard for staff comments. Ms. Bouchard replied that no conditions were requested.

Mr. McCusker asked Mr. D'Angio to discuss the case law he submitted. Mr. D'Angio described the case. Mr. McCusker said he would need more time to review the case law before making a decision. Mr. McCusker also asked if the design could be adjusted to reduce the encroachment into the setback.

Mr. Stebbins stated that the special permit for the accessory apartment was an easier decision but the variance is difficult to make a successful case.

Mr. Lally opened the hearing to the public and reread the call in information.

Ms. Bouchard recognized callers Paul and Wendy Kelly, 107 Willard Circle, stated their support of the project and asked if the intended use would change if the family moved out. Ms. Bouchard restated the question for the board and then replied with an explanation of what the Bylaw does allow for accessory apartments. Ms. Burke stated their intention to use the unit for family only.

Seamus Downey, 104 Beechnut Road, asked a question about the recertification of the units. Ms. Bouchard clarified the Bylaw requirements for owner residency on the premises and 4 year recertification of such. He stated his support for the proposal.

Ms. Kelly asked about parking requirements. Mr. Lally replied with the process for requesting additional parking requirements.

Mr. Kelly asked if driveway is to be larger and if there are plans to address water runoff. Ms. Burke replied that the driveway would remain the same.

Alex Zaprauskis, 95 Willard Circle, stated support for the proposal.

Pat Ahearn, Town Counsel, stated that he had no comments for the Board or questions and would review the case law and provide comment to the Board at a later time.

Mr. Lally closed the hearing to the public and stated his desire to have Town Counsel review the case law before making a decision. Mr. McCusker and Mr. Stebbins agreed. The Board proceeded to a motion.

On a motion by Mr. Stebbins and seconded by Mr. McCusker, the Board voted unanimously to continue the hearing to May 20, 2020.

Address: 38 Alder Road

Petitioner: William Lestan

Project: Application for Variance Under 5.2.3

Mr. Lally read the legal notice into the record.

Ned Richardson, attorney for the applicant, described the request for retroactive relief in the form of a variance to allow a series of retaining wall and fences to remain in a pool area, which had already been installed. Mr. Richardson described the project as an attempt to stabilize a 5 foot slope. Mr. Richardson stated his and the applicants' belief that the practice of combining the retaining walls and fence as a single structure should not have triggered the Bylaw requirement for total height. He stated that the topography of the land constitutes the hardship. Mr. Richardson referred to submitted photos of the walls and fence, which he described as a visual improvement and referenced letters of support from neighbors. He stated that the project does not derogate from the intent of the Bylaw, which he stated concerns principal structures and the fences are a landscaping issue.

Mr. Lally asked if the permits were pulled for the cabana and pool properly. Mr. Richardson replied that they were. Mr. Lally asked if the structures would be at risk if not for the retaining wall. Mr. Richardson confirmed his belief that they would be. Mr. Lally asked if the fence around the pool was mandatory. Mr. Richardson stated yes.

Mr. Stebbins asked if the lower retaining wall could be removed, as the combined walls and fences are too tall and variances have a strict threshold for approval. Mr. Richardson said the fence plus any wall would still exceed the height. He further stated his disagreement with the Building Commissioner that the walls added together should be considered a single structure. He said that since the application does not add any habitable living space, this should not apply and should be considered a landscaping issue.

Mr. Stebbins disagrees and says it visually appears to be one structure. Mr. Stebbins asked about landscaping plans.

Mr. Lestan, homeowner, stated that there is a plan to install perennial flowers between the retaining walls to soften the look. He stated that the project was trying to improve curb appeal. Mr. Lestan also stated that neighbors support the project.

Mr. Lally asked if the bottom wall were removed, if the integrity of the pool and slope would be undermined. Mr. Lestan stated that he was told it would be.

Mr. Stebbins further discussed possibilities for creatively resolving the issue without involving the structures that require a variance.

Mr. Lally opened the hearing to the public for comment.

Nick Trakas, 50 Alder Road, stated his support for the project.

Georgia Kyriacopoulos, 47 Alder Road, stated her support for the project. She asked why the walls were considered a single structure. Mr. Lally replied that it exceeded the maximum height. Ms. Bouchard explained the history of precedent by the Building Commissioner in applying the Bylaw in this manner.

Mr. Lally closed the hearing to the public.

Mr. Stebbins asked about landscaping plans for the planting area between walls. Mr. Lestan stated that the arborvitaes would be near the fence and that perennial flowers would be installed between the walls. Mr. Stebbins would like to see a landscaping plan with potentially hardier plantings that would provide more year round screening.

Mr. McCusker asked if the pool had been altered during construction. Mr. Lestan said the patio was unchanged but that a drywell was installed in the front. Mr. Lestan and Mr. Richardson discussed the intent of the project. Mr. McCusker stated that the ZBA has to implement the Bylaw. He discussed potential alterations to the fence that could negate the need for a variance.

Mr. McCusker says sloped land is not unique. He stated that he does not find the topography of the lot to constitute the criteria for a variance.

Mr. Richardson suggested that the Board might consider some conditions the Applicant proposes. Mr. McCusker suggested movement of the fence to negate the need for a variance.

The Board proceeded to a motion to continue the hearing.

On a motion by Mr. Lally and seconded by Mr. Stebbins, the Board voted unanimously to continue the hearing to May 20, 2020.

Address: 104 Beechnut Road

Petitioner: Seamus Downey

Project: Application for Special Permit Under 8.5 and Variances Under 8.5.6.3 and 8.5.6.4

Mr. Lally read the legal notice into the record.

Seamus Downey, homeowner, introduced the proposal to legalize an accessory apartment in his single family home. He described the unit as intended for his in-laws. He described the history of the project, which began when the cap on accessory apartment special permits had been reached. At that time, a door providing private access to the unit was required to be removed as no additional special permits were available to legalize the accessory apartment. He described the design of the current unit and the limitations of the property, access points, utilities, and necessary storage. He directed the Board's attention to the letters of support submitted by abutters.

The hearing was paused to allow Mr. Stebbins to reconnect.

Mr. Downey expressed his desire to achieve full compliance on the accessory unit. He stated that constraining the unit to the maximum square footage would involve financial hardship due to excavation necessary to close off a portion of the unit. He stated that the use of the unit doesn't change if the door is boarded up to provide that private access to the unit.

Mr. Stebbins confirmed that there is an existing kitchen. Mr Downey said yes.

Mr. Lally asked if the address is a principal residence for the applicant. Mr. Downey confirmed. Mr. Lally asked that there is full utility access, only one apartment on site, that the exterior still maintains the appearance of a single family home, and no proposed changes to the driveway. Mr. Downey confirmed.

Mr. Stebbins and Mr. Lally discussed the request for an oversize unit and indicated that the proposal did not meet the requirements of the bylaw. Mr. Downey stated that he could create a plan that could comply with size requirements but that nothing would stop him from refinishing the former space after receiving approval.

Mr. Lally asked about the egress. Mr. Downey confirmed that if the variance is not approved, the door will be sealed up and there would only be one mode of egress.

Mr. Lally opened the hearing to the public. No comments were made.

Mr. Lally closed the hearing to the public and deliberated. Mr. Lally stated that the Bylaw is clear on the egress and square footage requirements and the proposal did not satisfy the requirements for the variance, however it may qualify for a special permit for the accessory apartment generally. Mr. McCusker and Mr. Stebbins agreed.

The Board proceeded to a motion.

On a motion by Mr. Stebbins and seconded by Mr. McCusker, the Board voted unanimously to continue the hearing to May 20 2020.

Address: 21 Stearns St

Petitioner: Michael Francalangia

Project: Application for Variance under 4.5.3.3

Mr. Francalangia introduced the proposal to construct a garage on the existing single family home. He stated that the 22 foot width allows for two cars to be stored. He described the project as an improvement to the property and necessary due to the limited size of the lot.

Mr. Lally asked if the addition would be compliant on height. Mr. Francalangia confirmed that it was.

Mr. Stebbins asked if the average height calculation was included on the plans so as to confirm the applicable side setback. Ms. Bouchard confirmed that the side setback applied was appropriate for the average height as determined by the Building Commissioner.

Mr. Lally opened the hearing to the public for comment.

Lisa Golden, 9 Stearns Street, asked about the average height calculation. Michael Moylan, builder, and Mr. Lally explained the height calculation. Ms. Bouchard confirmed that the height calculation was not before the board for review. Ms. Golden stated her objection to the project due to concerns about drainage issues and property value.

Heather Lynch, pending buyer for 9 Stearns Street, stated her objection to the project due to concerns with privacy and visual impact of encroachment into setback.

Hearing no further comment, Mr. Lally closed the hearing for public comment.

Mr. Lally asked about uniqueness of the lot and hardship. Mr. Francalangia replied that the bylaw allows for a detached garage closer to the lot line, but the proposal is more aesthetically pleasing.

Mr. McCusker stated that the proposal does not meet the criteria for a variance. Mr. Stebbins and Mr. Lally agreed.

Mr. Francalangia entered a request to withdraw the application without prejudice.

The Board proceeded to a vote.

On a motion by Mr. Stebbins and seconded by Mr. McCusker, the Board voted unanimously to withdraw the application without prejudice.

Vote to Adjourn

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

The hearing adjourned at 10:11 PM.

List of Documents:

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| 101 Willard Circle |
| • Zoning Board application; plans and associated attachments |
| 405 Washington Street |
| • Zoning Board application; plans and associated attachments |
| 38 Alder Road |
| • Zoning Board application; plans and associated attachments |
| 21 Stearns Street |
| • Zoning Board application; plans and associated attachments |
| 104 Beechnut Road |
| • Zoning Board application; plans and associated attachments |