

Zoning Board of Appeals
Remote Participation, Zoom Video Conference Call
Meeting Minutes –September 21, 2022

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

Staff Members Present: Zoning and Licensing Agent Karyn Flynn, Director of Community & Economic Development Nora Loughnane

The meeting was called to order by Chair John Lally at 7:01 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.

Address: 754 High Street

Petitioner: Benjamin Haughey

Board Members: Chair John Lally, Michael McCusker and Linda Walsh

Project: Application for a Special Permit pursuant to Sections §4.3.3.12 [Accessory Uses – Accessory Apartments] and §8.5 [Accessory Apartments] and Variance Section §8.5.6.3 [Design Requirements] Applicant proposing to construct an addition consisting of three garage bays and an accessory apartment to the existing single-family residence. The proposed accessory apartment is approximately 1361 square feet in area, while the maximum size permitted under Section §8.5.6.3 is the lesser of 900 square feet or 24 % of resulting square footage of the combined dwelling if the footprint of the principal dwelling is enlarged. The maximum allowable size of the accessory apartment would be 900 square feet.

Ch. Lally read the public hearing notice for this application and explained the application proposes an addition consisting of three garage bays and an accessory apartment to the existing single-family residence. The proposed accessory apartment is approximately 1361 square feet in area, above the maximum of 900 square feet and asked if the applicant in attendance.

Attorney James McKenzie introduced himself as representing the applicant Mr. Haughey. Mr. McKenzie stated the application was for a Special Permit for an accessory apartment attached to an existing single-family residence. Mr. McKenzie read aloud the sections of the bylaw that pertain to an accessory apartment requirement and stated the proposed addition meets those requirements. He stated the design of the exterior elevations of the propped addition is in character of the existing home and the only requirement that the application does not meet is the maximum size of 900 square feet.

Mr. McKenzie stated the Variance request is due to the proposed apartment size being 1224 square feet. Ms. Flynn stated the Building Inspector stated 1361 square feet. Mr. McKenzie stated he believes the discrepancy is due to a long unheated mudroom hallway being included. Mr. McKenzie stated his client Mr. Haughey wants to provide housing for his elderly parents, both of which are 100% disabled. Mr. McKenzie stated Mr. Haughey's father is a disabled Vietnam Veteran and his mother is diabetic and blind and can't be left alone due to a fear of her falling. He stated that home health care assistance is needed and that is the reason for the second bedroom.

Mr. McKenzie stated that the house was built in 1830 and by doing the addition it would preserve the structure from possible being torn down and a rebuilt. Mr. McKenzie stated they believe they should be granted the special permit but believe they can work with the Board on the size of the apartment without sacrificing comfort or safety and would be glad to answer any questions the board may have.

Ch. Lally asked if this was the primary residence and Mr. McKenzie stated it was. Ch. Lally asked why a variance was necessary in relation to soil conditions, lot shape or topography. Mr. McKenzie stated there is no topographic issue with the site, but financial hardship was mentioned and the would be significant hardship for the couple. It would be impossible for the couple to safely and live in 900 sq. ft.

Ch. Lally asked Ms. Walsh if she had any questions. Ms. Walsh asked if the applicants are in the audience. Mr. McKenzie stated they were. Ms. Walsh stated that meeting the requirements for a variance is very difficult and was concerned with setting a new precedent. Ms. Walsh asked if the applicant had any evidence that less than 1200 square feet would make it impossible for the applicant to live. Mr. McKenzie stated that he did not. Mr. McKenzie stated that if the second bedroom was not needed that they could meet the 900 sq. ft. He stated it was needed for caregivers. Ms. Walsh then asked if the three-car garage was part of the accessory apartment. Mr. McKenzie stated it was not. Ms. Walsh asked if the apartment is fully handicap accessible. Mr. McKenzie stated it was, with only three steps to get in.

Ch. Lally asked Mr. McCusker if he had any questions. Mr. McCusker stated the Board had a very similar Variance application for an oversized accessory apartment two years ago. The Board denied that Variance and approved a Special permit for 900 sq. ft. or less accessory apartment. Mr. McCusker stated he understands the applicant's argument and is appreciative of it, but believes the Board must remain consistent.

Ch. Lally asked Ms. Flynn to open up the hearing to public comment. Ms. Flynn stated that there was one hand raised and would bring Mr. Atkins into the hearing. Mr. Atkins stated his name and his address of 783 High Street. He stated he was in favor the project and felt the design was in keeping with the original design of the home. Mr. Atkins also stated his was in favor of alternative housing options and adaptive reuse of older homes and pointed out the home's walkability to downtown. Mr. McKenzie stated that in Mr. Atkins had suggested section 8.1 of the bylaw and turning a one family home into a two family. And stated that is not what his client wanted to do and it would not be in the best interest of the town.

Ch. Lally asked Ms. Flynn if there was any other public comment. Ms. Flynn stated that Ms. Sandy Cialfi has raised her hand. Ms. Cialfi stated her name and her address as 766 High Street and she was a direct neighbor and in favor of the addition and Mr. Haughey's ability to accommodate his family.

Ch. Lally asked if the Board had any further questions. Ms. Walsh asked if the bedrooms were equal in size. Mr. McKenzie stated that without the master bath there were approximately the same size. Ch. Lally asked Ms. Flynn if there was any other public comment. Ms. Flynn stated there were no raised hands among the attendees and no comments in the Question & Answer queue. Ch. Lally said the Board has tremendous sympathy for what the family is going through. McCusker asked if he could interrupt and stated that what we are lacking is any evidence and that maybe they want to continue the hearing gather evidence. Ms. Walsh stated we have to look at the regulations to warrant a variance. She stated she would wholeheartedly support a Special Permit for an accessory apartment under 900 sq. ft. Ms. Walsh stated they was no evidence that 900 sq. ft is not adequate.

Ch. Lally asked Mr. McKenzie if the applicants would like to continue the hearing. Mr. McKenzie asked for a few moments to talk to his clients and then returned and stated he would like to continue the hearing but wanted to be clear that the Board was leaning to deny the Variance unless evidence could be presented. Ch. Lally stated it would have to be very compelling. Ms. Flynn stated the Board would need to find a uniqueness to the lot's shape, size, topography or soil or existing structure before considering hardship.

The applicant asked to repeat the conditions and Ms. Flynn read aloud the findings section of the bylaw. Ms. Walsh asked if it have to meet all of the conditions. Ms. Flynn stated it could be just one. Ms. Walsh stated perhaps size could come into play. Ms. Flynn stated it size in relation to the existing structure. Ch. Lally stated if the applicant would like to explore Section 8.1 and converting the single-family home to two family that would require a new application.

Mr. McCusker stated that we are talking about two separate things, what is before us is determining if there is anything unique about the lot's size, shape, or soil. He stated as he looked at the plot plan, the lot is somewhat unique in town. The question is if that is unique enough to get to hardship clause for a variance and then at that point we lack any evidence of harm.

Ch. Lally says the lot complies with all zoning requirements. Mr. McCusker states in his opinion a lot can meet zoning requirements but still be unique. Ch. Lally asked Mr. McKenzie if he wants to continue the hearing. Mr. McKenzie stated that they would but would like to better understand what the Board is looking for as far as compelling evidence. Ch. Lally directed the applicant back to the findings section of the bylaw and the uniqueness of the lot or structure. Mr. McCusker said that first is the uniqueness factor of the lot with shape or size, topography and then you have to show us that operating in 900 sq. ft would cause harm.

Ch. Lally moved that the Board continue the hearing for 754 High Street to the remote October 19, 2022 meeting via Zoom. The Motion was seconded by Ms. Walsh. Mr. Lally called a roll call vote; the Board voted via roll call 3-0 to grant the continuance to the remote October 19, 2022 meeting at 7:00PM via zoom.

Address: 129 Dover Road

Petitioner: Michael Stallings

Board Members: Chair John Lally, Michael McCusker and Linda Walsh

Project: Variance pursuant to Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and 10.4 [Variances]. Petitioner was issued a building permit for a detached shed, upon building inspection it was noted a sunroom had been built attached to the existing single-family home. The sunroom is attached by siding, roof flashing and interior trim.

The attached structure is considered an addition rather than an accessory structure, and therefore subject to setback requirements for a building. The addition is located 20'3" from the rear setback where 30' is required, creating a new nonconformity. The existing single-family residence is non-conforming due to a front setback of 12'4" where 40' is required and an east side setback that is 12'4" where 20' is required. The lot is nonconforming due to insufficient lot area. The Petitioner was granted a Special Permit in 2013 for a front porch and shed entrance to a bulkhead that violated the front setback. The property is located in the SRC (Single Residential C) zoning district.

Ch. Lally read the public hearing notice for the application. He explained that the Variance request was after the sunroom was built in the rear setback and asked if the applicant in attendance.

Mr. Stallings stated that he was present and Ch. Lally asked him to introduce his application. Mr. Stallings stated he had gone into the Building Department in Fall of last year and brought an application for a sunroom and provided plans that stated sunroom in two places and a plot plan that showed a shed up against the building. Mr. Stallings stated he was a licensed builder and read the code and if it is not attached it would not have to get a Variance. He stated that Susanne Hogan told him that he needed a set of plans. Mr. Stallings said that he didn't know why, but both Susanne and Mike McClean told him to apply as a shed. Mr. Stallings held up a plan and said it clearly states sunroom in two places. There seems to be some confusion on the part of the Building comments. Mr. Stallings said maybe he could have misread the code. He said he brought back plans to the office and a certified plot plan, and was issued a permit for a shed. He said the plans never changed, and it says sunroom. Mr. Stallings said a shed would have still needed Zoning. He said the previous owner had put a shed on the town line and that he moved it at his own expense to satisfy Joe. He stated that he put the house on the market and the buyer's realtor called the Building department and asked why there an open permit for a shed when its clearly a sunroom. Mr. Stalling stated that Joe called him up and admonished him for not having a permit and then called back to apologize because of course there was a permit. Mr. Stallings said if the realtor didn't call, it would probably have been signed off. He said that he was not here to throw anyone under the bus, I met with Pat Ahearn and Selectmen Walsh to explain this very unique situation. Mr. Stallings said he has been to building departments all over the state and don't question what they tell me to do. Mr. Stallings stated that he was not looking for a fight, and has gone through Zoning many times before.

Ms. Flynn asked if she could share her screen for a moment, and Ch. Lally agreed. Ms. Flynn displayed the freestanding shed plan and 2013 site plans with yellow highlighter for shed location submitted with the Building permit application and noted it says free standing shed in two locations. Ms. Flynn stated the plans that were submitted to Zoning were different and have sunroom written on them. Mr. Stallings stated that is what I was told to do. Ch. Lally asked if it was by Mr. Doyle. Mr. Stallings stated Mr. Doyle knew nothing about this. He stated that he has always been treated fairly, but I never would have built that structure if they told him he would have had to go to Zoning. He stated that he was issued a permit and a built a structure based on the permit I was given.

Ch. Lally asked Mr. Stallings if the existing shed on the site has been moved. Mr. Stallings said the shed that was there when he bought the house, yes that has been moved. Ch. Lally asked if he was meeting the setbacks for that shed, six feet from rear and six feet from the side. Mr. Stallings said yes. Ms. Flynn stated the Building Inspector Mike Perkins went out to the site and said it looked like the shed may have been moved and noted there is now a fence on the site. He suggested a as-built plans could be requested to be sure the shed and fence are not on town land.

Ch. Lally asked if he got a building permit for a sunroom. Mr. Stallings stated he got a permit for the structure that is currently there and Joe has since revoked it. Mr. Stallings stated he met with Joe and showed him an arrangement he and the new owner came up with. He said Joe stated that you can't step from the house into an accessory building, it would have to be moved and another door added. Ch. Lally said the Building Commissioners' submitted comments do not offer any alternatives to going to ZBA for a variance and that is what we are going to focus on. Ch. Lally asked what exactly unique about the lot or existing structure that warrants a Variance. Mr. Stallings said he did not have an answer for uniqueness, but he could cut the clapboards, flashing and shingles back, that was his mistake.

Ch. Lally asked Ms. Flynn if there were any updated comments from the Building Dept. and she stated just that Inspector went out to the site to look at the shed earlier in the day and was able to determine if the shed ad been moved to the correct set back.

Ch. Lally asked Mr. McCusker if he had any questions. Mr. McCusker wanted to clarify that the Variance application before the board was for an attached sunroom and that the old shed was from an earlier ZBA decision. Mr. McCusker said that the applicant applied for a permit for a detached shed. Mr. Stallings said yes. Mr. McCusker said it does not have water, electric or heat. Mr. Stalling said that was correct. Mr. Stallings stated that the roof was attached by flashing, I can remove the

flashing. Mr. McCusker asked if there is a reason it can't be moved, is the concrete pad attached to the house foundation. Mr. Stallings said it was not and Joe admitted they made mistakes. Mr. McCusker stated the Board has to determine if it qualifies for a Variance to keep it where it is or move it. Mr. McCusker asked how hard would it be to move it. Mr. Stallings said he would have to cut it, I couldn't move it because the force would destroy it. Mr. McCusker asked Ms. Flynn if there was any other guidance from the building Dept. for a resolution other than the Variance. Ms. Flynn stated just the Conditions for the decision that were developed with the Building Commissioner.

Ch. Lally asked if Ms. Walsh had any questions. Ms. Walsh stated that Mr. McCusker did a great job with his questions and she didn't want to get into any hearsay. There was a permit issued and the site is right next to the driveway to their office. She said it seems like there are ways to avoid a Variance by working with the Building Dept.

Ch. Lally asked when he applied for his permit did he have a site plan with the location of the structure. Mr. Stallings said yes. Ms. Flynn displayed the site plan and elevation submitted with the Building permit. Mr. Stallings said that not it. Ch. Lally asked what is the plan date. Ms. Flynn stated 2013. Mr. Stallings said he have the engineer on the next meeting to verify plans and that he can get proof that is not what he submitted. Ms. Flynn asked to read Building Commissioner Joe Doyle's June 10, 2022 comments. Mr. Doyle comments stated that the plans submitted to the ZBA are not what was submitted to the Building Dept for permitting. Mr. Stallings stated that's not right, it was revised. Ms. Flynn stated there was not a revision date. Mr. Stallings said if I can get the opportunity I will get the engineer to show you, that is not what I submitted to the Building Dept. He said he put it in as a sunroom and I had him change it to a shed in November of last year.

Ms. Flynn asked to point out that the Building Commissioner said no inspections were done. Mr. Stallings said there was an email requesting a final on November 29th. Ch. Lally stated that as it stands I believe you do not meet the standards of a variance. Linda and Michael, are you in favor of continuing the hearing and perhaps having the Building Commissioner at the next hearing. Mr. McCusker stated he was ok with continuing, because the attached structure is non-confirming and it would be best for Mr. Stallings to work it out with Joe or Mike Perkins. Ms. Walsh stated that she also was in favor to continue.

Ch. Lally moved that the Board continue the hearing for 129 Dover Road to the remote October 19, 2022 meeting via Zoom. The Motion was seconded by Mr. McCusker. Mr. Lally called a roll call vote; the Board voted via roll call 3-0 to grant the continuance to the remote October 19, 2022 meeting at 7:00PM via zoom.

Vote to Approve Meeting Minutes

Ch. Lally stated that the minutes for July 20, 2022 and August 17, 2022 were completed. Ch. Lally asked Ms. Walsh and Mr. McCusker if they had reviewed the minutes. Both members stated they did review the minutes and was in favor of approving.

Ch. Lally called a roll call vote; the Board voted unanimously to approve meeting minutes from the July 20, 2022 and August 17, 2022 meeting.

At this time Ms. Flynn asked Ms. Walsh if she could end the meeting for the night. Ms. Walsh stated that she would be recusing herself from the last hearing and left the meeting. Ms. Flynn promoted Danielle Button as third Board member.

Address: 9 Westwood Terrace

Petitioner: Michael Walsh

Project: Appeal relative Building Commissioner decision that a residential use is not allowed in the LBB (Local Business B) zoning district. Should the applicant's appeal be granted, Special Permit pursuant to Sections § 4.5.2.2 [Extension of a Nonconforming Use] and 4.5.3.2.2 [Alterations of Nonconforming Structures – Vertical Extension of an Exterior Wall in the Setback]. Applicant proposes a second story addition over an existing garage for home office. The side setback of the existing structure is 14.9' where 15' is required and the rear setback is 8.1' where 15' is required. The second story addition would encroach on the side and rear setbacks to the same extent as the existing structure.

Ch. Lally read the public hearing notice for this application and stated that the hearing was continued without discussion from the August 17, 2022 meeting. He explained that the application was twofold an Appeal and a Special Permit. Ch. Lally stated that that due to the Zoning Board of Appeals inability to secure a quorum to hear the Appeal and issue a decision within the required time frame, the Appeal portion of the application was Constructively Approved. The applicant filed a request for Constructive Approval with the Town Clerk on August 25, 2022. There were no appeals to the request for Constructive Approval and the Town clerk certified the Constructive Approval on September 20, 2022.

Ch. Lally stated the public hearing would be discussing the special permit portion of the Application per bylaw sections 4.5.2.2 [Extension of a Nonconforming Use] and 4.5.3.2.2 [Alterations of Nonconforming Structures – Vertical Extension] and asked if the applicant in attendance.

Mr. Walsh stated that he was present and would be representing himself. Ch. Lally then asked him to introduce his application. Mr. Walsh stated that the property was a small five-bedroom house with an attached garage. He said the proposal is to build a home office addition over the garage. Mr. Walsh stated that he did not see clients in his office as he is a workers compensation attorney and most meetings are either over zoom or at the client’s residence. Mr. Walsh stated that only had one employee working with him.

Ch. Lally asked what is the square footage of the addition. Mr. Walsh said less than 900 SF. Ms. Flynn stated the Building inspector has supplied 504 SF for the addition. Ch. Lally asked if the addition was going outside existing footprint. Mr. Walsh stated it was not. Ch. Lally asked if the proposed addition included any bedrooms or additional baths. Mr. Walsh said it was a home office with a half bath. Ch. Lally asked if he had a chance to discuss his project with the neighbors. Mr. Walsh said he had, and they were all in favor. He was going to have them attend, but determined it would not be necessary.

Ch. Lally asked Ms. Button if she had any questions. Ms. Button asked about the single-family usage. Mr. Walsh stated that part of the application had been addressed in the Constructive Approval. Ms. Button then asked about the egress to the home office. Mr. Walsh stated the doors between the garage and home was originally a breezeway that will be enclosed to have stairs the go up to the office and a separate door to the home.

Ch. Lally then asked Mr. McCusker if he had any questions. Mr. McCusker stated he wanted to check the measurement on the plan as inches vs. feet. Mr. Walsh said that was correct the measurement was given in inches and the addition was not 124 feet high. Mr. McCusker stated he just wanted that on the record and had no other questions.

Ch. Lally asked Ms. Flynn to open up the hearing to public comment. Ms. Flynn stated that there were no raised hands among the attendees and no comments in the Question & Answer queue. Ch. Lally declared the hearing closed.

Mr. McCusker moved that the Westwood Zoning Board of Appeals grant the special permit pursuant to Westwood Zoning Bylaw Section§ 4.5.2.2 [Extension of a Nonconforming Use] and 4.5.3.2.2 [Alterations of Nonconforming Structures – Vertical Extension]. The Motion was seconded by Ms. Button. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to grant the Petitioner’s request for a Special Permit.

Vote to Adjourn Hearing

On a motion by Ch. Lally, seconded by Mr. McCusker, the Board voted unanimously on a roll call vote to adjourn the meeting at 8:45 pm.

List of Documents:

754 High Street

- Zoning Board application; plans and associated attachments

129 Dover Road

- Zoning Board application; plans and associated attachments

9 Westwood Terrace

- Zoning Board application; plans and associated attachments