

**Zoning Board of Appeals
Remote Participation, Zoom Video Conference Call
Meeting Minutes –October 19, 2022**

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

Staff Members Present: Zoning and Licensing Agent Karyn Flynn, Director of Community & Economic Development Nora Loughnane, Building Inspector Mike Perkins and Building Commissioner Joe Doyle

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: 129 Dover Road

Petitioner: Michael Stallings

Board Members: Chair John Lally, Michael McCusker and Keith Flanders

Project: Application for Variance pursuant to Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and 10.4 [Variances]. Unpermitted Sunroom addition built 20'3" from the rear setback where 30' is required, creating a new nonconformity.

Ch. Lally stated that this hearing was continued from the September 21, 2022 meeting where Michael Stallings gave testimony for a Variance application pursuant to Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and 10.4 [Variances]. The hearing was continued with the Board directing Mr. Stalling to contact the Building department and try to work out the details with the department. Ch. Lally asked if the applicant or his representative was in attendance. Ms. Flynn stated he was not in the attendees not was there any comments in the Q & A.

Ch. Lally stated that Mike Perkins the Building Inspector for the Town of Westwood was in attendance and was involved in the building permit application submitted for this project. Ch. Lally asked him to give a summary of the events that happened with your department and Mr. Stallings for 129 Dover Road.

Mr. Perkins stated that he believed the Board has seen his memo dated October 13, 2022 with a detailed timeline of events. The original application did not have any plans submitted with it and a couple of weeks later Mr. Stallings came to the office and hand delivered plans. He stated Mr. Stallings applied for a 12 x16 free standing shed located on an existing patio. This shed would not have needed a building permit due to its size, but would require meeting zoning requirements. The Building permit was issued with the following language:

CONSTRUCT NEW FREESTANDING 12'X16' SHED. TO BE LOCATED AND CONSTRUCTED PER REVIEWED PLANS. SUBMIT AS BUILT PLOT PLAN PRIOR TO FINAL INSPECTION. NO OTHER WORK UNDER THIS PERMIT. SHED LOCATION MUST COMPLY WITH ZONING SETBACK REQUIREMENTS. CALL (781) 320-1091 TO SCHEDULE INSPECTIONS

Mr. Perkins stated sometime later the property was put up for sale and a realtor contacted the Building Dept. asking Susanne Hogan if there were any open permits or Zoning Violations. Ms. Hogan stated there was an open permit for a detached shed. The realtor stated there wasn't a new shed, just a newly constructed sunroom addition. It was then the department discovered they permitted a detached shed and Mr. Stallings built a sunroom room addition in the rear setback.

Mr. Perkins noted that at the last hearing Mr. Stallings stated that Ms. Hogan and building Inspector Michael McClean instructed him to apply for a shed. Ms. Hogan and Mr. McClean have supplied letters to the board indicating that conversation never happened and Ms. Hogan stated Mr. Stallings said that he was building a potting shed.

Mr. Perkins stated that after the addition construction was confirmed, Mr. Stallings was instructed to apply for a Variance with the ZBA as he created a new non-conformity by building in the setback. Mr. Perkins stated that no inspections were done on this addition, no framing inspections or insulation inspections. Mr. Perkins also stated that Mr. Stallings had indicated the addition was only attached to the house by roof flashing, clapboards and shingles. Mr. Perkins said that the framing is tied into the house.

Ch. Lally asked Mr. Perkins if the original shed that was due to be moved as a condition of a 2013 Special Permit has been moved. Mr. Perkins stated that can't be confirmed without an as built plot plan. Ch. Lally then asked the other Board members, if they had any questions. Both responded they did not. 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.

Ms. Flynn asked Mr. Perkins if he could respond to comments Mr. Stallings had made at the last hearing about moving the structure. Mr. Perkins stated if the structure were to be moved, it would need to be moved at least three feet to give adequate spacing for the egress out of the house. Mr. Perkins said that currently the second egress out of the house goes through this new structure.

Ch. Lally asked Ms. Flynn if Mr. Stallings had joined the hearing. Ms. Flynn stated he was not in the attendees and there were no comments in the Q & A. Ch. Lally stated in his opinion this application does not meet the requirements of a Variance and he is not in favor of granting a Variance.

Ch. Lally asked Mr. McCusker his opinion and Mr. McCusker stated that he agreed and that he heard things at the last meeting that were not true. Mr. McCusker stated he was also in favor of denying the Variance

Ch. Lally asked Mr. Flanders his opinion on the request. Mr. Flanders stated he has also in favor of denying the Variance and he wanted to add there may not have needed an electrical permit as there is existing electric service in the house exterior wall. Mr. Flanders stated that he did not have any further 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.

Ch. Lally started to make a motion to deny the Variance when Mr. McCusker stated he wanted to add a few conditions. Mr. McCusker read the following conditions to be added to the decision

1. Petitioner must apply with the Building Department for a demolition permit for the addition no later than 60 days from the date of the recorded decision. Failure to do so will result in a Zoning violation and fees may be assessed.
2. Petitioner must provide the Board of Health an asbestos survey prior to demolition.
3. Petitioner must relocate the shed located in the rear of the property so it rests fully on the subject property and adhere to rear and side setbacks appropriate for Zoning District C within 60 days of recorded decision. Failure to do so will result in a Zoning violation and fees may be assessed.

At this time Building Commissioner Joe Doyle joined the meeting and stated the time frame of 60 days should be removed as Mr. Stallings does not own the property any more. The change could be that the Building Dept will determine what is an appropriate time frame for the new homeowners to make changes.

Ch. Lally said that was fine and asked both Board members if they were in favor of those conditions, and both responded they were.

Ch. Lally moved that that the Westwood Zoning Board of Appeals deny the Variance pursuant to Westwood Zoning Bylaw Section § 4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and 10.4 [Variances] Extension] with the conditions as amended. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to deny the Petitioner's request for a Variance.

Mr. Flanders exited the meeting and Linda Walsh joined the Board as third member.

Address: 105 Phillips Brook Road

Petitioner: Architect Paul Hajain

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

Project: Application for a Special Permit pursuant to the Westwood Zoning Bylaw Sections §4.3.3.12 [Accessory Uses – Accessory Apartments] and §8.5 [Accessory Apartments]. Apartment within the existing single-family residence, that does not conform to the minimum floor area and does not have a second means of egress.

Ch. Lally read the legal notice into the record. He stated that this was a public hearing to consider an application filed by Paul Hajain for Special Permit pursuant to the Westwood Zoning Bylaw Sections §4.3.3.12 [Accessory Uses – Accessory Apartments] and §8.5 [Accessory Apartments]. An apartment within the existing single-family residence, that does not conform to the minimum floor area requirement of 500 square feet and does not have a second means of egress. The

Petitioner proposes to add a room to the apartment from the existing floor area within the single-family structure and an exterior door as a second means of egress. The square footage of the constructed new room added to the existing apartment, would make the total square footage of the Accessory Apartment equal 541 square feet. The proposed Accessory Apartment is fully contained within the existing single-family residence footprint. The property is located in the SRB (Single Residential B) zoning district.

Ch. Lally asked Mr. Hajain to introduce his project. Mr. Hajain stated the homeowner had reached out to him to come up with a way to bring an existing apartment within the home, to meet the Zoning bylaw for minimum size. Mr. Hajain stated he met with the Building commissioner and came up with a design that took interior square footage within the existing footprint of the home and made a new room in the apartment and also added an exterior door to make a second egress for the apartment.

Mr. Hajain went through the site plan and exterior elevations explaining the only changes would be the new exterior door on the West elevation and some new window to the front elevation to add light. He stated he would work with the Building Department to make sure everything is up to code.

Ch. Lally asked if the total square footage of the apartment was 541 square feet. Mr. Hajain said that was correct. Ch. Lally asked if this was this was the only accessory apartment on the property. Mr. Hajain said it was. Ch. Lally asked if the property was the owner's main residence. Mr. Hajain said it was. Ch. Lally asked if the exterior of the home would remain looking like a single-family home. Mr. Hajain said it would. Ch. Lally asked if there was proper water, sewer and parking on the property. Mr. Hajain said there was.

Ch. Lally asked Ms. Walsh if she had any questions. Ms. Walsh asked if there were staff comments. Ms. Flynn said there are and displayed the comments. Ms. Walsh then stated this was a unique application as it came before the Board as a violation and asked the applicant what was the space going to be used for. She stated when the Board had issued accessory apartments special permits in the past they were occupied by family members. Ms. Walsh asked Ms. Flynn is there a deed restriction. Ms. Flynn stated that the special permit gets recorded with the Registry of Deeds and the apartments are subject to periodic recertification and possible inspection by the Building Department. They can be rented or occupied by nonfamily members as long as the homeowner is living in the apartment or main home. Ms. Walsh said she had no further 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.

Ms. Walsh moved that that the Westwood Zoning Board of Appeals grant the special permit pursuant to Westwood Zoning Bylaw Section § 4.3.3.12 [Accessory Uses – Accessory Apartments] and §8.5 [Accessory Apartments]. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to grant the Petitioner's request for a Special Permit.

Address: 754 High Street

Petitioner: Benjamin Haughey

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

Project: Application filed by Benjamin Haughey for a Special Permit pursuant to Westwood Zoning Bylaw Sections §4.3.3.12 [Accessory Uses – Accessory Apartments] and §8.5 [Accessory Apartments]. Said application also requires a Variance pursuant to the Westwood Zoning Bylaw Section §8.5.6.3 [Design Requirements] to allow for an Accessory Apartment which exceeds the maximum size requirements. The Petitioner is 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. The property is located in the Single Residential C (SRC) zoning district

Ch. Lally stated this hearing was continued from the September 21, 2022. The hearing left off with the Board directing the applicant to come back with uniqueness to the lot or existing structure and compelling evidence regarding the size of the apartment, or consider design changes to no longer need a Variance.

Mr. McKenzie stated that he believes the application meets the threshold for a Special Permit and would like to get back to the Board's request for compelling evidence in relation to the need for a larger sized apartment. Ms. Walsh said that she wanted to hear the revised application. Mr. McKenzie stated they submitted revised plans with minor changes to make the apartment 1220 sq. ft. The new submittal also has documentation including a Certificate of Blindness, Department of Veteran Affairs letter stating the applicant is 100% disabled and a letter from Joslin Diabetes Center.

Ms. Flynn asked the Board to go back to the Variance threshold of uniqueness before considering hardship. Ch. Lally asked Mr. McKenzie to discuss the lot size, shape, topography of the site and its uniqueness. Mr. McKenzie said there was no uniqueness with topography or soil. He asked to focus the attention of the Board to American with Disabilities Act as it related to policy, practices or procedures. He said that if the regulation is for 900 sq. ft, and his two disabled applicants need more space to live comfortably due to their disabilities, the Board can waive that requirement.

Ch. Lally asked Building Inspector Mike Perkins to rejoin the meeting and discuss how the American's With Disabilities Act (ADA) relates to accessory units in Massachusetts. Mr. Perkins stated the ADA or in Massachusetts is the Massachusetts Architectural Access Board (AAB) applies to public building, public spaces and public housing. It is not enforced in private residences.

Mr. McKenzie stated that he agreed that the ADA does not affect private housing, but a Town agency, the Zoning Board has the ability to waive requirements for disabled applicants. The issue is not the nature of the building, but the services the Town provides, in this case being the applicants need for more than 900 sq. ft of space.

Mr. Perkins stated the limitation of 900 sq. ft does not preclude the applicants from receiving town services such as police or fire, etc. Sometimes there are design elements accommodations that require more square footage and a cannot adhere to strict zoning requirements like a wheel chair ramp. The plans for this project do not include design elements for ADA. Three of the ingress and egresses and stairs only and one that has a ramp is not ADA or Mass AAB compliant.

Mr. McCusker stated he agreed with Mr. Perkins, that the ADA and Mass AAB requirements do not have any bearing on the Board's decision. That may be a legal argument beyond this Board.

Ch. Lally then asked Ms. Walsh if she had any questions. Ms. Walsh said that she understands the argument, but does not see any case law to support it and maybe this case will. Ms. Walsh asked where was the argument for ADA compliance when the apartment has not been designed to meet it.

Mr. McKenzie asked to direct the Board to the Joslin Diabetes letter in the meeting materials and Dr. D'Elia's professional opinion that 1200 square feet is necessary for the applicant to live comfortably. To say there is no evidence, I believe that is not true. Mr. McKenzie asked the Board to note the ADA citation that a public agency must make reasonable modifications in practices, policy and procedures where necessary to avoid discrimination to people with disabilities. He said reasonable modifications is defined as a change or exception in regulations, rule, policy or procedure that may be necessary for a person with a disability to use a building. He stated his applicants with disabilities need more than 900 sq. ft to live comfortably with their disabilities.

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. I do see the applicant Mr. Haughey's hand raised. Mr. Haughey stated that he was a Vietnam veteran and does not like to talk about his disabilities. Her stated that he didn't see how a couple of hundred sq. ft. makes much of a difference and hoped the Board would grant the Variance.

Ms. Flynn stated that there are different ways to design the project to still end up with the desired square footage. It is the accessory apartment and the private entrance that caps the space to 900sq. ft. Try to work with your architect to redesign. Ch. Lally asked the applicant if they have considered redesign or converting to a two family. Mr. McKenzie said they have not, but did want to remind the Board of the two neighbors that spoke at the last hearing in favor of the project. I also want to point out that I spoke with Stacey Hamm at the Massachusetts ADA she said, "If it is necessary to provide appropriate space to live safely, a town would have to consider waving the cap on the amount of space. The town would have to allow a modification on a disability, determination, or face a discrimination charge. They would have to have a very, very valid reason to deny a request as not being reasonable."

Mr. McKenzie said can they do a redesign yes, but I don't believe that is necessary based on my reading of the federal rule. Ch. Lally asked Ms. Flynn if there was any comment from Town Council. Ms. Flynn said no there was not, but he did review Mr. Perkins comments and agreed for Mike to post them to the application.

Mr. McKenzie asked for the applicants Architect Brad Jernegan to speak about the plans. Mr. Jernegan said that he has reduced the sq. footage by 138 sq. ft. and could possibly reduce the space 100 sq. ft. more in the kitchen and living room area, it's not 900 sq. ft. but it is a compromise. Mr. McKenzie said that would get the apartment to approximately 1100 sq. ft.

Ms. Flynn noted there was a comment in the Q & A for David Sells regarding the difference between an addition and an accessory apartment. Mr. Perkins stated an accessory apartment has clear separation from the main residence by a physical barrier. It has private egresses and living area, kitchen and bathing facilities. An addition does not have a physical barrier from main living space.

Mr. McKenzie stated that he believes the Board has the authority to waive the requirements and grant the Variance.

Ch. Lally declared the hearing closed and thanked Mr. Haughey for his honorable service to this country. He stated there is a strict threshold for a Variance and he didn't believe this application meets it. Ch. Lally said he was in favor of grant the special permit if the apartment is redesigned and meets the 500-900 sq. ft. size requirement.

Mr. McCusker stated he was appreciative of all the work that was done on this application, but we must get over the Variance hurdle before considering hardship. He said that he also does not believe we have reached it and will leave ADA/ Mass AAB to Town Council. He said he was sympathetic to the mother and father's disabilities but without meeting the threshold, must uphold the bylaw.

Ms. Walsh said she agreed with the other members and had hoped the applicant would have considered redesign. She stated this is not discrimination, and would need to be decided in the courts. Ms. Walsh said she would also be in favor of a special permit within the bylaw requirements.

Mr. McKenzie asked if the Board would ask Town Council to offer an opinion. Ms. Flynn stated Town Council reviewed the Building Inspectors determination and was in favor of it being uploaded to the application. Mr. McKenzie stated there is a difference between a legal opinion and agreement to upload comments.

Ch. Lally stated that that would be better handled in the court system and declared the hearing closed.

Mr. Haughey asked to speak and stated his medical history and that hurdles were mentioned. He said that people with disabilities face hurdles every day.

Ch. Lally stated he was in favor of denying the Variance and in favor of granting a special permit for an accessory apartment that meets all bylaw requirements with revised accessory apartment plans to be approved by Building Commissioner to meet maximum 900 SF floor area or less at time of building permit submittal. The other Board members agreed.

Ch. Lally moved that that the Westwood Zoning Board of Appeals deny the Variance pursuant to Westwood Zoning Bylaw Section§ 8.5.6.3 [Design Requirements] and 10.4 [Variances] and grant the special permit pursuant to Section§ 4.3.3.12 [Accessory Uses – Accessory Apartments] and §8.5 [Accessory Apartments] as revised. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to deny the Petitioner's request for a Variance and grant the request for a Special permit as revised.

Vote to Approve Meeting Minutes

Ms. Flynn stated the minutes were not ready for approval and would be ready for the next meeting.

Administrative item:

Ms. Flynn stated that all Boards have been requested to review their Rules and Regulations for any updates. A public hearing will need to be scheduled when ready for approval.

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 8:40 pm.

List of Documents:

129 Dover Road

- Zoning Board application; plans and associated attachments

105 Phillips Brook Road

- Zoning Board application; plans and associated attachments

754 High Street

- Zoning Board application; plans and associated attachments