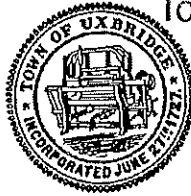


Rob Knapik, Member  
John Gniadek, Member  
Mark Kaferlein, Member  
Thomas McNulty, Associate Member



Uxbridge Town Hall  
21 South Main Street, Room 205  
Uxbridge, MA 01569  
508-278-8600 x2013

## **DECISION**

ZBA Case #: **FY19-04**

Zone: **Residential C**

Owner: **Mark Lavallee and TJ Lavallee**

Property Address: **66 Elm Street**

Assessor's Reference Map: **12C** Parcel: **2654**

Worcester District Registry of Deeds References: Book: **59186** Page: **376**

## **Variance Denied**

Decision Date: **November 7, 2018**

**BACKGROUND:** 66 Elm Street, Mark Lavallee, Owner/Applicant is seeking front setback **VARIANCE** to allow the construction of a detached garage on a pre-existing non-conforming lot.

**VOTING MEMBERS:** Rob Knapik Chair, John Gniadek and Thomas McNulty

### **SUBMITTALS:**

- Zoning Board of Appeals Application for Variance and Fee
- Property Deed
- Certified Abutter List
- Lavallee Garage Plans, prepared by Northern Building Systems, dated 9/7/18
- Zoning Board of Appeals Plan for 66 Elm Street, prepared by Andrews Survey & Engineering, Inc., dated 9/7/18

### **PRESENTATION / DELIBERATIONS / FINDINGS OF FACT:**

The Public Hearing was opened on October 3, 2018 and closed on November 7, 2018.

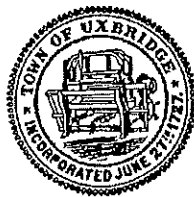
During the October 3<sup>rd</sup> public hearing, Byron Andrews, Andrews Survey and Engineering, Inc., represented the Applicant. He explained that the Property is a pre-existing nonconforming lot and that the location for the proposed garage will be as far from Elm Street as possible without violating the rear or side yard setbacks or encroaching upon a Sewer Easement on the Property.

Larry Lench, Uxbridge Building Inspector, attended and provided a comment that the proposed garage abuts a garage on the neighboring property (72 Elm Street). Mr. Lench also recommended a condition, if approved, that the garage be used only for personal use and not a business operation.

Attorney Henry J. Lane, with Lane and Hamer, P.C, appeared on behalf of Sally R. Staples, the direct abutter at 72 Elm Street, in opposition to the Application. He argued that the Board is without the authority to grant the relief requested, and, even if the Board did have the authority to grant the relief requested, the Application did not meet the applicable standard for the grant of a variance.

Because questions were raised regarding authority and ability to grant the relief requested, at the public hearing on October 3, 2018 the Board asked the Applicant to consider the following options: (i) for the Board to act on the Application as presented; or (ii) for the Board to continue the public hearing to allow the Board the opportunity to confirm that the Board has the authority to grant the relief requested; or to (iii) for the Applicant to withdraw the Application without prejudice. The Applicant chose to request that the Board to continue the public hearing to allow the Board the opportunity to confirm that the Board has the authority to grant the relief requested and for

Rob Knapik, Member  
John Gniadek, Member  
Mark Kaferlein, Member  
Thomas McNulty, Associate Member



Uxbridge Town Hall  
21 South Main Street, Room 205  
Uxbridge, MA 01569  
508-278-8600 x2013 p

## **DECISION**

ZBA Case #: **FY19-04**  
Zone: **Residential C**  
Owner: **Mark Lavallee and TJ Lavallee**  
Property Address: **66 Elm Street**  
Assessor's Reference Map: **12C** Parcel: **2654**  
Worcester District Registry of Deeds References: Book: **59186** Page: **376**

the Applicant to consider whether or not there may be mitigation measures that might be responsive to the abutter concerns.

At the continued public hearing on November 7, 2018, Mr. Knapik informed the Board and the Applicant that Town Counsel opined that the Board does have the authority to grant the requested variance, and added that based on the Application presented, it would appear difficult to meet the standard for the grant of a variance. Town Counsel added that if the garage were attached to the house then the attached garage may be allowed upon issuance of a special permit, being an expansion of a conforming structure on a pre-existing non-conforming use, if found not to be substantially more detrimental the neighborhood than the existing structure.

At the continued public hearing on November 7, 2018, Mr. Andrews said he reviewed M.G.L. c. 40A, §6 and argued that a garage falls under single family "residential use" as an accessory use. He referenced the Uxbridge Zoning Bylaws, which are not superseded by state law, that allow the construction of a new building only by variance and not special permit, so they are still requesting a variance. They believe the Application qualifies for a variance due to the size and shape of the lot in that setting and the fact that if the proposed garage were situated further back from Elm Street it would infringe upon the sewer easement. Mr. Andrews also said the Applicant considered attaching the garage to the house but it obscures the abutters view and they thought the detached was a better option for all.

Attorney Lane, representing the direct abutter and three additional abutters spoke during the second hearing in opposition of the project. The primary concern mentioned was the additional cars and associated activities being a nuisance to the densely populated neighborhood.

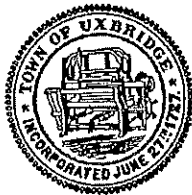
During deliberations, Attorney Knapik reiterated that the standard for a variance is a difficult one and Members agreed. There was also discussion on whether the easement could be considered a hardship. The Board concluded that the Applicant did not prove that: (1) due to circumstances concerning soil conditions, the shape of the Property, or the topography of the Property; which (2) especially affect the Property but not the zoning district generally; (3) literal enforcement of the Uxbridge Zoning Bylaw would cause a substantial hardship (financial or otherwise); (4) the variance could be granted without substantial detriment to the public good; (5) without nullifying or substantially derogating from the intent or purpose of the Uxbridge Zoning Bylaw. See M.G.L. c. 40A, §10.

### **MOTION / VOTE:**

Mr. McNulty made a **MOTION** to close the Public Hearing FY 19-04 for 66 Elm Street. **MOTION SECONDED** by Mr. Gniadek passed unanimously by vote of 3-0-0.

Mr. McNulty made a **MOTION** that the Zoning Board of Appeals deny the Variance for 66 Elm Street. **MOTION SECONDED** by Gniadek and the motion passed unanimously by vote of 3-0-0.

Rob Knapik, Member  
John Gniadek, Member  
Mark Kaferlein, Member  
Thomas McNulty, Associate Member



Uxbridge Town Hall  
21 South Main Street, Room 205  
Uxbridge, MA 01569  
508-278-8600 x2013 p  
508-278-0709 f

## DECISION

ZBA Case #: FY19-04  
Zone: Residential C  
Owner: Mark Lavallee and TJ Lavallee  
Property Address: 66 Elm Street  
Assessor's Reference Map: 12C Parcel: 2654  
Worcester District Registry of Deeds References: Book: 59186 Page: 376

## SIGNATURE PAGE

Rob Knapik, Member

Mark Kaferlein, Member

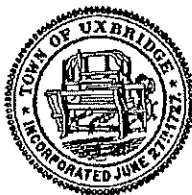
John Gniadek, Member

Thomas McNulty, Associate Member

November 7, 2018

Date

Rob Knapik, Member  
John Gniadek, Member  
Mark Kaferlein, Member  
Thomas McNulty, Associate Member



Uxbridge Town Hall  
21 South Main Street, Room 205  
Uxbridge, MA 01569  
508-278-8600 x2013 p

## **DECISION**

ZBA Case #: FY19-04  
Zone: Residential C  
Owner: Mark Lavallee and TJ Lavallee  
Property Address: 66 Elm Street  
Assessor's Reference Map: 12C Parcel: 2654  
Worcester District Registry of Deeds References: Book: 59186 Page: 376

Appeals, if any, from this decision shall be made pursuant to M.G.L. Chapter 40 A, Section 17 and filed within 20 days after the date of the filing in the Office of the Town Clerk.

I hereby certify that twenty (20) days has elapsed from the file date and no appeal has been filed in this office.

A true copy:     ATTEST

\_\_\_\_\_  
Town Clerk, Kelly Dumas or  
Assistant Town Clerk

\_\_\_\_\_  
Date

Town Seal

**\*\*THE APPLICANT IS REMINDED OF THEIR RESPONSIBILITY TO RECORD THIS  
DECISION AT THE REGISTRY OF DEEDS PER THE CERTIFICATE OF GRANTING.  
NO PERMITS SHALL ISSUE UNTIL THE PERMIT IS RECORDED. \*\***