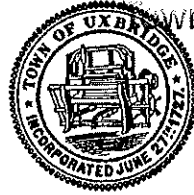


Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member



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TOWN OF UXBRIDGE ZONING BOARD OF APPEALS

MEETING MINUTES: Wednesday, November 7, 2018

Present: Rob Knapik, Chair, Members John Gniadek, Mark Kaferlein, and Thomas McNulty and Administrator Melissa Shelley

I CALL TO ORDER

It being approximately 6:00pm, the meeting being properly posted, duly called, and a quorum being present, the meeting was called to order by the Chair, who led the Pledge of Allegiance

II PUBLIC HEARINGS

1. **FY19-04: 66 Elm Street, Mark Lavalee, Owner/Applicant** is seeking front setback **VARIANCE** to allow the construction of a detached garage. The property is located in a **Residential C Zone**, is shown on the Town of Uxbridge Assessor's **Map 12C** and **Parcel 2654** and described in a deed recorded at the Worcester Registry of Deeds **Book 59168 Page 376**.

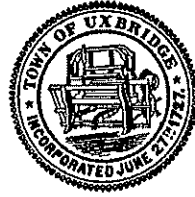
This hearing was continued from the October 3, 2018 meeting of the ZBA and Attorney Knapik provided the following recap for audience members. During the last meeting questions were raised regarding authority and ability to grant the relief requested, and the Board asked the Applicant to consider the 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 the Applicant to consider whether or not there may be mitigation measures that might be responsive to the abutter concerns.

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 it based on the Application presented, it would be difficult in this case to meet the standard for the grant of a variance. Town Council also opined that if the garage were attached to the house that this could be allowed on a special permit and a lesser burden that the proposed garage, being an expansion of a conforming structure on a pre-existing non-conforming use, if found not to be substantially more detrimental the neighborhood.

Byron Andrews, Andrews Survey and Engineering attended on behalf of the applicant. Mr Andrews said he reviewed MGL 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.

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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 Mr. Gniadek and passed unanimously by vote of 3-0-0.

2. **FY19-06: 83 Douglas Street, Cora Lane Group, Applicant** is seeking a **SPECIAL PERMIT** pursuant to Sections 400-12 (E) & 400-12 (F) for the reconstruction of a single-family home that was a pre-existing, non-conforming structure prior to its demolition circa 2014. The exact setback non-conformities are unknown and the reconstruction may cause an increase to one or more setbacks. In addition, the existing lot area and frontage are also non-conforming as its total area is 12,969 sq. ft. where 20,000 sq. ft. is required and total frontage is 88.53 ft. where 125 ft. is required. The property is located in a **Residential A Zone**, is shown on the Town of Uxbridge Assessor's **Map 18B** and **Parcel 4618** and described in a deed recorded at the Worcester Registry of Deeds **Book 46984 Page 324**.

Byron Andrews, Andrews Survey and Engineering, represented the Applicant during the hearing. He described his client's request for a Special Permit to re-construct a single-family residence on the property. Based on information obtained from GIS data, Mr. Andrews estimated the proposed building will either be the same or less non-conforming in terms dimensional requirements as the prior structure. He also stated that the dimensions of the proposed structure are approximately 36' wide x 70' long. Stephen Benoit, the property developer, also attended the meeting and said the proposed residence will be a single family, single story, ranch style house.

Larry Lench, Uxbridge Building Inspector explained he would have been able to issue a building permit had it been within a two-year timeframe of the demolition that occurred around 2014.

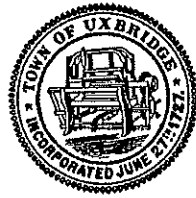
Mr. Knapik referred to the Uxbridge Zoning Bylaw Section 400-12 E & F which outlines the Board's authority and standards to be met:

E. (Nonconforming Single and Two-Family Residential Structures)

Nonconforming single-family residential structures may be reconstructed, extended, altered or structurally changed upon a determination by the Building Inspector that such proposed reconstruction, extension, alteration or change does not increase the nonconforming nature of said structure.

In the event that the Building Inspector determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration or change, the

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Board of Appeals may, by special permit, allow such reconstruction, extension, alteration or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

F. (Abandonment or Non-Use)

A nonconforming use or structure which has been abandoned or not used for a period of two (2) years shall lose its protected status and be subject to all of the provisions of these Bylaws; provided, however, that, by issuance of a special permit, the Board of Appeals may reestablish such nonconforming use or structure where such reestablishment shall not cause substantial detriment to the community.

During discussions, Members reviewed aerial photographs of the Property and surrounding area and discussed conditions of the prior house on the Property that may have led to the demolition and period lapse. No members of the public commented on the hearing.

During deliberations, there was consensus among the Board that they had the authority to issue a Special Permit and that the proposed structure was not substantially more detrimental than the existing structure was to the neighborhood. Board members also said they saw the proposed change as an improvement over past and current condition of the lot.

MOTION / VOTE:

Mr. Kaferlein made a **MOTION** to close the Public Hearing FY 19-06 for 83 Douglas Street. **MOTION SECONDED** by Mr. Gniadek and passed unanimously by vote of 3-0-0.

Mr. Gniadek made a **MOTION** that the Zoning Board of Appeals grant a Special Permit to reconstruct a single-family dwelling, with the following conditions, upon the finding that the proposed dwelling is not substantially more detrimental to the neighborhood than the previous structure:

CONDITIONS

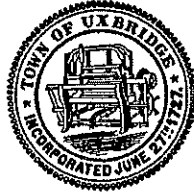
Construction related to the project shall only occur Weekdays from 7:00am – 5:00pm and Saturday from 7:00am – 2:00pm. Construction is not allowed to occur on Sundays or Holidays
The building shall be a single-family dwelling constructed as outlined in the submitted application and plans

MOTION SECONDED by Kaferlein and passed unanimously by vote of 3-0-0.

3. **FY19-07: 14 C Street, Kristina Dean, Owner/Applicant** is seeking a **SPECIAL PERMIT OR VARIANCE** to allow for the construction of an addition outside the required front setback and right side setback on a property with pre-existing non-conformities to the lot & structure. Specifically, the applicant is requesting the proposed addition to be set back 24.01 ft. from the front and 14.25 ft. from the right side. The property is located in a **Residential A Zone**, is shown on the Town of Uxbridge Assessor's **Map 12** and **Parcel 3424** and described in a deed recorded at the Worcester Registry of Deeds **Book 21343 Page 13**.

Zach Gless, Existing Grade Inc., represented the Applicant during the hearing. He explained the site is a pre-existing non-conforming lot both in area and in frontage and the structure itself is also pre-existing non-conforming by not meeting existing front and side yard setbacks. He reviewed the plan and described the proposal to put a 14' two-story addition on to the side of the house, which would reduce the

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side yard setback to 14.25 ft. and the front yard setback to 24.01 ft. Mr. Gless said he believed the appropriate relief to request is for a Special Permit as they are extending an existing single-family structure but left it open for discussion and the Board's recommendation.

The Building Inspector, Larry Lench, attended the hearing and provided comment. He stated he visited the area the location is at the end of a dead-end street and the lot is fenced in. He said he thought the Application, as proposed, met the criteria for a special permit as outlined on pg. 64 of the Uxbridge Zoning Bylaws. No members of the public provided comment during the public hearing.

During discussions, the Board agreed that relief in the form of a Special Permit is appropriate because it is a non-conforming lot and non-conforming structure and it relates to Section 400-12 Nonconforming Uses & Structures E. of the Uxbridge Zoning Bylaws. Mr. Knapik summarized that section by saying that non-conforming single-family residential structures may be extended upon a determination of the Building Inspector that the proposed activities do not increase the non-conformity. Because the proposed activities do increase the non-conformity, the Zoning Bylaw provides that the Board may by Special Permit allow such extension where it determines that the proposed extension is not substantially more detrimental than the existing non-conforming structure. The Board reviewed aerial images of the area and the abutting parcel which they observed to be an undeveloped land-locked lot. During deliberations all Board members agreed the proposed extension of the house will not be substantially more detrimental to the neighborhood than the existing structure. The Board found that the proposal met the standard as outlined in the Uxbridge Zoning Bylaw Section 400-12 E.

MOTION / VOTE:

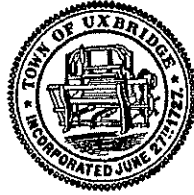
Mr. McNulty made a **MOTION** to close the Public Hearing FY 19-07 for 14 C Street. **MOTION SECONDED** by Mr. Gniadek and passed unanimously by vote of 3-0-0.

Mr. McNulty made a **MOTION** that the Zoning Board of Appeals approve a Special Permit to construct an addition as outlined on the plan submitted. **MOTION SECONDED** by McNulty and passed unanimously by vote of 3-0-0.

4. **FY19-08: 69 and 73 Lackey Dam Road, Raymond Lebouef, Owner/Applicant**, is seeking a **Variance** to several dimensional requirements. The pre-existing non-conforming property has two single-family dwellings on it that pre-date the zoning bylaw. The owner proposes to divide the property along the existing fence line, more or less. The property is located in an **Agricultural Zone**, is shown on the Town of Uxbridge Assessor's **Map 9** and **Parcel 785** and **787** and described in a deed recorded at the Worcester Registry of Deeds **Book 39743 Page 28**.

Attorney Mark Wickstrom, Wickstrom Morse LLP, attended on behalf of the Applicant. Attorney Wickstrom informed the Board that the reason for the Applicant is because the owner of the Property and of Lot 1 and Lot 2 as shown on the Variance Request is selling Lot 2 to his tenant, and that during a title search of the Property, it was discovered there was no plan of record that depicted the Property as two separate lots, and therefore some approval from both the Planning Board and the Zoning Board of Appeals would be required. The houses situated on each of Lot 1 and Lot 2 were built in 1950, which predates the Uxbridge Zoning Bylaw, and have existed on the same lot since. Over the years there have been some family transfers that were not recorded. Attorney Wickstrom emphasized there are no other changes being proposed, only the change of ownership and it should be seamless from the neighborhood perspective.

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Attorney Wickstrom explained that until recently in Massachusetts it appeared clear in this type of situation that pursuant to the relevant provision of the Subdivision Control Law, the Planning Board might allow a property owner to draw a dividing line between two structures that preexist the zoning bylaw. However due to a new case that was decided in approximately 2015, the Court advised that it is also necessary to obtain any necessary variances from the Zoning Board of Appeals where dimensional requirements are not met, making the a two-step, rather than a single-step, process. The Applicant has already obtained approval from the Uxbridge Planning Board for the division of the lots, which follow an existing fence line that has been in existence for some time. The dimensional deficiencies are set forth on the Variance Request Plan and the Application. It was also noted that the Town Assessor presently considers the Property as two assessed taxable parcels. Attorney Wickstrom described the detriment the Applicant would face without the variance as the inability to sell one of the houses. Attorney Wickstrom argued there is a hardship related to the structures themselves as opposed to the topography of the lot. It is "odd" that there are 2 structures on one lot and the division would alleviate that situation.

Mr. Knapik concurred with Attorney Wickstrom's explanation of the related portion of the Subdivision Control Law that provides generally that an owner of property on which is situated 2 houses that pre-date the zoning bylaw, then the property owner has the right to divide the property into two separate lots. Mr. Knapik mentioned the 2015 Court decision, which provides that even though such property may be divided pursuant to the Subdivision Control Law, it remained necessary to obtain a Variance for any dimensional requirements that are not met.

Larry Lench, Uxbridge Building Inspector, noted that division of the Property and the Application is consistent with Uxbridge Zoning Bylaw Section 400-13, B, 2 that provides that only one dwelling and private garage shall be erected or maintained on a single lot in any zone or district. No members of the public attended the hearing or provided comment.

During deliberations, Board members agreed that the Application satisfied the requirement that the standard for the grant of the variance is met.

MOTION / VOTE:

Mr. McNulty made a **MOTION** to close the Public Hearing FY 19-08 for 69 & 73 Lackey Dam Road. **MOTION SECONDED** by Mr. Kaferlein and passed unanimously by vote of 3-0-0.

Mr. McNulty made a **MOTION** that the Zoning Board of Appeals grant the Variances requested by the Applicant as set forth in the application for area frontage and certain setback requirements. **MOTION SECONDED** by Kaferlein and passed unanimously by vote of 3-0-0.

III MINUTES/MAIL/INVOICES

1. October 3, 2018 Meeting Minutes

MOTION: Mr. McNulty moved to approve the October 3, 2018 ZBA Meeting Minutes with the amendment noted during the meeting. Mr. Gniadek seconded, and the motion passed by vote of 3-0-0.

IV ANY OTHER BUSINESS, which may lawfully come before the Board

1. Review and discuss proposed ZBA rules and regulations – passed over discussion for further review.

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**TOWN OF UXBRIDGE
ZONING BOARD OF APPEALS**

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V ADJOURNMENT: NEXT ZBA MEETING, Wednesday, December 5, 2018

Motion: Mr. Gniadek moved to adjourn the December 5th meeting of the ZBA. Mr. Kaferlein seconded and the motion passed by vote of 4-0-0.

SIGNATURES:



Rob Knapik, Member

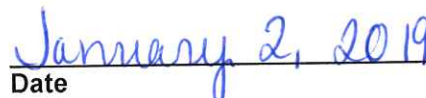
Mark Kaferlein, Member



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Thomas McNulty, Associate Member



Date