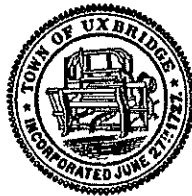


Rob Knapik, Member
John Gniadek, Member
Mark Kaferlein, Member
Thomas McNulty, Associate Member



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TOWN OF UXBRIDGE ZONING BOARD OF APPEALS

MEETING MINUTES: Wednesday, July 10, 2019

REC'D UXB TOWN CLERK
2019 SEP 5 AM 8:10

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

Absent:

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 ANY OTHER BUSINESS, which may lawfully come before the Board

1. ZBA Annual Re-organization

- Mr. Gniadek nominated Attorney Knapik as Chair of the Uxbridge Zoning Board of Appeals. Mr. Kaferlein seconded, and the nomination passed by vote of 4-0-0.
- Attorney Knapik nominated Mr. Gniadek as Vice Chair of the Uxbridge Zoning Board of Appeals. Mr. Kaferlein seconded and the nomination passed by vote of 4-0-0.
- Attorney Knapik nominated Mr. Kaferlein as Clerk of the Uxbridge Zoning Board of Appeals. Mr. Gniadek seconded, and the nomination passed by vote of 4-0-0.

III PUBLIC HEARINGS

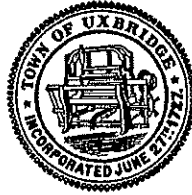
1. **FY19-13: 66 Elm Street, Mark & TJ Lavallee, Owners/Applicant** is seeking a **SPECIAL PERMIT** to construct a 25'x25' attached garage and patio pursuant to Uxbridge Zoning Bylaws Section 400-12 (E) and MGL Chapter 40A Section 6. The applicants also seek a **DETERMINATION** that the proposed modification is not more detrimental than the existing non-conforming structure to the neighborhood. The property 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**. The property is located in the **Residential C Zone**.

Discussion: Attorney Knapik provided an overview of the open issues that led to the continuing of the hearing during the June ZBA meeting: (i) whether or not the garage, as shown on the site plan, is attached and (ii) whether the ZBA can authorize the construction of the garage by either special permit or a variance. He also acknowledged the supporting materials submitted by Attorney Mark Wickstrom on behalf of the applicant and Attorney Henry Lane on behalf of the abutter opposing the project.

Attorney Mark Wickstrom attended on behalf of the applicant. He described the proposed addition as having an attached foundation and metal gate/arbor structure connecting the proposed structure to the current structure. He also stated that the applicant would consider a condition of a formal breezeway if it were deemed necessary by the Board. Attorney Wickstrom explained that precedent in Uxbridge has been that a connection by foundation and even retaining walls connecting foundations was an accepted practice. He requested the Board consider this and any changes to policy be prospective rather than apply to this pending application.

Mr. Wickstrom reviewed the key points of his memorandum and requested the Board make the following factual findings and therefore grant the petition to construct the proposed attached garage:

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1. The proposed extension of the pre-existing nonconforming structure on the pre-existing nonconforming lot is *"not substantially more detrimental than the existing nonconforming structure to the neighborhood"*.
2. The current petition *"has specific and material changes in the conditions upon which a previous petition FY19-04 for a variance for a detached garage was decided unfavorably"*. The previous proposed garaged was also positioned closer to the side lot line than the current proposal.

The Board discussed the setbacks and whether a garage could be considered an accessory use with the Building Inspector.

Attorney Henry Lane, attended on behalf of Sally Staples, an abutter to the property. He argued the Bylaw could not be interpreted to suggest an attached garage is an accessory use and therefore would not subject to those setback requirements. He further argued adding a garage would introduce a new non-conformity because current building complies with the side setback and that would require a Variance.

Attorney Knapik pointed out that the Building Inspector makes the initial determination of whether the proposal increases the *nature* of the non-conformity and related case law seems to indicate that if the nature of the non-conformity is setbacks than any increase in setback may be allowed by Special Permit on a Section 6 finding. After discussion, everyone agreed the case law is not perfectly clear and it is up to the Board to decide.

Attorney Lane argued that the proposed garage should not be considered an attached because it has completely separate walls, a separate foundation and is not going to touch the main house at any point. In response to the precedent argument, Attorney Lane said several cases indicate that just because Zoning Boards make a mistake they do not have to continue to make that same mistake.

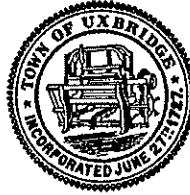
An Amended Agreement for Judgment between regarding a lawsuit between a developer and the town was reviewed and discussed because it contains a reasonable interpretation of the bylaw and the Building Inspector confirmed it has been followed for some time. It concluded that a short retaining wall connection between two buildings did result in one structure based on our Bylaw's definitions of a Building and a Structure.

The Board offered the opportunity to Attorney Lane and his client to present any conditions or mitigating measures for the Board to consider. Attorney Lane indicated that this was discussed with Attorney Wickstrom but unfortunately they were unable to come up with anything.

Christine & Sally Staples, 72 Elm Street, both spoke and expressed the following concerns for the proposed project: (i) a steel garage that close to their house will decrease their property value, (ii) the existing house has an attached 2-car garage, (iii) it does not fit the neighborhood character, (iv) the proposed structure should not be considered attached because the portion of the house where it would meet doesn't have a foundation.

Mr. Wickstrom clarified the existing garage was built in the 1950's and not big enough for two modern automobiles.

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Motion I: Mr. Gniadek made a motion to close the Public Hearing FY 19-13 for 66 Elm Street. Motion seconded by Mr. Kaferlein passed unanimously by vote of 4-0-0.

Board Deliberations: Members agreed that this is complicated and related case law is difficult to interpret. They also agreed on the Board's role was to determine (i) whether the garage is attached and (ii) is if they determine it is attached does the proposal increase the non-conforming nature of the structure. Mr. Kaferlein said, in his opinion, the garage is not connected and it would take a foundation, roof and continuous roofline for him to consider it such. Mr. McNulty agreed, as proposed, it was not attached based on his opinion and experience. He also indicated that Zoning Boards are entitled to make reasonable interpretations of the bylaw at a given point in time and are not necessarily bound by past decisions. Attorney Knapik explained why he concluded that the garage is attached and did not think it would be substantially detrimental to the neighborhood.

Motion II: Attorney Knapik made a motion to find the garage is attached to the structure. Motion was not seconded and there was no vote.

Motion III: Mr. McNulty made a motion to find the proposed garage is not attached to the structure. Motion seconded by Mr. Kaferlein passed unanimously by vote of 3-0-0.

Motion IV: Mr. Kaferlein made a motion to deny the Special Permit petition FY19-13 for 66 Elm Street based on the finding that the garage is not attached. Motion seconded by Mr. McNulty passed unanimously by vote of 3-0-0.

Discussion: Members agreed the basis of the denial was because the Board was without the authority to grant a Special Permit under the Uxbridge Zoning Bylaw §400-12 (E) because a they were unable to make the finding that the garage was attached and "detached" garage is not an extension of the pre-existing nonconforming use.

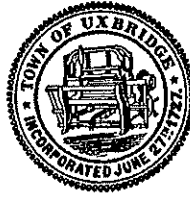
2. **FY17-29-MOD: 30 Monahan Drive, Peterson Pereira, All for One Inc., Owner/Applicant**, is seeking a **MODIFICATION** to his **SPECIAL PERMIT** for a Class II Auto Dealer License to increase the number of vehicles allowed on the site. The property is shown on the Town of Uxbridge Assessor's Map **51** Parcel **2755** and described in a deed recorded at the Worcester Registry of Deeds Book **57224** Page **342**. The property is located in the **Business Zone**.

Discussion: The applicant has hired Andrews Survey and Engineering to develop a parking plan which will not be complete until the end of July and therefore has requested to continue the public hearing.

Motion: Mr. Gniadek moved to continue FY17-29-MOD 30 Monahan Drive to the September 4, 2019 meeting of the Zoning Board of Appeals. Mr. Kaferlein seconded, and the motion passed by vote of 3-0-0.

3. **FY19-12-MOD: 151 North Main Street, Steven P. Lobisser, Applicant**, is seeking a **MODIFICATION** to his **SPECIAL PERMIT** FY19-12 to allow for an additional pre-existing, non-conforming, personal service use of one (1) barber chair in partitioned-off area inside the laundromat. The property is shown on the Town of Uxbridge Assessor's Map **18A** Parcel **2176** and described in a deed recorded at the Worcester Registry of Deeds Book **54726** Page **224**. The property is located in a **Residential A Zone**.

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Discussion: The applicant advised the Board 7/8/19 that he will not be moving forward with his business and requested to withdraw his application.

Motion: Mr. McNulty moved to withdraw FY1-12-MOD for 151 N. Main Street without prejudice. Mr. Kaferlein seconded, and the motion passed by vote of 4-0-0.

4. **FY20-01: 20 Glen Street, Outlaw Two, LLC, Tony Brookhouse, Owner/Applicant**, is seeking a **VARIANCE** of twelve feet (12') to the rear setback requirement for the existing deck attached to the single-family dwelling. The property is shown on the Town of Uxbridge Assessor's Map **36** Parcel **4127** and described in a deed recorded at the Worcester Registry of Deeds Book **59133** Page **289**. The property is located in the **Residential C Zone**.

Discussion: Steve O'Connell, of Andrews Survey and Engineering, represented the applicant during the public hearing. The dwelling was constructed approximately 4 months ago and during the final inspection to obtain an Occupancy Certificate, it was discovered by the Uxbridge Building Inspector that a 12'x20' deck was outside the rear setback requirement. Mr. O'Connell explained this is the last house constructed in a subdivision that approved in the 1990's and completed approximately 10 years ago. He stated it was a challenging property to develop that required permitting from the Board of Health and the Conservation Commission due to wetlands. He claimed that owing to the hydric soil conditions on the site, there was only a small footprint where the dwelling could be placed without much flexibility and that it was not unreasonable to have a modest deck off the back of the house with a sliding door in the kitchen.

Mr. Lench attended at the hearing and confirmed the wetland conditions on the site. He also said the lot is densely wooded and the dwelling is not visible to abutting properties. He explained that the plans submitted with the building permit application showed the deck placed on the left side of the house inside the setbacks. It was his understanding that either the builder or the homeowner saw an opportunity for a daylight basement with patio on the left side so a "field adjustment" was made to move the deck to the rear of the house. Mr. O'Connell added that site grading also contributed to the decision. No abutters attended the hearing.

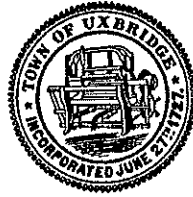
During deliberations the Chair confirmed the Uxbridge Zoning Bylaw §400-49 authorizes the board to hear and decide on petitions for Variances as set forth in M.G.L c. 40A §10. Members agreed that soil conditions and topography of the lot resulted in a hardship and options were limited. They also agreed that granting the relief requested, as proposed, would not be detrimental to the public and does not derogate from the intent of the bylaw.

Motion: Mr. Gniadek made a motion to close the Public Hearing for FY 20-01 for 20 Glen Street. Motion seconded by Mr. Kaferlein passed unanimously by vote of 3-0-0.

Motion: Mr. Gniadek made a motion that the Zoning Board of Appeals **GRANT** the **VARIANCE** for relief from the rear setback requirement from forty feet (40') to twenty-eight feet (28') as proposed in application FY20-01 for 20 Glen Street, based upon a finding that the soil conditions and topography of the lot are unique and result in a hardship. Motion seconded by Mr. Kaferlein passed unanimously by **VOTE** of 3-0-0.

5. **FY20-02: 688 Aldrich Street, Francis Sartain Jr. and Dean Ann Sartain, Owners, and Creative Carpentry and Construction Corp, Applicant** are seeking a **VARIANCE** or a **SPECIAL PERMIT** to

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construct an attached garage with a portion being inside the required thirty feet (30') side setback. The property is shown on the Town of Uxbridge Assessor's Map **48** Parcel **3527** and described in a deed recorded at the Worcester Registry of Deeds Book **8291** Page **74**. The property is located in the **Agricultural Zone**.

Discussion: Ryan Beaupre, Creative Carpentry and Construction Corporation, represented the property owners during the hearing. The proposed 28' x 26' two-bay garage is to be attached to the dwelling via a 10' x 13' mudroom. Mr. Beaupre explained the location was chosen and garage was positioned to fit at the end of an existing driveway on the property. He further described the existing driveway having a very steep incline that includes a hard-left turn and a slight bend to the right where it ends on a level area. Mr. Beaupre stated he evaluated options to keep the garage entirely within setbacks but it would have required a completely different design (vehicles entering from the side) that would have resulted in much more expensive project with tree removal and additional grading. The proposed garage and mudroom will include vinyl and cedar shake siding to match the house. No abutters attended the hearing or provided comment.

Board members agreed, because the existing structure conforms to the dimensional requirements set forth in the Uxbridge Zoning Bylaws, the construction of the attached garage can only be authorized with a Variance if it meets criteria outlined in M.G.L. Chapter 40A §10. They also agreed that they heard testimony that there are topographical constraints and issues that dictate the location of the garage and that granting the relief requested, as proposed, would not be detrimental to the public and does not derogate from the intent of the bylaw.

Motion: Mr. McNulty made a motion to close the Public Hearing for FY 20-02 for 688 Aldrich Street. Motion seconded by Mr. Gniadek passed unanimously by vote of 3-0-0.

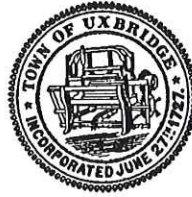
Motion: Mr. McNulty made a motion that the Zoning Board of Appeals grant the Variance for the construction of the garage as stated in the plans for FY20-02 for 688 Aldrich Street based on the finding that the unique topography of the lot results in a hardship. Motion seconded by Mr. Gniadek and the motion passed unanimously by **VOTE** of 3-0-0.

6. **FY20-03: 27 Lake Street, Lawrence Milo, Jr. and Hsiu-Min Milo, Owners and Merit Management LLC, Applicant** are seeking a **VARIANCE** for the dimensional requirements needed for a three-unit Apartment House. For three (3) proposed units, 36,000 sq. ft. of lot area is required where the applicant currently has 13, 911± sq. ft. They are also seeking a **DETERMINATION/SPECIAL PERMIT** to construct an addition to an existing non-conforming residential structure per Zoning Bylaw Section 400-12 (E). The property is shown on the Town of Uxbridge Assessor's Map **12A** Parcel **0516** and described in a deed recorded at the Worcester Registry of Deeds Book **48454** Page **169**. The property is located in the **Residential A Zone**.

Discussion: The applicant formally requested to withdraw the application without prejudice on 7/9/2019.

Motion: Mr. Gniadek moved to grant the request to withdraw the application FY20-03 for 27 Lake Street without prejudice. Mr. Kaferlein seconded and the motion passed by vote of 4-0-0.

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IV MINUTES/MAIL/INVOICES

1. April 3, 2019 Executive Session and June 5, 2019 Meeting Minutes Review

Motion: Mr. McNulty moved to approve the April 3, 2019 Executive Session ZBA meeting minutes as written. Mr. Kaferlein seconded, and the motion passed by vote of 4-0-0.

Motion: Mr. McNulty moved to approve the June 5, 2019 ZBA meeting minutes as written. Mr. seconded, Kaferlein seconded, and the motion passed by vote of 4-0-0.

V ADJOURNMENT: NEXT ZBA MEETING, Wednesday, August 7, 2019

Motion: Mr. McNulty moved adjourn the July 10th meeting of the ZBA. Mr. Kaferlein seconded, and the motion passed by vote of 4-0-0.

Rob Knapik, Member

SIGNATURES:

John Gniadek, Member

Thomas McNulty, Associate Member

Mark Kaferlein, Member

September 4, 2019
Date