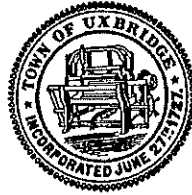


Rob Knapik, Chairman
Thomas McNulty, Member
Jim Blackburn, Associate Member



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**TOWN OF UXBRIDGE
ZONING BOARD OF APPEALS**

25013 UXB TOWN CLERK
2022 NOV 3 AM 10:07

MEETING MINUTES: Wednesday, October 5, 2022

Present: Rob Knapik, Jim Blackburn, Thomas McNulty and Administrator Melissa Shelley

CALL TO ORDER:

It being approximately 6:00 pm, the meeting being properly posted, duly called, and a quorum being present, the meeting was called to order by the Chairperson.

PUBLIC HEARINGS:

1. **FY23-02: 376 Hartford Avenue East** the Applicant, Jane White, is **APPEALING** a determination of the Building Inspector to allow for construction of a new duplex dwelling prior to the demolition of the existing primary dwelling on the property. The property is located in the **Residential B Zoning District**, shown on the Town of Uxbridge Assessor's **Map 07 Parcel 2978** and described in a deed recorded at the Worcester Registry of Deeds in **Book 65173 on Page 22**.

The property owners Jane White and Mark Bell attended the public hearing. Mr. Bell stated that he and his mother Jane White approached the Uxbridge Building Inspector during 2020 for guidance on replacing the primary residence with a newly constructed duplex on the property. They explained Ms. White's daughter would like to occupy the existing residence until the duplex is constructed at which time Ms. White and her daughter would move into the new duplex and tear down the existing dwelling. They were informed that this was permissible thorough the building and demolition permit process.

After securing a contractor, which took more time than usual due to the pandemic, an application for a building permit was filed by their contractor on August 2, 2022. It was denied by the town's Interim Building Inspector on August 4, 2020 for noncompliance with the Uxbridge Zoning Bylaw Article IV, Section 400-13 which states only one dwelling and private garage shall be erected or maintained on a lot in any residential district. The denial stated Ms. White could appeal the decision to the Zoning Board of Appeals.

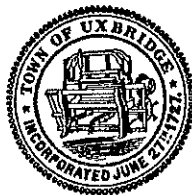
Jay Talerman, Uxbridge Town Counsel, attended the meeting at the request of the Zoning Board Chairperson to advise on the authority of the Zoning Board has to grant the relief requested. He explained the Board essentially acts as the Building Inspector but with the ability to impose conditions which the Building Inspector does not. Mr. Talerman said the Board's decision takes on the character of a Special Permit in that the conditions are enforceable. He offered the example of the Board partially upholding, partially reversing the determination of the Building Inspector provided that the Applicant be constrained to comply with a set of conditions such as no occupancy permit shall be issued for the new unit until the original unit is demolished with a specified timeframe.

Board members reviewed the concern being a potential cost to the town to enforce the Bylaw if the Applicant would decide not to take down the existing dwelling. They agreed the Applicant's request appeared to be altruistic and not any artifice or effort to circumvent the bylaw. There was discussion with the Applicant regarding fair and reasonable timeframes for construction of the new structure and the demolition of the existing dwelling. It was also explained that the occupancy permit, won't be given until such time as the other building is torn down, and that if neither are requested after completion of the building, then the new construction would have to come down. The Applicants were amenable to the conditions discussed.

There were no comments from members of the public.

Motion: Mr. McNulty made a motion to close the Public Hearing FY 23-02 for 376 Hartford Avenue East. Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

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Motion: Mr. McNulty made a motion to overturn the determination of the Building Inspector subject to the following conditions:

- 1) Proposed construction to be completed within eighteen months of issuance of the building permit
- 2) The applicant will submit to routine inspections of the property
- 3) The occupancy permit for the proposed dwelling shall not be issued until the existing dwelling is demolished pursuant to a valid demolition permit
- 4) Construction of the proposed dwelling is not completed within eighteen months from the date of issuance of the building permit, as may be extended by the board, then the applicant will be required to demolish any of the new construction

Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

2. **FY23-03: 420 West Street** the Applicant, A. Eli Leino, Trustee, is seeking a **SPECIAL PERMIT** pursuant to Article II, Section 400-12 C (non-conforming structures) of the Uxbridge Zoning Bylaw, to construct a small addition on the easterly side of the existing building to contain plumbing infrastructure related to a future sprinkler system. The property is located in the **Industrial B Zoning District**, shown on the Town of Uxbridge Assessor's **Map 33 Parcel 0168** and described in a deed recorded at the Worcester Registry of Deeds in **Book 66869 on Page 185**.

Presentation: Eli Leino the Applicant and Elijah Nyberg, Project Engineer, Allen Engineering attended the meeting. Mr. Leino, explained the request to add a reasonably sized addition within the setbacks to a pre-existing non-conforming structure. He said the addition is needed to improve safety by housing the sprinkler system apparatus. He noted that there will be very little visual impact for the public because you can only see the front facade of this building from West Street (due to the topography in the area) and the addition is toward the back of the parcel.

The ZBA Chairperson reviewed the applicable sections of the Uxbridge Zoning Bylaw – Section 400-12 Non-Conforming Uses and Structures and 400-50 B. Special Permit Criteria. It was verified that the ZBA can authorize the reconstruction extension or change of a non-conforming structure only if it determines that such change or extension not be substantially more detrimental than the existing non-conforming structure.

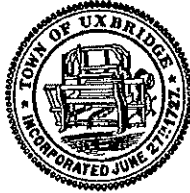
Mr. Blackburn asked what is going into the new space and what is the use for the entire building. Mr. Leino explained that the property was recently purchased and previously permitted for cannabis production. He did not have the details and requested the Board continue so he could gather more detail.

Motion: Mr. McNulty made a motion to continue the public hearing for 420 West Street to the next meeting of the ZBA on November 2, 2022. Mr. Blackburn seconded, and the motion passed unanimously by vote of 3-0-0.

3. **FY23-05: 680 Douglas Street, Luke Malo, APPLICANT** is seeking a **SPECIAL PERMIT** pursuant to a Class II Automobile Dealer License. The property is shown on the Town of Uxbridge Assessor's **Map 27 Parcel 3255** and described in a deed recorded at the Worcester Registry of Deeds **Book 46080 Page 290**. The property is located in the **Industrial B Zoning District**.

Presentation: Luke Malo, the Applicant, attended the public hearing. Mr. Malo operates a repair shop, Vanworx, at the location and is seeking a Class II Dealer License to provide him with the ability to sell vehicles. He anticipated that he would only have one or two vehicles for sale at any given time.

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Mr. Knapik reviewed the Boards authority to grant the relief as identified in the Uxbridge Zoning Bylaw Appendix A. Table of Use Regulations, Commercial Uses: Garaging and Maintaining more than three (3) automobiles of the passenger type.

Members discussed potential conditions with the applicant such as hours of operation and number of vehicles out for display and total of number of vehicles that can safely be kept on site at any given time. Mr. Malo said his intent is to have the ability to sell cars he may be working on. He estimated only having one or two for sale and does not plan on having vehicles displayed out front.

Members applied the project to the criteria outlined in Section 400-50 (B) of the Uxbridge Zoning Bylaws:

1. Positive impact on social, economic or community needs in that there is a need for competition
2. Little to no impact on traffic flow and safety, including parking, and loading due to the location and size of the business
3. The utilities and other public services are adequate because this business should have a low impact
4. This business is suitable for neighborhood character and social structures because the it is in a business zoned district
5. There should be no impact on natural environment
6. The fiscal impact including impact on town services, tax base and employment appears to be a net benefit

There were no comments from members of the public.

Motion: Mr. McNulty made a motion to close the Public Hearing FY 23-05 for 680 Douglas Street. Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

Motion: Mr. McNulty made a **motion to grant the special permit** pursuant to a Class II Dealer License located at 680 Douglas Street on a finding that the special permit criteria has been met. The special permit is subject to the following **conditions**:

1. Hours of operation permitted are Monday through Saturday 7:00am – 6:00pm
2. No more than 3 vehicles displayed for sale in the front of the building at any given time
3. No more than 25 total vehicles permitted on the site at any given time
4. Adequate access is available for emergency response vehicles at all times

Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

4. **FY23-04: 306 Hazel Street, Richardson-North Corporation, Owner is seeking a VARIANCE** to reduce the frontage dimensional requirement from three-hundred feet (300') to zero feet (0'). Access to the property is provided by a twenty-foot (20') right-of-way driveway easement. The property is shown on the Town of Uxbridge Assessor's Map 23 Parcel 545 and described in a deed recorded at the Worcester Registry of Deeds Book 18429 Page 144. The property is located in the **Agricultural Zoning District**.

Presentation: Tracy Sharkey, Sharkey Realty Services, attended the public hearing on behalf of the Applicant. Ms. Sharkey provided background information on the property explaining the Subject parcel is remainder land from one large parcel and it was subject to an eminent domain taking for a public way. The Applicant was granted a Special Permit in January 2000 to allow the lot to be built upon with no frontage upon acquisition of a driveway/utility easement. She

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provided the recorded driveway easement and permits for utilities to support the position that the Special Permit had been exercised. She also stated that this parcel has been taxed as a "buildable lot" since 2000. She proposed that the desired relief may be granted without detriment to the public good as the parcel contains twice the minimum lot area required for a building lot and fits with the neighborhood characteristics. She said the special circumstances related to the land is that it was subject to an eminent domain taking, incorrectly shown on all town maps and has a 20' driveway easement for access.

In 2019, after being denied a Building Permit the Applicant appealed to the Zoning Board of Appeals for relief in the form of a Variance. The request was denied and appealed by the Applicant in Land Court and dismissed July 1, 2020.

Members discussed their ability to proceed independent of the past petitions with Town Counsel during the hearing and confirmed that they may. The Board also verified with Town Counsel that there is nothing that prohibits them from varying the frontage down to zero, provided that they agree the applicant has met the standard and whether or not granting the variance is consistent with, or whether it derogates from the intent of the bylaw. Town Counsel said that would be incumbent upon Ms. Sharkey and her client to demonstrate how there's a unique soil conditions topography or shape of the property and that there's some hardship resulting from that uniqueness.

Abutter Comments: Charles Friis, 299 Hazel Street, provided some history of the parcel and asked the Board to consider upholding the prior decision and not to issue a Variance for the parcel. Mr. Friis is the owner of the property on which the driveway easement is held. He cited MGL Ch 41 Section 81 L re frontage requirements and Uxbridge Zoning Bylaw Retreat Lot requirements. He also expressed concerns for his liability. The chairperson asked Mr. Friis whether there were any conditions, meditation, or physical barrier, or the like, that you would consider mitigate the effect of this and Mr. Friis said there was not.

Motion: Mr. McNulty made a motion to close the Public Hearing FY 23-04 for 306 Hazel Street. Motion second by Mr. Blackburn passed unanimously by vote of 3-0-0.

Discussion: Members verified the long-term validity of the easement and discussed whether it is appropriately sized for all required access. They agreed frontage requirement laws were enacted to ensure every lot might be reached by agencies charged with protecting the health safety and welfare of the public. Members acknowledged that in order to grant a Variance, as defined in M.G.L. Chapter 40A, Section 10, their charge is to find that circumstances owing to the soil, shape, or topography of the land that resulted in a hardship and the relief granted cannot nullify or derogate from the intent of the Zoning Bylaw. They considered how to ensure the purpose of the bylaw is maintained if they grant the Variance and what conditions would be appropriate.

Motion: Mr. Knapik made a motion to grant the variance as requested for 306 Hazel Street on finding that there's a hardship, and that it wouldn't substantially derogate from the intent of the bylaw. Motion not seconded.

Motion: Motion seconded Mr. Blackburn made a motion to deny the variance as requested for 306 Hazel Street on a finding that the Applicant did not demonstrate a circumstance relating to the soil conditions, shape or topography leading to a hardship or sufficient evidence that the granting of a Variance in this instance would be in accord with the general intent of the Zoning Bylaw. Motion seconded by Mr. McNulty failed by vote of 2-1-0.

5. **FY23-06: 27 Forest Lane, Gary and Jessica Rea, APPLICANTS** are seeking a **SPECIAL PERMIT** to construct a private stable on the property in accordance with Appendix A, Table of Use Regulations, Uxbridge Zoning Bylaw. The property is shown on the Town of Uxbridge Assessor's Map 14 Parcel 3886 and described in a deed recorded at the Worcester Registry of Deeds Book 47513 Page 302. The property is located in the **Residential C Zoning District**.

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Jessica and Gary Rea, the property owners attended the public hearings on behalf of their petition. Mrs. Rea explained the structure is for her personal use to house and have the ability to ride her two horses on her own property. She provided a review of the site plans and the work proposed.

Discussion: Board members identified their authority to grant the relief is identified in Appendix A the Table of Use Regulations, Section D. Commercial Uses, Private Stable, nonprofit is allowed by Special Permit issued by the Zoning Board of Appeals. Members agreed that nonprofit in this instance means noncommercial not a nonprofit organization.

Board members reviewed potential conditions with the applicant related to the number of horses permitted and the stable not being used for commercial purposes. There were no comments from members of the public.

Members applied the following criteria outlined in Section 400-50 (B) of the Uxbridge Zoning Bylaws to the project as follows:

1. No impact on social, economic or community needs
2. No impact on traffic flow and safety, including parking, and loading
3. No impact the utilities and other public services
4. No impact neighborhood character and social structures due to the placement of the structure being
5. There should be no impact on natural environment
6. No impact on town services, tax base and employment

Motion: Mr. McNulty made a motion to close the Public Hearing FY 23-06 for 27 Forest Lane. Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

Motion: Mr. McNulty made a motion to grant the Special Permit as requested for 27 Forest Lane on a finding that the criteria has been met with the following conditions:

1. The stable & riding arena may not be used for commercial purposes
2. The total number of horses permitted is limited to six (6)

Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

ADMINISTRATIVE:

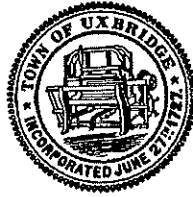
1. Meeting Minutes Review: 8/3/22
 - **Motion:** Mr. McNulty made a motion to approve the August 3, 2022 meeting minutes as written. Mr. Blackburn seconded, and the motion passed unanimously by vote of 3-0-0.
2. Zoning Bylaw Amendments
 - There was a brief discussion about the joint meetings with the Finance Committee/BOS and Planning Board public hearings on the Warrant Articles and the procedure for the upcoming Town Meeting.

ADJOURNMENT: Next Regularly Scheduled ZBA Meeting, Wednesday, November 2, 2022

Motion: Mr. McNulty made a motion to adjourn the October 5, 2022 meeting of the Zoning Board of Appeals. Mr. Blackburn seconded, and the motion passed unanimously by vote of 3-0-0.

Respectfully Submitted,
Melissa Shelley

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Motion: Mr. McNulty made a motion to close the Public Hearing FY 23-06 for 27 Forest Lane. Motion seconded by Mr. Blackburn passed unanimously by vote of 3-0-0.

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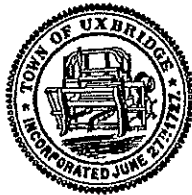
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**TOWN OF UXBRIDGE
ZONING BOARD OF APPEALS**

MEETING MINUTES: Wednesday, October 5, 2022

SIGNATURES:

Rob Knapik, Member

Thomas McNulty, Member

Jim Blackburn, Associate Member

November 2, 2022

Date