

Rob Knapik, Chairman
John Gniadek, Vice Chairman
Mark Kaferlein, Clerk
Thomas McNulty, Associate Member
Jim Blackburn, Associate Member



Uxbridge Town Hall
21 South Main Street, Room 205
Uxbridge, MA 01569
508-278-8600 x2019 p

TOWN OF UXBRIDGE ZONING BOARD OF APPEALS

REC'D UXB TOWN CLERK
2021 APR 26 AM 8:54

MEETING MINUTES: Wednesday, February 3, 2021

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

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 Chairman. He made the following statement to explain the purpose for the remote meeting: *Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Uxbridge Conservation Commission is being conducted via remote participation. Although, no in-person attendance of members of the public will be permitted, the Town of Uxbridge has made every effort to ensure the public can adequately access the proceedings in real time via technological means. This meeting is being streamed on Uxbridge Community Television and Zoom per the instructions on the agenda alternatively members of the public can call in by calling 301-715-8592 and using meeting i.d 861 620 3349. All motions will be voted on with roll call vote.*

Mr. Knapik informed the Board and members of the audience that he would be recusing himself from cases FY21-10 and FY21-11 in accordance with the conflict of interest law.

PUBLIC HEARINGS

1. **FY21-07: 191 Sutton Street, Lisa M. Hefron, Owner/Applicant**, is seeking a **VARIANCE** of the front yard setback requirement for detached garages and accessory uses from seventy-five feet (75') to ten feet (10') to construct a detached garage. The property is located in the **Residential C Zone** and shown on the Town of Uxbridge Assessor's Map 11, Parcel 1164 and described in a deed recorded at the Worcester Registry of Deeds in **Book 60340 and Page 114**.

Discussion: The Chairman summarized the action taken on the proposal to date. During the January meeting, the Board heard testimony from the applicant, reviewed the plans and also considered testimony from an abutter with concerns. The owners agreed to work with their engineer see what could be done to move the garage as far away from Sutton Street as possible. They downsized and repositioned the garage and provided a revised plan with the garage 20.1 feet from the right-of-way (31' from edge of pavement). Members conducted a site visit on 1/23/21 with the purpose of viewing the property.

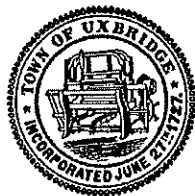
Members reviewed the variance standard, MGL 40A §10 - there has to be some unique circumstance that relates to the soil, shape or topography and that imposing the literal bylaw would create a hardship – and agreed the applicant has shown that the shape of the lot is unique due to the presence of the existing features including the septic system and the topography is unique due to the presence of ledge and boulders.

Owners Phil and Lisa Hefron and their representative John Federico, Guerrier and Halon, attended the meeting. Mr. Federico noted he was on site for the septic system soil testing and verified the presence of ledge. He also confirmed that, in the revised proposal, the closest corner of the structure will be 33' from the edge of pavement.

The Building Inspector attended and did not have any additional input. Board members did not have any additional concerns.

Doug Kenbeek, 190 Sutton Street asked for more detail about the proposed height and construction of the structure. Although, plans have not yet been finalized the Applicant estimated the main area to have 12' to 14' walls with a pitched roof and loft area for storage. The Building Inspector noted that the maximum height allowed is 35'. After discussion, the Applicant and Abutter agreed that 22' from the slab to the peak was acceptable. During this discussion it was also agreed that the garage may not be used as a commercial purpose or as a living space.

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Motion: Mr. McNulty made a motion to close the Public Hearing FY 21-07 for 191 Sutton Street. Motion seconded by Mr. Kaferlein passed unanimously by roll call vote of 3-0-0 (McNulty -aye, Kaferlein – aye, Knapik – aye).

Deliberations: Members acknowledged the efforts of the Applicant in revising plans and agreed, through evidence presented and the site inspection, that the proposal meets the standard on shape and topography and would not nullify the intent of the bylaw or be a detriment to the public good.

Motion: Mr. McNulty made a motion that the Zoning Board of Appeals grant the variance request FY21-07, 191 Sutton Street, to construct a detached garage no closer than 20.1' from Sutton Street on a finding that unique circumstances related to the shape and topography create a hardship and that a Variance may be granted without detriment to the public good and without nullifying or derogating from the purposes and intent of the Uxbridge Zoning Bylaw as long as it is constructed with the following condition:

1. The garage height may not exceed 22' from the slab to the peak of the structure.

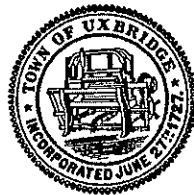
Motion seconded by Mr. Kaferlein passed unanimously by roll call vote of 3-0-0 (McNulty -aye, Kaferlein – aye, Knapik – aye).

2. **FY21-10: 35-37 Henry Street, Tariq Fayyad, Owner/Applicant, is APPEALING** the denial of a building permit for the construction of an additional residential unit, comprised of two stories with a four-bay garage on the first floor and the residential unit on the second. The applicant is also requesting a **SPECIAL PERMIT** for the proposed garage, if required, in accordance with the Uxbridge Zoning Bylaw, Appendix A. The property is located in the **Residential A Zone**, shown on the Town of Uxbridge Assessor's **Map 19 as Parcel 4256** and described in a deed recorded at the Worcester Registry of Deeds in **Book 63458 on Page 141**.

Presentation: Mark A. Kablack, Esq., M.A. Kablack and Associates, P.C. represented the applicant during the public hearing. Tariq Fayyad, the property owner was also in attendance and provided testimony. Mr. Kablack shared the property plans and architectural drawings and provided the following details:

- The site is 20,430 s.f. with an improved two-unit residential building that is currently rented.
- Mr. Fayyad acquired the property October 7, 2020 with the intent to construct an additional residential unit for his primary residence (a 2-story structure with a four-bay garage on the 1st floor and residence on the 2nd floor).
- The reason Mr. Fayyad purchased this property was because of the proximity to his infirmed father's residence on Hecla St. for whom he is a caregiver to and currently resides. This would provide him the opportunity to have his own place and but be close enough to still care for his father.
- His decision to purchase the property was in reliance upon the published Uxbridge Zoning Bylaw Appendix B Table of Dimensional Requirements. The Applicant calculated he would require 18,000 s.f. to achieve the dimensional standard for three residential units in a Residential A zoning district.
- Mr. Fayyad only learned there was a problem when applied for a Building Permit on November 2, 2020 to construct the residential unit and garage.
- The Building Inspector denied the application on November 16, 2020, citing minimum lot size requirements of MGL Chapter 40A, Section 6 (5,000 s.f) and that Appendix B of the Uxbridge Zoning Bylaw contained a typographical error for the minimum lot size required in the Residential A zoning district, stating the minimum lot size should have been 20,000 s.f. not 2,000 s.f – therefore requiring a total of 36,000 s.f.

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Mr. Kablack asked the ZBA for relief based on Mr. Fayyad's reliance on the Zoning Bylaw. He also pointed out that the Building Inspector's denial letter also references Appendix A of the Uxbridge Zoning Bylaw and states that garaging of more than 3 automobiles constitute a commercial use, requiring a Special Permit in Residential A Zoning District. He explained Mr. Fayyad's intent for the garage is an accessory to the proposed residential use and the cars stored in the garage will only be for his own personal use. He did not believe a Special Permit is required and said his client is willing to accept related conditions.

Mr. Fayyad added that he was never trying to "push the law" and that he believed he understood the bylaw and never considered there could be a mistake. He confirmed the use of the garage is personal only. He described his situation with his father and necessity to be close by.

Discussion: Larry Lench, Uxbridge Building Inspector provided input. He said he's received several calls about the area requirements over the past 6 months and his response was that 20,000 sq. ft. is the minimum (and has always been the requirement). He explained the error was identified by the Town after its publication and corrected by vote during the Fall Annual Town Meeting held December 15, 2020. Mr. Lench also explained the foundation plan appeared to contain an office and had the ability to hold 7 cars which led him to believe it may be intended for a commercial endeavor. Mr. Fayyad responded that he only placed his home office there so he could look at his cars for personal enjoyment.

During members' questions it was determined the project is proposed as part of the primary use (apartment house) – not an accessory use. They also confirmed the application was made prior to the Town Meeting which the Bylaw was corrected. Members recognized that the appeal was timestamped 35 days after the denial letter but that everyone was working toward a 30-day deadline and some delays within Town Hall may have occurred because of covid related staffing issues.

Members asked the applicant to describe why they believe this is one structure (Uxbridge Zoning Bylaw Section 400-13 B 2. state *Only one dwelling and private garage shall be erected or maintained on a single lot in any residential zoning district*). Mr. Kablack explained the structures are connected by an underground foundation wall which they understood to be a way they could meet the spirit of the bylaw. Mr. Fayyad added his architect advised him this has been done before in Uxbridge and he was familiar with it from his father's house and other condo's on Kennedy St.

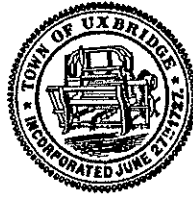
Members also considered and discussed MGL Chapter 40A's 5000 sq ft minimums lot size. Mr. Kablack said the 5000 sq ft is a minimum amount for providing grandfathering protection from the zoning minimum being increased in a town - it doesn't require that the minimum amount that a town must be allow for be 5000 sq. ft.

Abutter Comments: Emily Costa – 53 Henry Street – inquired where the tenants would be parking? Mr. Fayyad explained there is a proposed driveway on the right side of the existing structure for tenant parking.

Jane Pauly, 33 Kennedy Street – spoke in favor of Mr. Fayyad and his project fitting into the neighborhood. He described the project he completed on Henry Street – he was considerate of the neighborhood, good job renovating, great neighbor.

Megan Taft, 29 Henry Street – spoke in favor of Mr. Fayyad and did not have any opposition to the project.

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Beth Hughs, 54 Power Street – she said she spoke to Mr. Fayyad about size of the garage and was assured it was for personal use. She did not have a problem with the project and did not believe it would negatively impact the neighborhood.

Discussion: Mr. Blackburn asked Mr. Fayyad would consider a different type of attachment to connect the two structures such as a breezeway. Mr. Fayyad said he would if it was a determining factor.

Member considered their options and agreed there are 2 separate decisions to make. Do they “order” the Building Inspector to issue a permit? Can it be conditioned? What conditions? Do they agree this is a typo?

Mr. Kablack closed by saying they don’t dispute there was an error in the Bylaw but his client had no warning and reasonably relied on the certified copy and proceeded in good faith.

Motions:

Mr. McNulty made a motion to close the Public Hearing FY 21-10 35-37 Henry Street. Motion seconded by Mr. Blackburn passed unanimously by roll call vote of 3-0-0 (Blackburn – aye, Kaferlein -aye, McNulty – aye).

Mr. Blackburn made a motion to find that the lot’s square footage at the time of the Building Permit Application filing was acceptable per the Uxbridge Zoning Bylaws in effect at the time of the application for a residential A property. Motion seconded by Mr. McNulty passed unanimously by roll call vote of 3-0-0 (Blackburn – aye, McNulty – aye, Kaferlein – aye).

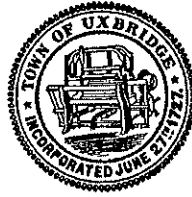
Mr. Blackburn made a motion to find that the proposed garage structure is a residential accessory use per the Table of Use within the Uxbridge Zoning Bylaws contrary to the determination of the Building Inspector that the use was more consistent with a commercial garage containing more than 3 vehicles. Motion seconded by Mr. McNulty failed by vote of 2-1-0 (Blackburn – aye, McNulty – aye, Kaferlein – no).

Mr. Blackburn made a motion that the Zoning Board of Appeals overturn the Building Inspector’s decision to deny a building permit for 35-37 Henry Street. Motion seconded by Mr. McNulty failed by roll call vote of 2-1-0 (Blackburn – aye, McNulty – aye, Kaferlein – no).

3. **FY21-11: 48 Industrial Drive, Cynthia Lafrance, Trustee of 56B Industrial Drive, Owner/Applicant**, is seeking a **SPECIAL PERMIT** for the expansion of an existing non-conforming structure pursuant to Uxbridge Zoning Bylaw, Section 400-12(D) Non-conforming Structures and 400-50 (B) Special Permit Criteria. The property is located in the **Industrial B Zoning District**, shown on the Town of Uxbridge Assessor’s **Map 40 as Parcel 4681** and described in a deed recorded at the Worcester Registry of Deeds in **Book 62857 on Page 24**.

Presentation: The applicant was represented by Steven O’Connell, Turning Point Engineering. He explained the property was included in a recent Variance approval (ZBA Case FY20-12) and all conditions were met (the concrete dock connecting the 2 buildings was demolished). The expansion is in response to a request of the upcoming tenant for a larger space to operate their marijuana cultivation business. This user has a host agreement with the Town to operate their business. Specifically, they would like to construct a 75’x45’ addition to the southerly side of the existing building by extending the exterior walls in a southerly direction along the same non-conforming distance within the left and right-side yard setbacks. The structure complies with all other setbacks and requirements. The final size of the building will be 8,175±s.f. The business proposes to have a maximum of fifteen (15) employees on site during a work shift and will utilize areas on the site for parking. The area is serviced by a private well and town sewer. It will contain a sprinkler

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system for fire protection. The expansion allows the tenant to triple their capacity to grow marijuana and that has a direct financial benefit to the town.

The Building Inspector confirmed the project as proposed would not create any new non-conformities.

Comments provided by Mass DEP related to the number of employees and water supply regulations were considered and discussed with the representative. Mr. O'Connell described the use as marijuana cultivation – the addition will also accommodate the same tenant – the expansion is just to accommodate additional growing area – not adding to the office space or processing area. He further explained that the system is automated and adding growing area will not result in an increase in employees – the number of employees is not dependent on the expansion.

Parking was discussed in detail – 20 to 25 parking spaces along the front and left side of the building and some parking available behind the building. There is no need for large deliveries – small vans/ups size vehicles.

Mr. O'Connell also confirmed that this property is now completely separate from 56 Industrial Drive (new owner).

No members of the public provided comments regarding the petition.

Motion: Mr. McNulty made a motion to close the Public Hearing FY 21-11 48 Industrial Drive. Motion seconded by Mr. Blackburn passed unanimously by roll call vote of 3-0-0 (Blackburn – aye, Kaferlein -aye, McNulty – aye).

Members agreed the Uxbridge Zoning Bylaw Section 400-12(D) Non-conforming Structures provides the Board the authority to grant relief as long as they find the expansion will not be substantially more detrimental. The following summarizes the Board's assessment of the Special Permit Criteria, outlined in Section 400-50(B) of the Uxbridge Zoning Bylaw, as it applies to the proposal:

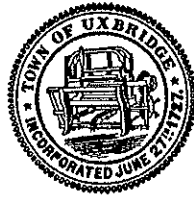
1. Positive impact on social, economic or community needs
2. Minimal to no impact on traffic flow and safety; parking and loading needs are met
3. Utilities and other public services are adequate to accommodate the expansion; the proposed use does not place a high demand on utilities or public services
4. This use is suitable for neighborhood character and social structures; it is consistent with the surrounding uses
5. The use will have little to no impact on the natural environment
6. Positive fiscal impact on town services, tax base and employment

Motion: Mr. Blackburn made a motion that the Zoning Board of Appeals grant the Special Permit as requested in the application FY21-11, 48 Industrial Drive, on a finding that the expansion will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The Board imposed the following condition:

1. No on street parking is permitted by the tenant or its employees

Motion seconded by Mr. McNulty passed unanimously by roll call vote of 3-0-0 (Blackburn – aye, Kaferlein -aye, McNulty – aye).

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**TOWN OF UXBRIDGE
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ADMINISTRATIVE

1. 01/06/21 Meeting Minutes Review

Motion: Mr. McNulty moved to accept the January 6, 2021 meeting minutes as written. Mr. Blackburn seconded, and the motion passed unanimously by roll call vote of 3-0-0 (Blackburn – aye, McNulty – aye, Kaferlein – aye)

2. Zoning Bylaw Amendments

Members agreed to pass over discussion and to schedule a meeting or obtain permission to seek advice from Town Counsel related to a potential change to the definition of structure in the Uxbridge Zoning Bylaw.

ANY OTHER BUSINESS, which may lawfully come before the Board

ADJOURNMENT: NEXT ZBA MEETING, Wednesday, March 3, 2021

Motion: Mr. McNulty moved to adjourn the February 3, 2021 meeting of the ZBA. Mr. Blackburn seconded, and the motion passed unanimously by vote of 3-0-0 (Blackburn – aye, Kaferlein – aye, McNulty – aye).

Respectfully Submitted,
Melissa Shelley

SIGNATURES:

Rob Knapik, Member

John Gniadek, Member

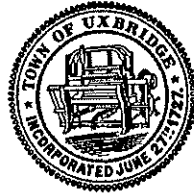
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Date

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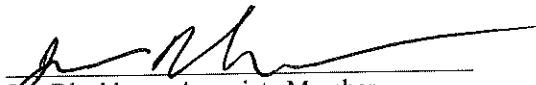
SIGNATURES:

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Mark Kaferlein, Member

Thomas McNulty, Associate Member



Jim Blackburn, Associate Member

04/12/2021

Date

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Respectfully Submitted,
Melissa Shelley

SIGNATURES:

Rob Knapik, Member

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Jim Blackburn, Associate Member

April 12, 2021
Date

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Rob Knapik, Member

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Date

4/14/21