

TOWN OF BRISTOL
ZONING BOARD OF REVIEW MINUTES

Monday, May 16, 2016

The following petitions were received and were heard by the Bristol Zoning Board of Review on Monday, May 16, 2016 at 7:05 p.m. at the Bristol Town Hall, 10 Court Street.

Members present: Chairman Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum, Mr. David Simoes and Mr. Charlie Burke (alternate)

Also present were: Amy Goins, Town Solicitor, Mary Ann Escobar, Court Reporter, Ed Tanner, Zoning Enforcement Officer.

APPROVAL OF MINUTES: Mr. Simoes made a motion to approve the minutes from April 4, 2016 and May 2, 2016. Mr. Brum seconded. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum and Mr. David Simoes.

3. CONTINUED PETITIONS

2016-09 John Brando

4 Milford St

Dimensional Variances: to subdivide an existing parcel into two lots, each containing less than the required lot area; and to construct a new single-family dwelling with less than the required front yard and less than the required rear yard.

DECISION: Attorney Rego appeared before the Board along with Mr. Brando. Mr. Rego stated that Mr. Murgio, the land surveyor could not attend the meeting tonight, but he was at the last meeting. Mr. Rego explained that the property is located in an R10 zoning. Mr. Rego would like to merge and/or subdivide the property into two buildable lots, each containing 8,000 square feet. The real estate is located on the second plat entitled "Hope Highlands" dated December 1910 (Exhibit E in package). The lots in this particular plat are unique in that they are only 80 feet in depth.

Proposed Lot B has an existing carport, which Mr. Brando is planning on demolishing so that it comply with side yard setbacks. Proposed Lot A, which is the vacant lot, Mr. Brando wants to gift it over to his son, so he can build a house for him and his family

Mr. Brando is also going to be extending the water line, at an extensive cost, but this will be a great benefit to the neighborhood. Those neighbors will have an opportunity to tie into this line if one of their wells fails.

Mr. Brando was questioned by Mr. Rego and stated the following: He wishes to have his son and family close by. He has owned this property since approximately 1959. He was born and raised there. He stated that he will be bringing up a water line to the proposed new lot. The existing lot is already serviced by an existing well. He explained that when he built his house 30 years ago, they

had to extend sewer services and he already had in mind that down the line his family could live next door. The frontage of each lot is 100 feet and the depth of the lot is 80 feet.

The new proposed lot has a current side yard setback of 26.8 feet, so he will need a variance of 3.8 feet for that. The north and south side setbacks have been met and he does not need a variance for those. The rear yard setback is 26.3 so he will need a variance of 3.7 feet for that. He also explained that the height of the proposed dwelling will be under 25 feet.

Parcel B (exhibit G in packet) has a house on it that was built in 1930. Mr. Rego stated that due to the age of the house, this should be grandfathered in according to the zoning laws. Mr. Rego requested the Board to grant this Parcel grandfathered in. The reason being if the Board finds that the existing house is grandfathered in, they do not need any front, rear or side yard relief for that existing house. They would only need the 2,000 square feet area relief. Mr. Kogan stated that the Board will address that issue in their motion. Mr. Kogan also stated that the carport will need to be removed as it is encroaching on the second parcel. Mr. Rego agreed. He stated they will be demolishing the existing carport.

Mr. Rego questioned Mr. Brando if this proposed dwelling will be in conformance with the existing neighborhood and he stated yes it would be. Mr. Rego also questioned Mr. Brando if this were not granted that this would cause a hardship for Mr. Brando. Mr. Brando replied that it would be a hardship because they have had this lot for many years and always had the intention of having his children and grandchildren live next door to him. Mr. Brando has spoken with all the neighbors and they do not have any problem with it. No neighbors appeared before the Board this evening to object to this project.

Mr. Kogan made a motion verbatim as follows:

I'll make a motion the applicant's request for dimensional variances to permit the proposed subdivision of a now merged single lot into two separate lots be approved. That request for a variance would require the following dimensional variances because the two lots would each constitute 8,000 square feet. Each lot would require a variance on minimum lot area of 2,000 square feet from the normally required 10,000 square feet.

The newly created Parcel A would also require based upon the applicant's plan to construct a new home on that lot a front yard variance of 3.8 feet that would allow them to build

within 26.2 feet from the property line when the normally required front yard setback is 30 feet.

I'm also proposing that with respect to Lot A, a 3.7 foot variance that would enable them to build the new proposed home to within 26.3 feet of the rear property line when there is normally required a 30 feet rear yard setback. The new Parcel B would only require the already proposed minimum lot area variance and would otherwise either be in full conformity or regarded as a pre-existing nonconforming lot since there was testimony that the home presently erected on Parcel B numbered 4 Milford Street was built in 1930 in its present location not by the applicant and other than the south side side-yard would be grandfathered as built.

The south side presently is not in conformity with the minimum side yard setback, but will be assuming that the applicant conforms to a special condition as testified to in which I will propose at the end of my motion with respect to demolishing the car port.

The reasons for the motion that I am making is that there exists a hardship due to unique characteristics of the subject land and/or structure and not the general character of the surrounding area. Those unique characteristics arise from the fact that this part of Bristol was originally laid out in a subdivision plat dated 1910 in which the applicant has introduced as an exhibit in which this particular piece of land

was broken up into five separate 80 feet deep by 40 feet wide separate lots. Today those would be regarded as very small and substandard lots in which were in common ownership for many years dating back, according to the town's record and the applicant, dating back into the 1910's at some point that they have been in common ownership and eventually more recently as a result of changes to the zoning code those lots were merged into a single lot. The 80 feet depth was testified to as a unique characteristic that requires some relief with regard to front and rear setback.

If anything is to be built, it will be a reasonable home on that lot. This hardship is not the result of any prior action on the part of the applicant. The applicant did not divide these lots up in 1910 -- I don't believe he's that old -- and the applicant did not construct the home that is presently on proposed Parcel B because that home was constructed according to the testimony and the town records in 1930 and again, I don't think the applicant was old enough or born to build that house in 1930 in its present location.

These hardships are not due to any economic disability on the part of the applicant nor any desire to realize greater financial gain. Rather, the applicant testified to his desire to create a family neighborhood in which he and his children can reside in close proximity in order to have a closer relationship with both his children and his grandchildren.

The requested variances will not alter the general character of the area. This is an area that has relatively small lots with, for the most part from at least my observation, raised ranch style homes in that neighborhood. What the applicant is proposing is very consistent with what presently exists.

Granting the requested dimensional variances will not impair the intent of the Town's Comprehensive Plan because the plan intends to encourage residents to create harmonious family life, in addition to creating housing that will be reasonable. The relief requested, if approved by the Board, would be the least relief necessary. It's very hard to envision how the applicant could ever have a home that would conform to all of the, particularly the front and rear setbacks, and be a livable home. And it would amount to more than a mere inconvenience for the Board to deny the request.

So therefore I move the dimensional variances be granted subject to the following special condition which I understand is also a special condition for the planning board and that is that the carport erected on the south side of 4 Milford Street on what would be Parcel B be demolished in order to create a reasonable and conforming south side side-yard setback.

Mr. Hudak seconded the motion. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum, and Mr. David Simoes.

2016-10 Paul S. and Kathi M. Tavares

77 Ridge Road

Dimensional Variance: to construct a 12ft. 5in. x 24ft. garage addition to an existing single-family dwelling with less than the required right side yard.

DECISION: Ms. Cory Kallfelz, Architect, appeared before the Board along with Mr. & Mrs. Tavares. Ms. Kallfelz stated that the Tavares' have three children and wish to expand their living space and bathroom and a possible future bedroom located on the first floor for the possibility of Mrs. Tavares taking care of her mother. They also wish to maintain their current two car garage.

The proposed addition will be in three parts. The two parts on the west and east do not require relief, but the part on the northerly side will need relief of 11.4 foot on the side yard setback. Ms. Kallfelz stated that this addition is requested for the improvement of life for the Tavares' and not for greater financial gain. This proposed addition will fit in with the existing houses in the neighborhood and would not impact the surrounding area.

Mr. Tavares spoke to the Board and requested to submit a letter written by the neighbor on the north side of the property who could potentially be impacted by this proposed addition. This neighbor did not have any problem with their plans.

Mrs. Tavares spoke to the Board about how her mother is elderly and lives in the Boston area. They visit her frequently to take care of her, but it is becoming more and more difficult and it was agreed among all of them that it would be convenient and also safer to have her mother move in with them, so they can really help her with her future needs. Mrs. Tavares also stated that this is why she wants to have a bedroom and bathroom on the first floor in order to accommodate her aging mother.

Mr. Kogan made a motion verbatim as follows:

"I will make a motion that the applicants' request for dimensional variance to enable them to construct a garage and living space addition to an existing single family dwelling with less than the required right side yard be granted that would enable them to build to within 8 feet 8 inches of the north or right side property line which would require an 11 foot 4 inch variance from the normally require 20 foot side yard setback in an R20 zone.

The reasons that would support my motion are that there exists a hardship arising from the unique characteristics of the subject land and/or structure. The applicants own a 15,077 square foot lot in an R20 zone which had been approved at some point even though normally the required lot area in an R20 zone is 20,000 square feet and they previously erected a substantial home in full conformance with the setbacks and taking maximum advantage of their lot which is in a very appropriate residential part of this town so that almost any addition that they would erect would likely require some dimensional relief with regard to some setback requirement.

The applicants explained the reasons why they want to put on the addition, some of which arise from a desire for additional living space but some of which arise from family situation in which there is an elderly parent of one of the applicants and that elderly parent is presently living on her own at a distance in Boston from Bristol. The applicants testified to the fact that the applicant's mother is not able to negotiate all of the structure in which she's presently residing and needs some assistance. The applicants are requesting the addition in order to be able to have their mother live with them and the family provide the assistance as opposed to other institutional settings or bring some stranger in to provide care and assistance.

This hardship is not the result of any prior action on the part of the applicant, where the applicant built the home in their present location, but when they built it in its present location they were careful to comply with all of the required setbacks at that time which has now created a difficulty of fitting in an addition.

The hardship is not the result of any economic disability on the part of the applicant, nor the desire to realize greater financial gain. Rather, the hardship is one of trying to in this day and age provide for the needs of an elderly parent in a respectful and appropriate manner.

Granting the requested dimensional variance will not alter the general character of the area. The Highland is an entirely residential community of substantial homes on substantial lots which owners in that neighborhood have come before the board in seeking dimensional relief, and where it's sensible and justified, the Board has granted similar requests for dimensional relief.

Granting the requested dimensional variance will not impair the intent of the town's Comprehensive Plan which is intended to enable a high quality of family life for all members of families. The relief requested is the least relief necessary. It's very difficult to envision how that garage bay which is going to be converted into space for a bedroom for an

elderly parent would be made up for and without the variance at least one of the cars would have to be parked not within a garage and that would not be normal for that neighborhood.

The applicant would suffer a hardship more than a mere inconvenience if the dimensional variance requested, and it's only one, were not granted in that they would have a valued member of their family whose needs are not being appropriately addressed.

So for all of those reasons, I move that we grant the requested variance."

Mr. Brum seconded. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum, and Mr. David Simoes.

4. NEW PETITIONS

2016-11 Colin and Melanie McLellan

29 Defiance Avenue

Dimensional Variance: to construct a 26ft. x 36ft. two-story garage and living area addition to an existing single-family dwelling with less than the required front yard on a corner lot; and to construct a 16ft. x 16ft. 9in. two-story family room and sunroom addition with less than the required left side yard.

DECISION: Mr. Collin McLellan appeared before the Board and stated as follows: He is applying for two separate variances. His plans are to add on a bathroom, master bedroom, additional playroom for the kids and also some garage space. They have lived in this house for five years now and have come into the same situation where he will be having his mother-in-law move in with them. The house was built in 1959. He has re-arranged his plans a few times now to make the symmetry of the house flow better and also so there will be less impact on the overall project.

On the east side they are looking for a 4.8 variance. On the south side of the house they would need a 1.3 foot variance.

He said after speaking with his neighbors and showing them his plan, they give him their blessings. No neighbor was present tonight at the meeting. Mr. McLennan stated that they love

the neighborhood and does not plan on moving anytime soon. He stated that this addition will fit in perfectly fine with the surrounding houses.

Mr. Hudak made a motion verbatim as follows:

"I'm going to make a motion to allow them to construct a 26 by 36 foot 2 story garage and living area in addition to an existing single family dwelling with less than the required front yard on a corner lot and to construct a 16 foot by 16 foot 19 inch 2 story family room and sun room addition with less than the required left side yard which would require us to give a dimensional variance of 4 foot 8 inches in the front and 1 foot 3 inches on the left side of the house.

In support of this motion I would say that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and structure and not to the general characteristics of the surrounding area, and not due to the economic disability of the applicant.

The applicant has testified that the home, which he did not build, is positioned on the lot in a manner in which he did not place it there, which if it was placed differently would have utilized the property better and not require the dimensional variance. He also has a raised ranch which at this time limits his ability to use the house in certain ways because of his family size.

The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of

the applicant to realize financial gain. As testified from the applicant, the house is from 1959. The applicant did not build this house. He is not seeking financial gain but merely to accommodate his growing family.

The granting of the requested variance will not alter the general characteristics of the surrounding area or to impair the intent or purpose of this chapter or the comprehensive plan of the town. This house is in conformity with other houses in the area and the comprehensive plan of the town is to support families of growing sizes. That the relief to be granted is the least relief necessary.

The applicant is utilizing the existing floor plan to the best of his abilities and I think he is encroaching on these variance requests minimally. And in granting the dimensional variance the hardship that will be suffered by the owner if it is not granted shall be more than a mere convenience. It would be more of a mere inconvenience to deny him the ability to grow in his house with his family for what I believe is least relief necessary. So for these reasons I move that we grant the variance."

Mr. Simoes seconded. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum, and Mr. David Simoes.

2016-14 Century 21 Topsail Realty **729 Hope Street**
Dimensional Variance: to install a 12 square foot secondary wall sign at a size greater than permitted on a corner lot.

DECISION: Michael Fonseca appeared before the Board and stated that he wishes to have a sign erected on his building. He stated that when people drive to his office they drive right by it due to lack of signage and end up doing a U-turn and coming back around. He feels this is a hazard to the current traffic patterns in the area and feels that if he had a better sign there, that this would not happen anymore.

He hired Dion Signs to come up with a light that would be conducive to the building. Mr. Fonseca gave the Board pictures of what the sign would look like on the building. The sign will be 6 feet by 2 feet. He feels that this would be a more appropriate way to do this instead of placing free standing signs in the parking lot. The sign will be illuminated by a light fixture which shines down only on the sign and will not distract traffic or neighbors in the area. He stated that the current light goes off at 11:00 p.m.

Mr. Burke asked Mr. Fonseca if the light could be turned off any earlier, thinking that it would bother the neighbors. Mr. Fonseca responded that the light shouldn't impair anyone since the light is designed to shine downwards only.

Mr. Kogan made a motion verbatim as follows:

"I'd like make a motion that the applicant's request for a dimensional variance with regard to the size of a secondary wall sign be granted and the applicant is requesting to install a secondary wall sign which is permitted on a corner lot in this zone. However the size being proposed by the applicant is 6 feet by 2 feet which would amount to 12 square feet and the zoning ordinance would normally only permit a maximum size of 6 square feet. So that the motion I'm making would be to grant a 6 square foot variance to enable the applicant to install the 12 square foot secondary wall sign as depicted in the applicant's application.

The reasons for the variance is that there is a hardship arising from unique characteristics of the subject land and structure, not the general character of the surrounding area. The existing land is an odd shaped lot that comes to a

point at its northern end with an existing structure that pre-dated, according to the testimony, this applicant's ownership. The building was purchased as a real estate business from the prior Century 21 real estate operator.

The hardship is also related to the operation of this business as a real estate office and its proximity to heavy traffic along Hope Street. The applicant testified to traffic issues that arise presently from the lack of adequate signage on the Hope Street side of this property where customers or clients, whatever they're called in the real estate business, who are looking for the office approaching from the south on Hope Street pass by at a speed consistent with traffic on Hope Street at that location, which through his testimony to the effect that it's in the range of 35 to 40 miles an hour, and then come to realize once they have gone past the building that this is the location for which they are looking, screech to a halt, and then seek to make a U-turn at that corner there with Thames and Hope Street come together creating significant traffic hazard.

This hardship is not the result of any prior action on the part of the applicant. The applicant testified to purchasing the building and the land from the prior real estate operator in its present configuration. This hardship is not due to any economic disability on the part of the applicant or any

desire to realize greater financial gain even though the applicant is certainly engaged in business and seeks financial gain, the primary motivation for seeking this variance as testified to by the applicant is concern that adequate identification of the property in its present location and with high volume of traffic passing by for that downtown historic district location at a relatively high rate of speed.

Granting the requested dimensional variance will not alter the general character of the area because the applicant has sought approval from a historic district commission. The sign being proposed is tasteful and given the architectural design of the building seems to fit into that gable end in an appropriate manner.

Granting the requested dimensional sign size variance will not impair the intent of the town's Comprehensive Plan which seeks in the downtown historic district to create an appropriate mix of both historic residential structures and downtown businesses to create a vital downtown mixed use community.

The relief being requested is the least relief necessary in order to create adequate size sign that will ameliorate the traffic hazards that were testified to by the applicant and the applicant would suffer a hardship amounting to more than a mere inconvenience were the requested dimensional

variance not to be granted. And for those reasons I move that we approve the requested variance.

Mr. Brum seconded. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum, and Mr. David Simoes.

2016-15 N.C.D. Developers, Inc.

1 Sullivan Lane

Dimensional Variances: to construct an approximate 40ft. x 47ft. single-family dwelling and attached 26ft. x 26ft. garage with less than the required left and right side yards.

DECISION: Mr. Hudak recused himself from this matter. Mr. Charlie Burke sat on the Board to vote on this petition.

Mr. Michael Fonseca appeared before the Board on this matter and stated as follows: He wishes to build a house for his son and daughter-in-law, who is pregnant. He bought this lot a year and a half ago. There is an existing garage right on the property line. Mr. Fonseca said there were two options. (1) they could keep the garage there and re-side it and cut down the proposed new garage on the house or (2) they could demolish the old garage and build the current house which they have in mind, but will need to request a variance.

Mr. Kogan stated that this lot is approximately 25,300 square feet and he doesn't think there is a hardship for this applicant. He stated that there are other house designs which could fit perfectly on this lot without the need for a variance.

Three neighbors appeared before the Board and agreed with Mr. Kogan. They believed that there is no need for a variance for this property and were in opposition to this variance.

After Mr. Fonseca had a brief discussion with his family, he stated to the Board that he wished to withdraw his petition with prejudice.

2016-16 Warren J. and Diane L. Poehler

154 High Street

Dimensional Variance: to operate a five (5) room bed and breakfast inn with less than the required lot area per rooming unit.

Mr. Simoes recused himself from this matter. Mr. Charlie Burke sat on the Board to vote on this petition.

Attorney Bruce Cox appeared before the Board along with Mr. and Mrs. Poehler. He stated that they have run a bed and breakfast for the last 18 years at this site. In 1998 the Poehlers purchased this B & B and have been running it as a five bedroom B & B for the past 18 years. They have only discovered when they decided to sell this business that it was listed as a 4 bedroom B & B. The previous owners had been before the Board in 1992 and had received relief to operate as a 4 bedroom unit back then. Mr. Cox stated that those owners must have made it a 5 bedroom before they sold it to the Poehlers in 1998.

Mr. Poehler testified that when the purchased the property in 1998 it was used as a 5 bedroom bed and breakfast. They have continuously used it as a 5 bedroom for the last 18 years without any problems. Mr. Poehler was asked by the Board how many parking spots were on this property. He stated he has 5 to 6, but has parked as much as 9 cars in the lot, if parked correctly. They currently are open 8 months out of the year.

Mr. Brum made a motion verbatim as follows:

"I make a motion that we grant the dimensional variance to operate a five bedroom bed and breakfast with less than the required lot area per room unit.

In support of my motion I would state that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or the structure and not the general characteristics of the surrounding area. The positioning of the home creates this hardship.

When the home was first constructed a 6,000 square foot lot could be considered a reasonably sized lot especially in that area of town. The variance they are seeking is for 3,967 square feet. The hardship is not the result of any action of the applicant. As the applicant testified, since 1998 the bed and breakfast had operated as a five bedroom bed and breakfast and only through this loan process have they realized that in fact it was only zoned for a four bedroom bed and breakfast.

The granting of this request of this variance will not alter the general characteristics of the surrounding area. It's

been mentioned the bed and breakfast have been in operation for many years. It hasn't caused or impaired the surrounding community or the area by its operation.

The relief that's granted is the least relief necessary. In this case it real serves one purpose. And not allowing the applicant to have this occur would be a great economic disadvantage, and the dimensional variance if it's not granted shall be more than a mere inconvenience.

And for these reasons I make the motion to approve."

Mr. Burke seconded. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum ,and Mr. Charlie Burke.

CONCLUSION OF ZONING BOARD OF REVIEW MEETING:

The Chairman entertained a motion to adjourn. Mr. Hudak made a motion to adjourn at 9: 16 p.m. Mr. Burke seconded. The Vote was unanimous. Voting were Mr. Joseph Asciola, Mr. Bruce Kogan, Mr. Steve Hudak, Mr. Tony Brum, and Mr. Charlie Burke.

Whereupon the Bristol Zoning Board of Review meeting was concluded at 9:16 p.m.

C E R T I F I C A T E

I, Mary Ann C. Escobar, Registered Professional Reporter, and Commissioner for the State of Rhode Island, do hereby certify that the foregoing pages 1 through 7 are complete, true and accurate to the best of my knowledge, skill & ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 2nd day of May, 2016.

Mary Ann C. Escobar, RPR

My Commission expires: September 30, 2016.

Minutes of May 2, 2016

Accepted by:

_____, Chairman

* * * * *

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