

**ZONING BOARD OF APPEALS  
MEETING MINUTES**

**June 11, 2020**

*[Note: This meeting was held remotely using GoToMeeting]*

**Members Present:** Jim Reinke, Chair, Jim Buckley, Vice Chair, Vaughn Hathaway

**Members Absent:** N/A

**Alternate Members Present:** Richard Johnston

**Staff Present:** Tiffany Peters, Department Assistant

**Meeting Time:** 6:00PM

**Agenda:**

1. **Public Hearing, Special Permit**

48 Lake Drive, replacement of deck with new deck and sunroom on a pre-existing non-conforming structure. Applicant: Brady Built Sunrooms,  
*continued*

2. **Approval of Minutes:**

- May 12, 2020

3. **Correspondence/General Board Discussion:**

- Miscellaneous Updates

4. **Adjourn**

Meeting called to order at 6:01PM

**48 Lake Drive Special Permit, *continued***

Mr. Kevin Kieler, Chief Designer for Brady-Built Sunrooms, is present at the meeting and representing the applicant, Ms. Toni Mandel. He states that he is now taking over representation of the applicant as he has returned to work after being out due to a personal issue. He states that Mr. Earl Connor from Brady-Built Sunrooms who had been representing the applicant at the prior meetings, does not typically deal with permitting. Mr. Kieler states that he will be doing the presentation tonight and apologizes for any frustrations or confusion that have occurred during the process thus far. He states that he reached out to the Building Inspector who visited the site. He states that the Building Inspector determined that the retaining wall was a part of the structure as it is a part of the original foundation of the house, is intact and that there was a footing underneath that at one point supported a cement slab which was there. He states that it sits in the setback at 14.1 feet from the property line which makes the structure a pre-existing, non-conforming situation. Mr. Kieler states that the Building Inspector did not want to slide the Brady room down the house which was something that Mr. Connor had tried to do. He states the Building Inspector wants the room located in the same spot as the original deck since the stairs were not going to intrude on the setback any further, so they changed the engineering plan to reflect that. Mr. Kieler states that they coordinated with Jarvis Land Survey, Inc. to make sure that their plans reflected accurately what was on the plot plan. He states that they are not going to be any closer to the lot line or increasing the pre-existing non-conformity of the lot. He states that they designed the stairs to descend towards the driveway and not towards the water so not to infringe any further on the pond. Mr. Kieler states that Ms. Mandel has discussed the proposed

plans with the neighbors on both sides and they are in support of it and that they also have received approval from the Conservation Commission. He states that they feel that approval of the special permit can be done without derogating from the spirit and intent of the bylaw. He states that they respectfully request the granting of a special permit so that they may proceed forward with the project.

Mr. Buckley states at the end of the last hearing his question was whether the retaining wall is considered in determining the setback of a structure by the Building Inspector/Code Enforcement Officer, and he does not see where this has been confirmed. Mr. Kieler states that according to his conversations with the Building Inspector that it does, and that the Building Inspector instructed him on how to finish the plan accordingly because of that. It is showing the setback on the site plan as 14.1 feet to the retaining wall, so he is considering it part of the structure under the zoning bylaw.

Mr. Buckley reads the email sent by the Code Enforcement Officer to the Town Planner regarding 48 Lake Drive on May 18, 2020:

*Hello Michelle,  
I was asked by Earl from Brady to visit 48 Lake Dr. I looked and talked with the owner, the Brady room and deck with stairs going next to chimney makes the most sense. Existing deck is 8 feet depth, proposed new deck 9 feet, 2 existing footings suggest a structure once existed on that side of the house. Stairs would be 36 inches wide and 6 inches less than the existing basement door opening retaining wall. Most of house and yard cannot be seen from the road because it sits so low-down a steep grade along with the shed and a construction of a type of cover, covering the stairs leading to the yard from the road. I agree with the proposed plan. Any detailed plan submission will be rechecked. FYI. DavidM*

Mr. Reinke states that the email does not mention the retaining wall being inclusive or being counted towards the setback which was what the Board asked for. Mr. Hathaway agrees with this interpretation. Mr. Kieler states that he has had extensive conversations with the Building Inspector, and he has also visited the site and confirmed that he felt that retaining wall is a part of the original structure of the house.

Mr. Buckley states that he finds it hard to believe that a retaining wall is a part of the structure. He references houses that have retaining walls as a part of a driveway and the proximity they can be to the roads, which would be within a setback area. Mr. Kieler states that he thinks the Building Inspector considers it a part of the original structure because when it was built with the foundation of the house it had a footing underneath it like the original foundation, it supported a cement slab and was built for an entrance way to the basement. It was not something that was added later, it was built at the exact time as the foundation of the house was built. Mr. Buckley states that he can agree that the retaining wall may be part of the structure but is questioning whether it should be considered when determining the setbacks. Mr. Kieler states that according to the Building Inspector, under the bylaws, it is considered part of the definition of the setback. Mr. Hathaway states that he does not feel it fair to characterize the bylaw in this way because he does not believe that it is covered by the bylaws.

Mr. Reinke states that the Building Inspector did not communicate that in his letter and asks if this is the only plan option that they are going to be presented with at the meeting. Mr. Kieler

states that this plan is what the Building Inspector said he would approve. Mr. Kieler states that the discrepancy may be in the use of the word “retaining wall” and that the wall is an extension of the foundation of the house which was built as an entry way into the basement. Mr. Kieler states that he agrees that if the Board considered retaining walls that were built during landscaping for determining setbacks, it would not make sense, but that this is a stone wall that was built with a footer underneath it and was necessary as an entrance way to the house.

Mr. Johnston states that when they left the last meeting they wanted to know if the Building Inspector considered the wall a part of the structure and that it appears that he has confirmed verbally that it is. He asks if we can consider approving the special permit subject to the Building Inspector's approval regarding the retaining wall, asking him to write something more specific that can be included in the file.

Mr. Buckley states that a clear determination from the Building Inspector as to whether this wall was considered in the calculation of the setback was not provided. Mr. Kieler states that he thinks that the Building Inspector would be willing to clarify these concerns in writing if the Board as a condition to the approval of the special permit and asks if the Board would consider a conditional vote. Mr. Reinke asks the Board if they would be comfortable voting on the application with that condition in place. Mr. Hathaway and Mr. Johnston both state that they would be comfortable voting on this with the condition that the Building Inspector provides a letter of clarification regarding the wall and setback. Mr. Hathaway states that he was surprised that the Building Inspector/Code Enforcement officer in his email used the shed to justify it because the shed clearly does not meet setback requirements. Mr. Buckley states that if a person came to them wanting to build the house exactly as it is with the retaining wall, they would be told no because it encroaches into the setback.

There is further discussion regarding whether the retaining wall is a part of the structure or not. Mr. Kieler states that he believes that the definition of the retaining wall needs clarification. He states that there are retaining walls that are used for things such as landscaping purposes and then there are retaining walls that are required as part of the foundation of a house in order to make it an area deep enough for a mandatory entry way into the house. Mr. Reinke states that this is a unique situation and there is a lot of gray area in this but that he does not feel it is a detriment to the neighborhood.

Mr. Buckley states that he does not understand how they arrived at this point and mentioned that they discussed previously why the stairs were not placed on the other side of the structure where this would not be an issue. Mr. Kieler states that if the stairs were on the other side, they would still have issues with the setback. Mr. Kieler states that the building code requires them to have a platform at the top of the stairs so the footprint of the stairs had they been on the other side would have to change. Mr. Kieler states there is more room on the side of the house that they decided to put the stairs on, and the neighbors agree that it is the best place for them to go. Mr. Buckley states that what the neighbors think doesn't change the bylaws. He is concerned that the use of the retaining wall is not in line with the bylaws which is why he would like to hear from the Building Inspector. Ms. Peters told the Board that the Building Inspector has discussed this with the Town Planner and determined that the wall was a part of the original structure. Mr. Reinke states that it can be a part of the original structure but that they wanted an opinion on

whether it was an extension of the structure as generally they use the side wall of the house to determine the setback.

The Board discusses how they should proceed with application and whether they should vote on this or discuss a possible variance. The Building Inspector's original letter states that the applicant needed a special permit. Mr. Buckley states that it was the applicant who brought up the possibility of a variance for this. Mr. Reinke mentions that the plans have changed multiple times. Mr. Kieler states the plan he has presented today is more in line with the original version and this was the way he was instructed to do it by the Building Inspector because in his opinion the retaining wall was a part of the original structure and can be used to determine the setback and could be done with a special permit.

Mr. Hathaway states that he would be ok with a vote with the condition that they receive a letter from the Building Inspector. Mr. Buckley states that he would prefer if it were in writing before the vote. Mr. Reinke states that he agrees that he would rather have it before but does not want to hold up this application any longer. Mr. Johnston states that we could continue it for one more week in order to get the letter although he would prefer to do a conditional vote today. Mr. Buckley states he is not comfortable with a conditional vote as he is concerned that the letter will not be specific enough. Mr. Kieler states that he will make sure the letter is clear and specific and once the letter is drafted it can be distributed to the Board.

Mr. Hathaway states that it would be helpful to know under what conditions they are going to allow retaining walls to determine setbacks in the case they receive similar applications in the future. Mr. Reinke states that they may need to speak with the Town Planner about adding language to the zoning bylaw to define this as it is a gray area. Mr. Hathaway adds that the vote needs to be unanimous in order to pass, so the applicant can consider that when deciding if he wants to continue the hearing until next week or proceed with a vote. Mr. Kieler wants to proceed with the vote with the condition that he obtained a letter from the Building Inspector. Mr. Buckley states that he is fine with making it a condition. He states that considering a retaining wall when determining a setback would be a monumental change. He states that the letter must say that the wall is an extension of the structure and is used in the calculation of the setback. Mr. Reinke states that they will need a copy of the letter before signing the decision.

**Motion:** Mr. Hathaway moved to approve the special permit for the sunroom including the stairs with the condition that there will be a letter from the Building Inspector specifically articulating that the retaining wall defines the setback and that any new construction is within that setback.

**Second:** Mr. Johnston

**Discussion:** None

**Roll Call Vote:** (4-0-0)

**Motion:** Mr. Johnston moved to close the hearing for 48 Lake Drive

**Second:** Mr. Hathaway

**Discussion:** None

**Roll Call Vote:** (4-0-0)

**Approval of Minutes:**

**May 12, 2020 Meeting Minutes**

Minor edits to the meeting minutes were discussed by Mr. Hathaway including a missing word and a typo. Edits had been addressed by Mr. Johnston prior to meeting. Minutes are now corrected.

**Motion:** Mr. Johnston moved to approve meeting minutes as corrected

**Second:** Mr. Buckley

**Discussion:** None

**Roll Call Vote:** (4-0-0)

**Correspondence/General Board Discussion:**

Mr. Reinke states that he will be applying to the Zoning Board of Appeals for several projects on his property. He states he will need to discuss with the Town Planner how the process will work due to his inclusion in the Board as he wants to proceed with transparency.

**Motion to Adjourn:** Mr. Johnston

**Second:** Mr. Buckley

**Discussion:** None

**Roll Call Vote:** (4-0-0)

Meeting Adjourned at 6:57PM

Respectfully submitted,  
Tiffany Peters, Department Assistant

**Documents included in meeting packet or otherwise sent to ZBA in advance of the meeting:**

- Agenda
- Special Permit Application for 48 Lake Drive
- Email from the Building Inspector to the Town Planner dated 5/18/2020
- Plans for 48 Lake Drive
- Meeting Minutes for 5/12/2020

**Documents submitted at meeting: None**