

Zoning Board of Appeals Meeting Minutes

Minutes of December 7, 2016

Members present: David Kirwan, Chair; Jim Buckley, Clerk; Vaughn Hathaway, David Orth and Paul Schold

Alternate members present: Jim Reinke, Mary Moore, Dick Johnston

Hearing on the petition of Kevin Baker of 141 Clark Street, Rochdale, MA for a Special Permit to build a new garage in the same footprint of existing garage located in front setback.

Meeting called to order at 8:17PM

Mr. Kirwan gave instructions on the hearing procedures.

Voting at tonight's meeting: Jim Buckley, David Kirwan, Vaughn Hathaway, David Orth and Paul Schold

Mr. Buckley read the Notice, Application, a letter from the Building Inspector and a letter from Kevin Baker to the Board, Page 7 from the Zoning Bylaws, Section 1.5.01; Accessory Structures

Submitted into evidence: a Registered Plot Plan, sketches of the structure on the lot, and return receipts from the Certified Mailing

Correspondence received: None

Mr. Kirwan opened the meeting to the applicant.

Mr. Kevin Baker, 141 Clark Street in attendance.

Mr. Baker explained the existing garage was falling down and needed to be removed. He would like to build a new garage in the same spot.

Mr. Kirwan asked if it was staying within the existing footprint.

Mr. Baker said no it will be a little bigger, but will be in the same area as the existing garage.

Mr. Reinke asked if it would be closer to the property line.

Mr. Baker said it might be a little bit, but it won't encroach into the sideline.

Mr. Orth asked if he knew when the existing garage was built.

Mr. Baker said the first records show the house being built in 1910.

Mr. Orth noted it being built prior to zoning.

Mr. Kirwan asked if it will have running water or heat.

Mr. Baker said they were planning on it, if it was in the budget, but there will definitely be some sort of heat put out there.

Mr. Kirwan asked if anyone would be living there and would a kitchen or bathroom be needed.

Mr. Baker said no it will not be living space. Their house is very small and they need a spot to entertain. They also needed a spot for some storage.

Mr. Kirwan asked the height. Mr. Baker said 1 ½ stories, roughly 22-feet high.

Mr. Buckley asked if the Building Inspector was aware, when he wrote his letter, that the garage wasn't going to be the exact same dimensions and in the same place.

Mr. Baker said yes he was aware.

Mr. Buckley understood the only way a pre-existing nonconforming structure could be rebuilt, was when it was put back in the same footprint.

Mr. Orth said the nonconformity was the structure being in front of the house.

Mr. Hathaway said it fell under alteration of a pre-existing nonconforming structure and the nonconformity was it being in the front plane of the house and making it bigger.

Mr. Buckley noted the pre-existing nonconforming wasn't the setbacks, because it still met the setbacks.

Mr. Orth said in that zoning district, it met the setbacks.

Mr. Hathaway said a registered plot plan usually shows the existing and the proposed change. The plan submitted looks like the proposed structure was hand drawn and not done by a registered surveyor.

Mr. Baker agreed.

Mr. Hathaway said he didn't have a problem saying go ahead and build the garage, with the understanding it may not be within the setbacks described in the Bylaw and there could be problems later on. There is a registered plot plan showing what is currently there.

Mr. Baker said he assumed if they got the special permit, it would be conditioned upon a registered survey being done.

Mr. Hathaway said typically what happens is, after approval, you get your building permit.

There won't be a requirement saying a survey needs to be done then. The building inspector will go by what the special permit says. It's only when the property is up for sale that an error would be found.

If there was a registered plot plan showing the changes, the building inspector would have that to go by. If there are questions, the problem then becomes the building inspectors and not the property owners.

Mr. Baker said if he can do this in the front yard, he will have the property surveyed and submit a registered plot plan. If it is a simple no, it can't be done in the front yard, that's a lot of money for nothing.

Mr. Hathaway explained if the garage were to be built by just the drawings and it's discovered the measurements were wrong, it's the responsibility of the property owner, when selling the property, for not having a registered plan.

Mr. Buckley suggested the Board require a Registered Plot Plan showing the proposed structure and the petitioner is going to get one, so the Board should just continue this hearing until they come back with a Registered Plot Plan.

Mr. Orth understood why the petitioner didn't want to put the money into a registered plot plan if the Board wasn't going to approve it.

He pointed out there being a registered plan showing the existing garage and a drawing of the existing and the new garage. In his opinion, it seems the applicant did meet the registered plot

plan requirement and the proposed structure is similar to what already exists. The only difference was the current garage was more square to the property line and the proposed was more cockeyed to the property line and was not be further encroaching on the sideline. He felt the Board could put a condition on the permit that a registered plot plan is provided and then amend the decision if needed.

Mr. Hathaway explained that once a decision is made, it can't be amended without a new hearing. If the Board were to vote in favor, he would be willing to make a condition that the garage meet all setbacks.

Mr. Schold noted the building inspector didn't require a registered plot plan before issuing a permit.

Mr. Baker wanted to make note that the proposed structure will be a post and beam structure and it's a lot cheaper if the wood is cut during the winter, because it's off season. That is the biggest reason he would not want to have this continued. He will be getting the property surveyed regardless.

Mr. Kirwan asked Mr. Shivik if he had any comments.

Mr. Shivik said no, he was there observing.

Mr. Buckley understood that a registered plot plan was a requirement showing the proposed structure and dimensions.

Mr. Hathaway agreed that was noted in the requirements.

Mr. Buckley asked if the Board was now not requiring a registered plot plan. Even though he understood the reasoning, he asked how the Board can require a registered plot plan from some and not require it from others.

Mr. Kirwan asked before moving on, were there any other issues with the proposed structure being built in the front yard.

Mr. Orth felt because a garage has always been there and obviously built pre-zoning, he felt it was a pre-existing non-conforming structure. Even with making the garage larger, it wouldn't be further encroaching on any of the setbacks.

Mr. Schold agreed and didn't have a problem with the location. He did agree that a registered plot plan be provided.

Mr. Kirwan agreed a registered plot plan was the requirement and what the Board should have before them.

After some discussion, it was agreed to continue to December 21, 2016.

MOTION: Mr. Buckley moved to continue the hearing on the petition of Kevin Baker of 141 Clark Street, Rochdale, MA for a special permit to build a new garage in the same area of existing garage located in the front setback

SECONDED: Mr. Reinke – Discussion: None – VOTE: All in Favor

General Board Discussion

Withdrawal request – 21-69 Main Street, Cherry Valley

A letter received from Fran Nicolaou of Shaping Zone for Women requesting to withdraw their application for Special Permit for the placement of a business sign at the property.

MOTION: Mr. Orth moved to accept the request of Fran Nicolaou of Shaping Zone for Women located at 21-69 Main Street, Cherry Valley, MA to withdraw her petition for a special permit for placement of a business sign at the property.

SECONDED: Mr. Buckley – Discussion: None – VOTE: All in Favor

Meeting adjourned at 8:45PM

Respectfully submitted:

Barbara Knox

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