

Zoning Board of Appeals Meeting Minutes

Minutes of February 1, 2017

Hearing on the petition of William & Pamela Keyes of 8 Sherry Lane, Spencer, MA for a special permit for the alteration of a pre-existing nonconforming structure and a variance from the front yard setback for a garage on property located at 25 Lakeview Drive, Leicester, MA

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

Alternate members present: Jim Reinke, Dick Johnston

Meeting called to order at 8:26PM

Instructions were given on hearing procedures

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

Mr. Buckley read the Notice and application into the record.

Submitted into evidence: Registered Plot Plan, return receipts from Certified Mailing, Quitclaim deed

Correspondence received: Comments from the Board of Health; Site Consideration from the Building Inspector that were read into the record by Mr. Kirwan.

Variance (house)

Mr. Kirwan opened the meeting to the applicant to present their petition.

Mr. Jason Dubois of DC Engineering, William & Pam Keyes, property owners and Jay Gallant, Architect were present.

Mr. Dubois made the presentation.

William & Pam Keyes purchased both properties a couple of years ago. The parcel with the house is 17,000-square feet and the parcel across the street where the garage will be located is 13,000-square feet.

There is an existing dwelling on the 17,000-sf lot that sits close to the side setback line. The property is located in the SA zoning district that requires 80,000-square feet of area, 200-feet of frontage and 40-foot setbacks on all sides. All the lots around that area are all small lots and do not meet current zoning.

They are proposing the house stay in its current location and add a couple of additions, to modify the deck, and change the 3 season room in back to a full season, all year round living space. It is currently a 2-bedroom house and they are proposing keeping it to stay as a two-bedroom house.

One addition will come off the side, making one of the bedrooms livable, with a landing off the front and a step that goes into the front setback.

The septic is located off to the side where the step and landing would be facing. The shape of the lot comes in at an angle point and that is the closest point. The existing house now is 21.9 and the front of the step would be 17.6.

Across the street is the 13,000 square foot lot that is a wooded lot and has a concrete pad they didn't know what it was used for. With the setbacks at 40-feet, it didn't leave a lot of room to work with and only 20-feet that was allowable.

They are proposing to put a 30 x 38 garage on that parcel. It will meet the two side setbacks and the back setback, but not in the front at 28.4-feet.

Mr. Orth confirmed two projects being proposed, one is the extension of the house and the construction of a garage. He asked if where the garage was being proposed was an empty lot.

Mr. Dubois said yes the garage was proposed on the empty lot.

Mr. Orth asked what the proposed changes were to the house.

Mr. Jay Gallant, Architect said the house was originally a cottage that was winterized. The Keyes would like this as their permanent home and make it more user friendly.

There are two small bedrooms on the side and small kitchen. In order to make it work for the owners, they want to reconfigure a small addition on the side, for a 13 x 16 bedroom and a small 10 x10 bedroom, having it remain a two-bedroom house.

The two additions are the bedrooms and a mud room that steps back a foot from the front of the existing building, in an effort to keep the front wall of the house as far away from the front property line as possible.

Mr. Hathaway asked the location of the lake. Mr. Gallant said the back of the house faced the lake.

Mr. Dubois said the setback dimensions were for the front step, the building was another 5-feet back.

Mr. Orth asked if they were further encroaching on the front setback. Mr. Gallant said not with the building, just the landing and the step.

Mr. Hathaway asked if more than the steps were further encroaching.

Mr. Dubois reviewed the proposed structure from the existing structure and indicated it was only the steps that were further encroaching.

Mr. Gallant said they will be moving the front door over to the addition and potentially extend out to the side. They can't go further back or more to the side because of the topography of the lot, the location of the septic system and location of the lake.

Mr. Orth asked if they would be further encroaching to the side where the addition was going. Mr. Gallant said no, the proposed structure will stay very close to within the existing structure. Mr. Hathaway asked the applicant to address the hardship. Mr. Gallant said if they were to try to build within the setbacks, the configuration of the lot and location of the septic system, limits them on where the addition can go. They felt the shape of the lot and topography created the hardship.

Mr. Orth asked to confirm they couldn't further encroach on the setbacks because of the angle of the road. Mr. Gallant agreed.

Mr. Kirwan asked to confirm the hardship being both the topography and shape of the lot and being limited by the location of the septic system. Mr. Gallant agreed.

Mr. Hathaway said soil, shape and topography was one condition for hardship, another condition was on financial or otherwise. He asked what the hardship would be if this addition was denied. Mr. Gallant said the existing bedrooms were extremely small and probably didn't meet today's code for new construction. In order to make this a livable home, the living space needed to be upgraded.

Mr. Hathaway said he wasn't concerned with this just being the steps further encroaching, but would like to hear more than just the bedrooms being undersized as the hardship.

Mr. Reinke said his understanding of a private road was the property owner owning to the middle of the road. He asked how that would affect this application.

Mr. Dubois said the road is basically a right-of-way and they own to the middle of the right-of-way on both sides, giving everyone the right to pass over it.

Mr. Kirwan explained if the variance was to be granted, the Board has to specifically address the reasons for approval. He asked for some specific hardships if this were to stay as a summer home.

Mr. William Keyes said they want to make this their permanent home and felt their hardship was the need to have both the addition and the garage.

Ms. Pamela Keyes explained the small living space and the need for them to expand in order to live there.

Mr. Keyes explained when they bought the property, they were led to believe on a private road, they owned to the middle of the right-of-way and so he assumed it was part of the square footage. When Mr. Dubois drew the plot plan, he had a different opinion.

Mr. Kirwan asked if their current home was already sold or under agreement, because he felt that might be considered to be a hardship. Mr. Keyes said no.

Mr. Buckley said it looks like they were over by 40-feet and asked the square footage of the addition.

Mr. Gallant said not much. They tried to stay as far from the property lines as they could, while making enough room that made sense.

Mr. Orth asked how far the structure was from the sideline.

Mr. Dubois said over 40-feet.

Mr. Johnston said he reviewed the original subdivision plans for that area and these lots are all typically 50-feet wide. This lot was an unusual lot, because it was so much wider. He felt it could be 2 lots. Mr. Dubois said they were actually 3 lots.

Mr. Orth asked if the variance was just for the steps, because the special permit was for the extension of nonconformity. He felt the setback concern was because of the steps.

Mr. Dubois agreed. He explained the steps couldn't be put on the side because of the location of the septic tank.

Mr. Hathaway asked if there were plans for the landing area and steps to be enclosed.

Mr. Gallant said no.

Mr. Orth asked what the hardship would be if the Board denied the variance.

Mr. Dubois said the shape of the lot was the hardship because that's what's causing the issue with the front steps.

Mr. Kirwan asked if the Board strictly enforced of the Bylaw, could the hardship be viewed as preventing the owners from use of their property.

Mr. Orth felt because this wasn't their permanent current home, that wasn't a hardship.

Ms. Keyes felt the hardship was because the front door could only go in that spot, because the septic was on one side and a neighbor on the other side. She didn't know where else will they could easily gain access into the house.

Mr. Orth asked if they were not to do anything to the structure, what the hardship was.

Mr. Keyes said the reason they liked this house was that it had only one floor. As they are growing older, the need to be on one floor was beneficial for their future enjoyment of life.

Mr. Kirwan asked for any further comments or questions, hearing none, asked for a motion on the Variance for the house.

MOTION: Mr. Hathaway moved to approve the petition of William & Pamela Keyes of 8 Sherry Lane, Spencer, MA for a Variance on the house for the steps attached to the side of the addition on property located at 25 Lakeview Drive, Leicester, MA

SECONDED: Mr. Buckley – Discussion: Mr. Orth added a condition that the steps and landing never be enclosed. VOTE: All in Favor

Finding of Facts:

Mr. Hathaway voted in favor of the Variance because he felt the property was unique to the area and was in harmony with the intent and purpose of the Bylaw and wasn't detrimental to the neighborhood. He felt a literal enforcement of the Bylaw would have created a hardship.

Mr. Orth voted in favor of the motion because he felt the topography of the property limited where the steps could go and the addition would not further encroach from the existing setbacks, with the exception of the steps, which was minimal. Hardship was met because of the need for a single-story structure.

Mr. Johnston voted in favor of the variance because he felt that the hardship was satisfied; that there would be a minimal effect to the setback and this would not have a detrimental effect to the neighborhood.

Mr. Buckley voted in favor of the motion because he felt it met the condition of soil, shape and topography of the land due to the road and it did meet the hardship because of the need for a single-story home.

Mr. Kirwan voted in favor of the variance because of the design of the land upon which the home sits, including the location of the septic system and the shape of the lot. Because of the shape of the bend in the road, this design makes good sense for the neighborhood and that the steps are minimally closer to the road.

Instructions were given on the appeal period and the filing of this decision with the Registry of Deeds.

Special Permit (house)

Mr. Hathaway said he didn't feel this needed any more discussion than what has already been taken place. He made the following motion.

MOTION: Mr. Hathaway moved to approve the petition of William & Pamela Keyes of 8 Sherry Lane, Spencer, MA for a Special Permit for the Alteration of a pre-existing nonconforming structure on property located at 25 Lakeview Drive, Leicester, MA

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

Variance (garage)

Mr. Kirwan opened discussion to the applicant to present their proposal.

Mr. Dubois said the garage proposed will sit on the second parcel across the street, but virtually it's like one deeded parcel.

The existing parking area is on the street and not sheltered. With the garage, they will be able to protect their vehicles and not have to park on the street.

The garage will be 38-feet wide and the depth is 30-feet. It will sit 28-feet from the front property line, leaves enough space to park, and won't be a detriment to adjacent properties. It's a 3-bay garage, above will be a loft area for storage or workshop and no plumbing proposed. Mr. Buckley questioned the garage being an accessory building and asked if the setbacks for an accessory building were considered the same as the primary structure. Mr. Hathaway said that was a good point, because for an accessory structure its 10-feet from the property line. He asked if the Building Inspector said a variance was needed for the garage.

Mr. Dubois said the garage is essentially located in the front of the house.

Mr. Orth asked if both lots were deeded as one lot.

Mr. Dubois said it's one deed, but 3 separate parcels.

Mr. Buckley said the Board usually goes by the Building Inspector requiring a variance.

Mr. Johnston said in the Building Inspector's memo he commented not having seen any plans regarding this application.

Mr. Orth said usually the procedure is a building permit is applied for, it is denied and that is what triggers a meeting with the Zoning Board.

Mr. Dubois said they knew a variance was needed, so they just moved forward with that.

Mr. Hathaway suggested talking with the Building Inspector to get his interpretation regarding the garage.

Mr. Orth asked why the garage could not be put on the same property as the house.

Mr. Dubois said because of the location of the septic system.

Mr. Hathaway said based on what Mr. Buckley said about an accessory structure and if this did go forward as a variance, he felt it would be difficult proving hardship. Therefore, they would be better off not having to apply for a variance.

He explained two options, one was to withdraw the variance request for the garage; and two was to request a continuance and talk with the Building Inspector for his opinion.

Mr. Dubois said they would like to request a continuance.

MOTION: Mr. Buckley moved to continue the application for variance for the garage on property located at 25 Lakeview Drive, Leicester, MA to Wednesday, March 1, 2017 at 8:30PM

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

Approval of Minutes

November 30, 2016

503-505 Stafford Street

Note in minutes the voting members.

December 7, 2016

1 Wildwood Lane

December 7, 2016

141 Clark Street

December 21, 2016

141 Clark Street continued

MOTION: Mr. Hathaway moved to approve the minutes of November 30, 2016 for 503-505 Stafford Street; minutes of December 7, 2016 for 1 Wildwood Lane; minutes of December 7, 2016 for 141 Clark Street; and minutes of December 21, 2016 for 141 Clark Street Continued meeting with noted typos & corrections.

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

Meeting adjourned at 9:35PM

Respectfully submitted:

Barbara Knox

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