

**ZONING BOARD OF APPEALS
MEETING MINUTES**

April 29, 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: Michelle Buck, Town Planner; Tiffany Peters, Department Assistant

Meeting Time: 6:00PM

Agenda:

1. **Public Hearing, Special Permit**
3 Sterling Street, addition to a non-conforming house in front yard setback. Applicant: Taryn Rossi
2. **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
3. **Adoption of Minutes:**
 - July 31, 2019
 - August 7, 2019
4. **Correspondence/General Board Discussion:**
 - Acceptance of MGL Chapter 119G, Section 9 related to electronic signatures
 - Miscellaneous Updates
5. **Adjourn**

Members of the Board introduced themselves and Mr. Reinke explains recommended instructions for online meeting. Mr. Reinke explains that since there are only four Board members vote must be unanimous in order to pass as special permits require a vote of four or more. Mr. Reinke verified that all applicants mailed in their abutter's notifications and that the legal ad fees have been handled.

Meeting called to order at 6:03PM

3 Sterling Street

Mr. Hathaway reads the application summary:

The applicant requests a Special Permit under Section 6.4.02 (Special Permits) and Section 1.4.02 (Alteration and Extension of Nonconforming Structures or Uses) to allow a 18'6" x 15' addition to a non-conforming structure. The property is located in the Residential 1 (R1) Zoning district, which requires a 25' front setback. The front wall of the proposed addition is approximately 23.7' to the front lot line, with the roof overhang

extending into the setback an additional 8". The proposed addition is further from the front setback than the existing home (the current porch is 7.7' to the front property line).

Stacey Oliva, representing the applicant Taryn Rossi, presents building plans on screen. She points out Sterling Street and front porch which is approximately 7.7 feet away from the street currently. She points out front wall of the addition and where the setback line exists. Ms. Oliva states that when planning the design for the proposed addition she focused on making it a functional space and an affordable project while preserving as much of the applicant's prior investments as possible (such as bulkhead and landscaping). Ms. Oliva then shows plans for the second floor of the addition including master bedroom and a second bathroom. She states that she tried to keep the addition as far back from the front of the house as possible.

Mr. Johnston states that all the houses on this street are very close to the street itself and that this proposed addition is setback further than other houses on the street. He also mentions that this is a corner lot which borders Pleasant Street so the addition will not encroach on neighbors and that based on his observation it will fit in nicely with the neighborhood. Mr. Hathaway states that he likes that the addition has minimal encroachment on the setback even though the front of existing house encroaches significantly on the setback. Mr. Buckley asks if this home is on public sewer and water. Ms. Oliva states that it is. Mr. Buckley explains that one of the conditions for granting a special permit is having public sewer and water. Mr. Reinke asks if there are any further questions from the Board. There are none. Mr. Reinke asks if there are any questions from the public. There are none.

Motion: Mr. Johnston moves to grant the special permit as requested.

Second: Mr. Hathaway

Discussion:

Roll Call Vote: All in favor (4-0-0). Mr. Buckley notes that the project is in harmony with the purpose and intent of the bylaw.

Ms. Buck explains that the Board will sign the decision and there will be significant delays in the signing due to Registry of Deeds requirements. She states the Board will take a vote later tonight to authorize electronic signatures. A certificate of that vote then needs to be sent to the Registry. Ms. Buck then needs to reference the recording information of that certificate above the signature block of the document that is to be signed. She states she this process may take a couple of weeks. Ms. Buck states that it is then filed with the Town Clerk and the appeal periods are now extended until 20 days after the State of Emergency ends. Ms. Buck states that for special permits, once the decision is filed with the Town Clerk that the applicant can proceed at their own risk prior to that appeal period ending. Ms. Oliva asks if she will be notified when decision is filed with the Town Clerk. Ms. Buck advises that she will be notified.

Motion: Mr. Hathaway moves to close the hearing for 3 Sterling Street

Second: Mr. Johnston

Discussion: None

Roll Call Vote: All in favor (4-0-0)

48 Lake Drive

Mr. Hathaway reads the application summary.

The applicant requests a Special Permit under Section 6.4.02 (Special Permits) and Section 1.4.02 (Alteration and Extension of Nonconforming Structures or Uses) to allow replacement of an existing 9' x 16' deck with a factory-built sunroom of the same size. The property is located in the Suburban Agricultural (SA) Zoning district, which requires a 40-foot setback from all sides. The existing deck (and proposed sunroom) is located 29' from the rear lot line, and 22' and 11.6' from side lot lines.

Mr. Reinke asks Ms. Buck if she knows of any other correspondence for this application. Ms. Buck states that there is a letter from the Building Inspector dated 3/12/2020 which is a description of the project and notification to the applicant that they would need to apply to the ZBA. Mr. Reinke asked if there were any issues with starting this hearing due to the hearing time. Ms. Buck states that she advertised the hearings as starting at 6:00PM and running consecutively; she did not assign them specific times. Mr. Earl Connor from Brady-Built Sunrooms is present and representing the applicant, Ms. Toni Mandel.

Mr. Reinke states that he filed a potential Conflict of Interest statement with the Town Clerk this afternoon. He states sometime between 2004-2006 he had a non-compensated business relationship with Brady-Built Sunrooms. He states that his company provided the licensing and labor for the ancillary things that needed to happen in order to install a Brady-Built Sunroom. He said that they never received payment, nor did they ever pay Brady-Built Sunrooms. He wanted to make everyone aware and poll the Board and see if anyone had objections to him voting on this application. No Board members have objections.

Mr. Connor states that the house has an existing deck on the east side of the house. The existing deck is 9x16 feet and the applicant would like to replace that with a factory-built sunroom of the same size. The new sunroom would be the same size and be installed at the same height as the existing deck and stair. He states that the project had already been approved by the Conservation Commission. He states that the new sunroom will not be visible from Lake Drive and the existing tree growth significantly screens the sunroom from neighbors from the north and south. He states that sunroom will greatly improve the appearance of the home from Burncoat Pond. Mr. Connor states that the house, deck and stairs are pre-existing non-conforming structure. Mr. Connor states that Zoning Bylaw Section 1.4.02.1 allows the ZBA to issue a special permit should they determine the alterations do not increase the non-conformity or be substantially more detrimental to the neighborhood than the existing non-conformity. He states that he strongly feels like the project will enhance the property and the neighborhood. He states that he feels the special permit can be issued without strain from the spirit of intent of Zoning Bylaws in the Town of Leicester.

Mr. Connor addresses the request of the Board for a better architectural description of the project. He states that he was unaware that was a requirement. He said he was able to obtain it this morning, but he was limited because his store is closed at this time. Mr. Connor address questions regarding the finish, stating that there is a short knee wall section that will be sided to match the existing house and the remainder is glass. Mr. Connor addresses concerns from the Chair regarding the representation of the stairs exiting the sunroom and states he submitted a clearer representation of that by email prior in the day to the Department Assistant. He states

that the contractors doing the constructions will be required to meet building codes in terms of egress and dimensions of the stairway.

Ms. Mandel states that the Brady-Built Sunroom is completed. She states it is beautiful and will enhance the property.

Mr. Johnston voices concerns over the plans of the stairs and the landing which were received by the Board today. He states there is an issue of further encroachment on the property lines. He states that it was presented as a sunroom being built on the same footprint as the deck but with the new plans received it now shows a landing next to the room and the stairs extending out beyond that which is encroaching on the property line another 3 or 4 feet. Mr. Johnston suggests that the landing at the top of the stairs be removed and the stairs be placed directly next to the deck which would prevent further encroachment on the property line.

Ms. Mandel states that the original stairs are on the opposite side of where the new stairs are proposed, and they run along the backside of the house.

Mr. Johnston states he is referring to the Jarvis Land Survey plan in which the proposed new stairs had been superimposed. He states that it appears to be a further extension of the deck. Mr. Reinke confirms that the plan that Mr. Johnston is referring to is not the plan that was submitted today. Mr. Reinke states that the plan included with the packet placed the stairs on the right of the plan towards the right of way to shore. Mr. Earl confirms that this is correct and confirms on the plan where the existing stairs are located. Mr. Johnston's concern remains further encroachment on the property line.

Mr. Hathaway asks what the reason was for moving the stairs to the opposite side of the deck from where the original stairs were located. Mr. Connor states that it was to accommodate the design, how the room would fit on the house and what the room would be used for.

Mr. Reinke states that with the inclusion of the stairs on the plan this is no longer the same footprint and would encroach further into the setback. He states that this application may need to be resubmitted as a variance due to the encroachment of the setback. Ms. Buck asks if the stairs will extend further than the house on the side of the stairs. Mr. Reinke states that the plot plan shows that it will encroach further than the current house. Mr. Reinke states the applicant could tweak the design so that they would not need to obtain a variance. Ms. Reinke observes a chimney on the same plain as the stairs and asks if Mr. Connor knows the distance from the lot line to the chimney. Mr. Connor states he does not have that dimension. Mr. Hathaway states that this can only stay a special permit vote if the plans do not encroach further into the setback.

Ms. Mandel asks if the existing footprint of the house is to the extension of the chimney. Mr. Reinke states that it is because the chimney is a part of the existing house. Mr. Connor asks if it is possible to include as a condition of the special permit that the stairs could not extend further than the chimney. Mr. Reinke states that is a possibility.

Mr. Paul Gagne, neighbor of the applicant, states that he has seen the plans and the room at Brady-Built Sunrooms, and he believes it is going to enhance the property. He states that where the sunroom and stairs are going in terms of their property line, he does not see any issue with the plans as they are proposed. He also states that there is a cement brick area on the house that protrudes further than the chimney.

Mr. Johnston states that if they eliminate the landing at the top of the stairs and move the stairs closer to the deck it looks like they will not infringe further on the property line. He states it would be the easiest thing to do to avoid having to apply for a variance.

Ms. Mandel confirms that there is a section on the outer wall of the house that protrudes further than the chimney as indicated by Mr. Gagne. She also states that the lot is not square as indicated by the land surveyor and the house sits closer to the property line of 46 Lake Drive than it does 52 Lake Drive. The stairs would go on the side of 52 Lake Drive.

Mr. Hathaway states that he thinks they could make a motion for the special permit however when applying for the building permit its going to have to show where the stairs are located, and they will run the risk of having to come back for a variance.

Mr. Reinke asks Mr. Connor asks if they will be able to make the plans fit the setback. Mr. Connor states that they could get 36-inch stairs in the plans without going past the chimney and asks if it could be a stipulation to the special permit. Mr. Hathaway agrees that such a condition could be included in the special permit but that does not mean that the building inspector won't require the applicant to apply for a variance. Mr. Reinke states that if the stairs are not included within the pre-existing non-conformity that it can cause issues down the road when it comes to legalities when selling the property or doing a land transfer.

Mr. Reinke asks the Board if they think that the applicant should come back in front of them for a variance. Mr. Hathaway states that he thinks the applicant needs to come back with a full proposal including the stairs. Mr. Reinke asks Mr. Connor and Ms. Mandel if they would like to continue the meeting in order to give them time to get updated plans together which include the stairs. Mr. Connor states that he does not think the building inspector will reject it for encroaching the property line because of the depth of the chimney. Mr. Connor states he would like to go forward with the special permit but that it is Ms. Mandel's decision. Ms. Buck states that they should not need a variance if they make it no closer to the existing property line than the current chimney and that the Board could do a conditional vote. Mr. Reinke states that they prefer to get plot plans that reflect exactly what the project is. Mr. Connor states that another condition of the special permit could be that the applicant must provide the office with a revised site plan.

Ms. Reinke expresses concern about not doing their due diligence by voting on a special permit without an accurately represented plan when the plan that was provided would require a variance. Mr. Buckley states that all they would be able to vote on tonight is the plan that was provided, it would not include the stairs. Mr. Buckley asked how long it would take to draft a plan that included stairs. Ms. Buck asks if the hearing could be continued to give the applicant time to submit a revised plan. Mr. Reinke states that a continuance is feasible with the submission of a revised plan. Mr. Johnston agrees that a continuance would be a way to resolve this. He states that Jarvis can get the dimensions from the chimney to the property line and then the Brady-Built plans can be revised before continuance. Mr. Hathaway states that they should provide dimensions from the property line to the chimney and to the proposed stairs to make sure for accurate representation.

Mr. Connor states that he would be able to accommodate the Board's requests in time for a continuance if Jarvis Landscape Survey are currently working (due to COVID19 concerns) and asks when the next meeting will be held. It is determined that the hearing will be continued until

May 12, 2020. Ms. Buck confirms that land surveyors are considered essential and are still working.

Motion: Mr. Hathaway moves to continue the hearing for 48 Lake Drive until 6:00PM on Tuesday, May 12, 2020.

Second: Mr. Johnston

Discussion: None

Roll Call Vote: All in favor (4-0-0)

Mr. Connor asks how he should submit the revised plan. Ms. Buck states that if he has it ready before the meeting it would be beneficial to submit it ahead of time as they post all documents related to the meeting online ahead of time.

Approval of Minutes:

July 31, 2019 Meeting Minutes

Mr. Hathaway questions his specific wording in the finding of facts for 25 Lake Drive Special Permit and Variance. Is states that “Mr. Hathaway voted in favor as hardship is demonstrated in terms of topography and handicap”. Mr. Hathaway requested that it be changed to “Mr. Hathaway voted in favor as hardship is demonstrated in terms of topography and handicap accessibility”.

Motion: Mr. Johnston moves to approve meeting minutes for 7/31/2019 as written (with the correction)

Second: Mr. Buckley

Discussion: None

Roll Call Vote: All in favor (4-0-0)

August 7, 2019 Meeting Minutes

Motion: Mr. Johnston moves to approve meeting minutes for 8/7/2019 as written

Second: Mr. Buckley

Discussion: None

Roll Call Vote: All in favor (4-0-0)

Correspondence/General Board Discussion:

Mr. Reinke asks Ms. Buck if there are any interested parties in being on the ZBA. Ms. Buck responds there is not.

Acceptance of MGL Chapter 110G, Section 9 related to electronic signatures

Ms. Buck requests that the Board move to approve electronic signatures.

Motion: Mr. Hathaway moves that the Leicester Zoning Board of Appeals recognize and accept the provisions of MGL Chapter 110G regarding electronic signatures and that its members will henceforth execute documents either with electronic signatures or with wet ink signatures and that both will carry the same legal weight and effect.

Second: Mr. Johnston

Discussion: None

Roll Call Vote: All in favor (4-0-0)

Motion: Mr. Johnston moves that we adjourn the meeting'

Second: Mr. Hathaway

Discussion: None

Roll Call Vote: All in favor (4-0-0)

Meeting Adjourned at 7:30PM

Respectfully submitted,
Tiffany Peters, Department Assistant

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

- Agenda
- Memo to the ZBA from the Town Planner dated 4/22/2020
- Hearing Notice for 4/29/2020 ZBA Hearings
- Special Permit Application and plans for 3 Sterling Street
- Special Permit Application and plans for 48 Lake Drive
- Meeting Minutes for 7/31/2019
- Meeting Minutes for 8/7/2019
- Suggested Motion Regarding Electronic Signatures
- Letter from the Worcester Registry of Deeds dated 4/23/2020
- Massachusetts Deeds Indexing Standards 2018 – April 2020 Amendment
- Letter from the Worcester Registry of Deeds dated 4/09/2020

Documents submitted at meeting: None