

**ZONING BOARD OF APPEALS
MEETING MINUTES**

May 12, 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**
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:**
 - April 29, 2020
3. **Correspondence/General Board Discussion:**
 - Miscellaneous Updates
4. **Adjourn**

Meeting called to order at 6:02PM

48 Lake Drive

The public hearing for 48 Lake Drive is a continuation from the April 29, 2020 ZBA meeting. Mr. Earl Connor of Brady-Built Sunrooms is present to represent the applicant Ms. Toni Mandel. Mr. Connor states that they shifted the sunroom to the right in order to minimize any incursion into the side yard setback which enabled them to put in a logical stair that works for Ms. Mandel and does not impact the left side setback based on the construction of a retaining wall which is a part of the original structure. Mr. Connor states that the retaining wall is integral to the function of the existing door which has always been a part of the house. He states that the retaining wall is what is going to govern where the setback lies on that side of the house.

Ms. Reinke asks if there are any questions from the Board. Mr. Hathaway states that this is the first time he has seen a retaining wall considered part of the structure. He states that he considers it a landscaping retaining wall and does not know if should be considered integral to the building. Mr. Hathaway states that they had specifically stated that they wanted the distance to reflect from the lot line to chimney and that is not what the applicant submitted.

Mr. Connor states that he has researched definitions, all which indicate that retaining walls are permanent structures, that foundations themselves are a form of retaining wall and that retaining walls are structures that are governed by state code.

Mr. Hathaway states that he is still not sure it can be considered part of the house. Mr. Hathaway states that in the letter there were several dimensions that we mentioned and none of those dimensions were on the plot plan that was provided by Jarvis Survey.

Mr. Connor states that the key dimensions are there and they are different than the letter. He states that the letter was drafted hastily as they were trying to submit their application as soon as possible. He states that 14.8 feet to the stairway and the 14.1 feet to the retaining wall are the certified distance from Jarvis Survey. Mr. Connor confirms that the Board should consider the certified survey the accurate dimensions.

Mr. Johnston states that if the retaining wall/bulkhead area was a part of the original structure then the applicant has done what they were asked to do. They have presented a plan that does not encroach further on the property line.

Mr. Buckley states that at a minimum he would want something from the Building Inspector/Zoning Enforcement Officer on this retaining wall as he has the same concerns as Mr. Hathaway. He states that when we left the last meeting it had been discussed that the stairs would fit within the setback that was measured by the distance of the chimney to the property line. He does not know if the setback should be measured based on the retaining wall.

Mr. Connor states that they did an in-depth analysis when they went back to the site regarding how the stair was being arranged. He states that were the stair ends would have been right behind the chimney. He states that he wanted to identify what would be the structural control. They determined that it was the retaining wall, which allowed them to make a more sensible design that deals with the egress from the room. He adds that this wall was built as part of the original house and is integral to the egress from the basement, it was placed there to service a door that is part of the original structure, it is not landscape. He states it is a structure to hold back the earth just as the foundation does. He states that he understands the concern of the Board but he that he has made this argument before when a retaining wall was in question.

Mr. Reinke states that if a retaining wall is four feet or more then it falls under the state building code, anything below that is not. Mr. Reinke asks what the height of the retaining wall is. Mr. Connor states that he does not have the height measurement, but that if you look at the photographs that he provided it is taller than 4 feet. Not all Board members were able to view photographs. Ms. Buck shares photos on the screen. Mr. Connor points out in photo that a portion of the retaining wall is the same height as the door. It was agreed upon by Mr. Reinke and Mr. Connor that the photo contained a door that measured either 6'6" or 6'8". Mr. Reinke states that it appears to be a field stone retaining wall that is quasi-tied into a CMU foundation which would indicate that they were not built at the same time. Mr. Connor states that he visited the site and that it is very evident that it has always been part of the construction. Mr. Connor states retaining wall is stone with a concrete cap. Mr. Reinke states that the wall and the foundation are made out of different building materials and are not interconnected as far as he can see, therefore the wall is not an integral part of the house and to him does not look like it was built at the same time as the original foundation. Mr. Connor states as design professional building materials are often mixed on projects. Ms. Mandel states that the cellar in the front portion of the house is made of fieldstone. She states the fieldstone retaining wall looks the same age as the fieldstone inside the cellar.

Mr. Hathaway states that even if the Board decides on the special permit, the Building Inspector may determine that they need a variance anyway. Mr. Hathaway asks why the stairs cannot go on the north side of the project, closer to the lake. Mr. Connor states that the backyard is too small and that any further incursion into the backyard would decrease the limited green space that they have. Mr. Hathaway expresses concern that the applicant was asked to present a plan based on the stairs and now they are being asked to consider a retaining wall as a part of the structure. He states that he does not have objections to the aesthetics or blocking the view to the water but that he believes this may require more than a special permit and is interested to see what the Building Inspector opinion is on it.

Mr. Reinke recounts the series of events in the application process which include the application being received, stairs not being represented in the plans and now being asked to consider the retaining wall. Ms. Buck states that the Board gave the applicant specific instructions as to what they were looking for and the applicant did not do what the Board asked. Mr. Connor states that architecturally that it made more sense to design the stairs in a way that works best for the resident. Mr. Connor states they tried to design the stairs behind the chimney and that there was not enough room. Mr. Connor states that he had a previous discussion with the Building Inspector and stated that this could have been interpreted as being allowed by-right, which the Building Inspector did not agree with which is why they went in front of the Board. Mr. Connor states that they have been cooperative, and the stairs were left out of the original plan due to hastily trying to submit application before COVID19 restrictions went into place. He feels like the design presented is what will work best for Ms. Mandel and for the Town. He said that the neighbors on either side have no issue with the plans that are being proposed. He said that this plan is a better package as it works architecturally, you can egress down the stairs without running into a chimney and it does not intrude into green space in the back yard. He states that they are taking advantage of what truly is the setback on that side of the house which is the retaining wall.

Mr. Hathaway mentions that the stairs in the original plans were shown egressing towards the lake and in the new plan are shown egressing away from the lake. He states he feels frustrated and feels like this has not been put forth in the most upfront manner. Mr. Connor states that all his efforts have been to disclose what is best for the homeowner and are well within the jurisdiction of the Town of Leicester's special permit criteria. Mr. Hathaway apologizes if his previous comment came across as insulting as that was not his intent. Mr. Hathaway states that he did not hear an explanation as to why the direction of the stairs had to change. Mr. Connor states that when he changed the plans in order to clean up the plans and limit the incursion into the back-yard space.

Mr. Reinke asks why the stairs were not left where they were located on the original deck. Mr. Connor states that the original stairs are in disrepair. Mr. Reinke asks why they can't build new stairs in the same place as the original stairs were located. Ms. Mandel said that to leave the stairs on the original footprint they would need to bring the Brady room to the edge of the west side of the house. Ms. Mandel states that the exit door on the Brady room is on the opposite side and that the Brady room has already been built. She also states that if they moved the Brady room that it would block her kitchen window. Mr. Reinke states the application we received indicated that the Brady room would be put on the same footprint as the existing deck so it

should not block any existing window. Mr. Connor states that using the existing stairs is not an option because that is not how the room is laid out.

Mr. Connor asks if we can conclude this hearing by applying for a variance. He states that he believes that this can be done without impacting the neighborhood and without going outside of the bylaws which is why he thinks it can be done under a special permit. He states that in filing a variance he will need to prove hardship to the homeowner which he states can be easily done and that the location in the SA zone alone creates that. Mr. Hathaway states that there would need to be additional hardship besides just zoning.

Mr. Johnston states that they are trying to avoid the need for a variance. He states he has concerns that the Building Inspector will not recognize the retaining wall as a part of the structure and that it would make the best sense to go back to the plan that was discussed at the last meeting. Mr. Buckley states he agrees with Mr. Johnston and that he does not feel comfortable making any kind of judgement based on the retaining wall as the measurement for the setback.

Mr. Reinke asks the applicant if they want to apply for a variance or if they want to reconsider their plans based on the discussions that were held in this meeting. Mr. Johnston states that he does not think it is going to be that easy to obtain variance approval as hardships are usually based on disabilities, elderly relatives moving in and issues of that nature. Mr. Connor states that the bylaw recognizes topography and location of existing structures as hardships and he thinks he can show that due to the constraints based on the location of the house. Mr. Connor expresses concern that the Building Inspector will have knowledge of these discussions and that it may influence his opinion of the matter. He asks who has jurisdiction to determine if the retaining wall is a part of the original structure. The Board states that they are unfamiliar with this and that they would need further documentation provided to show them that a retaining wall can be considered part of the structure.

Mr. Reinke asks the applicant if they want the Board to vote on the plans as is or if they want a continuance to further research the retaining wall. Mr. Connor states that he would like a continuance in order to have a discussion with the Building Inspector, speak with the Selectmen, and do further research. He is asking for a 4-week continuance. Ms. Mandel also states she would like a continuance. She states that the retaining wall has been in place for a long time and protrudes out further than the stairs and that she considers the retaining wall to be the more permanent structure as opposed to the stairs.

Mr. Reinke advises that they are considered the same in terms of permanence. Mr. Reinke also advises that at the continuance that the Board is going to be looking for more information on retaining walls and how they relate to zoning setbacks. Ms. Buck states she will research this and speak with the Building Inspector. Board members discuss other plan options with Mr. Connor that would eliminate the issue of the retaining wall. Mr. Buckley adds that Building Inspector is also the Zoning Enforcement Officer for the Town of Leicester and that his opinion would hold bearing on this topic. Discussion is had about not sharing meeting minutes from this meeting with the Building Inspector until after Mr. Connor has an opportunity to speak with him.

MOTION: Mr. Hathaway moves to continue hearing to 6:00PM on June 9th, 2020 with the petitioner ready to speak to both the retaining wall as a structure as well as placement of the stairs in the location is was talked about last time which was going towards the water.

SECOND: Mr. Johnston

DISCUSSION: None

VOTE: All in favor (4-0-0)

Approval of Minutes:

April 29, 2020 Meeting Minutes

MOTION: Mr. Johnston moves that to accept the minutes as written

SECOND: Mr. Hathaway

DISCUSSION: None

VOTE: All in favor (4-0-0)

Correspondence/General Board Discussion:

Mr. Johnston asks if there are candidates for the Board. Ms. Buck advises that there is not.

Motion to Adjourn: Mr. Johnston moves to adjourn the meeting

Second: Mr. Buckley

Discussion: None

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

Meeting Adjourned at 7:20PM

Respectfully submitted,
Tiffany Peters, Department Assistant

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

- Agenda
- Public Hearing Notice for 4/29/2020 ZBA Hearings
- Special Permit Application for 48 Lake Drive
- Plans for 48 Lake Drive
- Meeting Minutes for 4/29/2020

Documents submitted at meeting: None