

Zoning Board of Appeals Meeting Minutes

Minutes of November 19, 2014

Continued hearing from October 29, 2014 on the petition of Margaret Rondeau of 22 Pleasant Street, Leicester for a Variance to extend the front porch 5-feet in depth, from 4 ½ feet to 9 ½ feet and will be 4.7 feet from the front yard setback.

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

Alternate members present: Paul Schold, Jim Reinke

Meeting called to order at 8:14PM

Submitted at tonight's hearing: a revised Plot Plan

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

Mr. Orth said the last meeting was left with the Board requesting a new plan showing why the alternate locations suggested wouldn't work.

Mr. Kirwan said Mr. Reinke, at the last meeting, had proposed the deck to be moved to the left front of the house.

Mr. Hathaway said it was suggested as an alternative location.

Mr. Reinke said his point was that she could achieve the same outcome within the bounds of the Bylaw.

Mr. Buckley agreed the Board was trying to find a way to accomplish what the petitioner wanted without the need of a variance.

Mr. Orth said if the Board were to grant the variance as requested, then the Building Inspector would issue a building permit assuming that he approved of the building of the porch.

Mr. Hathaway said the Board needs to try and understand why the variance is needed.

Mr. Reinke said it looks like there was a change made to the plan from the first variance on June 4th. The plan shows the deck across the front, and shows the smaller deck and porch on the southern side.

Ms. Rondeau said the last plan the Board should have is dated July 24th.

Mr. Kirwan said he has a plan from June 25th

Ms. Rondeau said the plan was revised for the VA because originally the back ramp was the only ramp needed, but the VA requested two egresses and two ramps; one in the front of the house and one in the back of the house. She had the surveyor show, on the plan, the existing ramp on the side of the house. She spoke to the building inspector about a permit and was told that the existing ramp was included with the first variance approval in June. The July 24th plan shows the second ramp.

Mr. Kirwan noted that if the second ramp was going as far as it appears on the plan, he didn't feel there would be enough room to move her husband back over to the back corner. Mr. Schold said the ramp is 4-feet wide, the driveway is around 8-feet wide, it made sense to put a deck down the backside and the ramp off that deck. It would bring the ramp out to the driveway, plus there's a good setback there.

Mr. Schold noted there not being a back deck there now, that there was just a ramp. Ms. Rondeau said there's an entryway to the door, but there's just a ramp, no deck. Mr. Orth thought if there were a deck there, it would block the ramp. Ms. Rondeau agreed. Mr. Schold asked if the secondary ramp was for emergencies. Ms. Rondeau said yes.

Mr. Schold said the deck that is there now, that's in question, it doesn't meet setback and has very limited space, it made sense to move it to the back where there's more room. Mr. Orth felt where the deck sits now, was the only place the deck can be put.

Mr. Buckley said the applicant stated she wanted her husband to be able to have a view and they would be able to have a deck off the back that would accomplish the same view. Ms. Rondeau disagreed.

Mr. Orth said she needed more room to be able to maneuver the wheelchair; he felt there was the need and met the hardship. Mr. Hathaway said if there was a need for a 9 ½-foot deck, and the required width is 5-foot, why can't they go smaller? Mr. Orth said the deck was 4 ½ feet and she needed to be able to move the wheelchair around and the length would be at least 4 to 6 feet from the back of the chair to the front of the foot and she needs to be able to maneuver around. He felt it would not be unreasonable.

Mr. Reinke said the applicant stated some VA guidelines he was not familiar with that require two means of egress. Ms. Rondeau said it's not a guideline, it's what they wanted and this is what they have done. Mr. Reinke asked if the guideline calls for a ramp or an egress. Ms. Rondeau said a ramp.

Mr. Hathaway stated that if we were looking at this as if the hardship was that because the porch was already there, it was hard to see how this wasn't a self-imposed hardship. This didn't go to the Building Inspector for a permit first and receive a denial letter before filing. Ms. Rondeau noted her contractor was very good at his work. Mr. Hathaway said the contractor should have noted that the front deck was not part of the permit. Ms. Rondeau said her current contractor was not involved with the front porch.

Mr. Hathaway said he thought the misunderstanding was the front porch was covered by the other permit.

Ms. Rondeau said no, she took out a permit for her house long before the current contractor was hired, to do all the exterior work on the house. The permit was to put up siding, to put in new windows and she included repair to the front porch.

Mr. Hathaway asked if it wasn't realized that the permit didn't include enlarging the porch.

Ms. Rondeau agreed, because she thought the permit included the redoing of the porch.

Mr. Hathaway said the applicant took out the permit and the permit didn't cover the extension and now it's a problem created by the applicant.

Ms. Rondeau said of course it is according to the Bylaw, which is why she is here today.

Mr. Hathaway disagreed that was the reason they were here. Ms. Rondeau said yes it was.

Mr. Orth said the reason they are here today was a variance is needed, because at the time the porch was built, it seemed correct, which is the way he sees this.

He does agree that this is a self-imposed hardship.

Mr. Hathaway said a variance can't be approved for a self-imposed hardship.

Mr. Orth proposed to the Board that if the applicant had proposed the porch before it was built, which is the way the Board should be looking at this, and it appeared that there was no other place to build the porch in which her husband can go outside and be maneuvered around, would the Board have granted this based on the need and the hardship of maneuvering the wheelchair out into the porch area? His feelings were that this was a unique situation because of the applicants' husband's service in the military, which resulted in his injuries and the situation they are in right now. The length of the wheelchair is longer than a normal wheelchair and the size of the porch, as proposed, would be reasonable. Due to the topography and the ramps themselves, there isn't another place to put such a viewing area.

Mr. Hathaway said he is trying to understand the hardship perspective. The stated hardship is there is no place to sit to watch traffic. It is still not clear that this could not be achieved at another location. If the Board were to grant this variance for the porch, the porch will outlive everyone present at the meeting and still be there long into the future.

One of his concerns is how close to the road the porch sits and if this were to be granted, the porch will be there forever. He also didn't want to see that the porch end up being used for commercial purposes.

Mr. Kirwan said some of the variances the Board has granted were for the need of more room for someone's children and there were never stipulations put on those requests.

Mr. Hathaway said the porch is in an area that's too close to a road.

Ms. Rondeau asked why she sent out the notices to her abutters for no one to have any complaints. There's a house across the street with a big red X on the building and their grass should be cut, but she can't force them to cut their grass. There's this house across from her that should be knocked down and yet she sends out the notices to her abutters with no one here to complain or object.

Mr. Reinke said a person has the right, as an abutter to a junk house across the street, to make that property owner follow the same set of Bylaws and a complaint should be filed.

He asked if the proposed ramp on the back was permanent.

Ms. Rondeau said yes.

Mr. Reinke asked if the ramp along the side was permanent.

Ms. Rondeau said no that one was temporary.

Mr. Kirwan asked if it would make the Board more comfortable if a condition was put on the porch.

Mr. Hathaway said his concern was with safety and having someone sitting out on the porch at night with cars going by 4.7 feet away from the porch.

Ms. Rondeau said it's actually 7.5 feet from the porch to the sidewalk and then there's the road.

Mr. Reinke said one of his concerns was that it may set a precedent.

Mr. Orth said this Board has noted in the past that previous Zoning decisions do not necessarily mean similar zoning requests will be approved.

His reason for deviating is because of the particular situation she has due to the hardship of her husband. Whereas, if someone else was to demonstrate a hardship, he would probably be more amenable to granting a variance, than to someone who wants a bigger porch because he or she has 3 children. Technically, the Board grants permits based on its particular merits.

Mr. Reinke said he recognizes the hardship but doesn't see this as being permanent.

Mr. Orth said nothing is permanent

Mr. Hathaway said if the variance is granted the porch will always exist.

Mr. Orth said the Board cannot grant a variance based on future and cannot deny a variance based on the future.

The way he looks at a variance is, what is the need now and why the change. It would seem to him that the hardship with the applicant's husband and needing the maneuvering ability to be able to move the wheelchair from the inside to the outside.

Mr. Reinke asked when the permit was pulled for the siding. Ms. Rondeau said in 2013.

Mr. Buckley felt this was a tough issue and wondered why it got this far. The porch was built without a permit and some action should have taken place and it shouldn't have come here.

Mr. Orth said what happened was the misinterpretation on what the permit was for and she had a permit to fix the porch.

Mr. Buckley said the Building Inspector said the porch was built without a permit and a permit must be applied for and approved or else it could be required that it be taken down.

Mr. Orth said the building inspector told her not to take it down and that was his decision, which is another discussion. But the porch is there and even if it wasn't there and it was proposed, which is how the Board should be looking at this, and based on those merits, would the Board approve it. Regardless of how it got there and why it's there.

Mr. Hathaway said the question is, if this porch didn't exist, would we have granted this and from his perspective, would the Board grant this or would something smaller be granted. The fact that the porch is there, complicates things, because if it wasn't then the Board might be able to consider something smaller.

Mr. Orth said how much smaller is small enough or how much smaller would be necessary to maneuver the wheelchair. Another question, the space that is being requested, is it overkill or can it be reduced smaller and if it can be reduced smaller, how much smaller can it be reduced too?

Mr. Hathaway felt that was not up to this Board to decide, but rather that it is up to the petitioner to demonstrate why the location and size are needed.

Mr. Orth disagreed; he felt it was trying to be decided.

Mr. Hathaway said that's because it hasn't been stated as to why it needed to be that big.

Mr. Orth said he thought it was for the applicant's husband to be able to go outside and view the street.

Mr. Hathaway asked why the porch needed to be 9 ½ feet wide in order to see the street.

Mr. Orth reiterated at what point the width would be reasonable to grant a variance.

He felt it had already been established that the porch can't be put anywhere else based on where the ramps will be placed and current egresses are. He asked, what would be the width extension the Board felt comfortable.

Mr. Hathaway said he hadn't heard why a temporary ramp can't be moved and he hadn't heard why the porch can't be put in back.

Mr. Kirwan said it was mentioned at the previous meetings as to why this Board is even sitting here viewing this petition. That if the Building Inspector had put a Cease & Desist on the porch and handled it then and there and ordered it to be removed and say this is how you go about having it put on. Apply for a building permit, it would then get denied and would have to come before the Zoning Board. So the fact that the Building Inspector did not take those actions leads to infer that he really doesn't have a problem.

Mr. Hathaway said he thought that maybe he was trying to be a nice guy and didn't want to order it taken down if the ZBA might come up with a decision that would render the porch acceptable

Mr. Reinke said the Building Inspector has the absolute authority, which was what he stated earlier.

Mr. Kirwan agreed, because otherwise the Building Inspector would have ordered it taken down. So therefore, he infers by his actions that by sending this to the Zoning Board, the Building Inspector isn't basically against this deck. To just go about it in the right way, therefore apply for the variance.

Mr. Reinke said his question is that the Building Inspector's notes within the Board's minutes stating the porch should be taken down and the ZBA was the first line of defense with this issue.

Mr. Buckley agreed and the Building Inspector recommended for the applicant to come to the ZBA for a variance, which isn't pre-determining a variance would be granted. But then in his letter it states that he felt the existing porch met ADA requirements and the extension was not necessary. He felt the letter was saying, go to the Zoning Board, get a variance, but then writes a letter speaking in opposition to granting the variance.

Mr. Buckley continued. The Building Inspector is the Zoning Enforcement Officer and he, himself, puts some weight to what the Building Inspector says. That's the reason the Board asks for his opinion and he is saying it's not necessary, in his opinion and he is the Zoning Enforcement Officer and his opinion has some weight there.

He's not saying whether it's right or wrong, but it's a weird situation and there's a lot of contradiction.

Mr. Orth agreed there are a lot of questions on how the Building Inspector handled this.

Mr. Schold felt this was an awkward situation and is really putting the cart before the horse.

Mr. Orth asked for any further comments or questions; hearing none, asked for a motion.

MOTION: Mr. Kirwan moved to approve the petition of Margaret Rondeau of 22 Pleasant Street, Leicester, Ma. for a Variance to extend the front porch 5-feet in depth from 4 ½ feet to 9 ½ feet and will be 4.7 feet from front yard setback.

With the conditions that the deck will never be used for any type of commercial use; that as the deck is built today, it must so remain or be reduced at the owners' discretion, but not under any circumstances enlarged.

SECONDED: Mr. Orth – Discussion: Mr. Buckley asked what the hardship was. Mr. Orth said he felt hardship was because her husband is in wheelchair and they needed the extra space to maneuver the wheelchair to get her husband outside. He felt there was no other spot on the lot, due to the configuration, to put the porch.

VOTE: 2 in favor -3 opposed

Variance Denied

Instructions were given on the appeal process.

Ms. Rondeau sternly stated that at each meeting she attended, each one of the opposed members kept asking the same questions over and over again. She pointed at Mr. Reinke stating he was supposed to know about ADA requirements.

Mr. Reinke said he did. Ms. Rondeau disagreed, because then he would know what a hardship this is.

Mr. Reinke said he didn't say it wasn't a hardship.

Ms. Rondeau said but you refused to grant this.

Mr. Reinke said yes, based on what was presented.

MOTION: Mr. Hathaway moved to adjourn

SECONDED: Mr. Kirwan – Discussion: None

Meeting adjourned at 9:05pm.

Respectfully submitted:

Barbara Knox

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