

Zoning Board of Appeals Meeting Minutes

Minutes of October 29, 2014

Hearing on the petition of Margaret Rondeau of 22 Pleasant Street, Leicester, Ma. for a Variance to extend 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: Vaughn Hathaway, David Kirwan, Jim Buckley, David Orth

Alternate members present: Jim Reinke, Paul Schold

Called to order 7:50PM

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

Mr. Orth reviewed the last hearing where discussion was left at having the applicant review options that could circumvent the variance request.

Ms. Rondeau said she was told her where the second ramp was being proposed and where the current ramp is located, would make it impossible to put in another ramp off the front porch. The American Disability Association told her there were no current set rules in place for porches, although it does make sense to have a 5-foot turnaround. They explained to her that 5-foot turnaround is correct, as far as the ramp goes, but that's only for a ramp and not for an area, such as a porch or a room.

Mr. Hathaway asked if 5-feet were wide enough to turnaround the wheelchair on the porch.

Ms. Rondeau said no, a bit of maneuvering is needed. When you're talking 5-feet, it really isn't that wide.

Mr. Hathaway asked if there were any State Regulations regarding the 5-feet.

Ms. Rondeau said no.

Mr Reinke explained that the Massachusetts Architectural Access Board strives to recognize and regulate around architectural value, such as the turning radius in a home, public building or business. The turning radius comes from a person who is in a wheelchair and it was designed to help the disabled not feel disprivileged by barriers

Although ADA does trump zoning, such as putting a ramp in the front of the house, having it in the setback would still require a special permit from the ZBA.

The fact the building permit wasn't pulled for the deck was the first mistake and the problem was compounded by the actions of the building inspector by not really following the right way of doing things.

Section 114.2 of the State Building Code gives the Building Inspector the authority to order something to be taken down. In order to get to that level though, a stop work order has to be issued first, in writing and not verbally, because a verbal order isn't enforceable.

Mr. Hathaway said if this were to go to court, a judge would say that a verbal order didn't count and would have to be in writing. He felt that giving a verbal order was intended to inform Ms. Rondeau about what should be done.

Mr. Reinke agreed, the letter of the law is supposed to be in writing.

Mr. Hathaway said it would be relevant if the Building Inspector were issuing a day-to-day fine for not meeting the order. He was not sure why this was being discussed at this hearing of the ZBA.

Mr. Reinke said the Building Inspector stated, as a rebuttal to the minutes, the deck should be taken down and he has the authority to take it down, so why is this petition here?

Taking it a step further, maybe the Building Inspector decided to give them a break. The man was disabled; he fought hard for our country and thought to give him a break. Have them go before the ZBA and if the Board approves it, then the Building Inspector would be okay with that.

Mr. Hathaway said he didn't read that as saying take the deck down. He read it as, "not continuing construction."

Mr. Reinke pointed out in the rebuttal the comment "This is fact, it should be taken down, it was finished even after a verbal stop work order was ordered."

Mr. Buckley said the Building Inspector noted in his opinion, the Board shouldn't grant a variance.

Mr. Hathaway said the Building Inspector was issuing his opinion from his perspective. He wasn't telling the Board what to do; he was telling the Board his opinion.

Mr. Buckley agreed the Building Inspector gave his opinion as the Zoning Enforcement Officer. The Board is obviously putting some value to it, by asking for the Building Inspector's opinion. Mr. Hathaway said he didn't take offense on the Building Inspector offering his opinion.

Mr. Buckley said he didn't say he was being offended, he was saying there was a contradiction with what the Building Inspector's comments to the Board. The Building Inspector advises the applicant to go to the Zoning Board to get a variance for something Mr. Buckley felt shouldn't receive approval for a variance. He agreed that it's anyone's right to file a petition to get a variance, but there wasn't a permit issued to build the deck, so how can the Board grant a variance for this.

Mr. Reinke said the only reason he can figure why the Building Inspector sent this to the ZBA, was to try to do something to help the situation.

Ms. Rondeau said when she spoke with the Building Inspector, she asked him what he wanted her to do and he advised her to go before the ZBA.

Mr. Hathaway explained that's consistent advice on what the Building Inspector would give, but the Building Inspector's comment to the Board was "he never spoke about the porch being taken down and he did tell her at the Town Hall if the ZBA says no, it would have to be removed, but not to continue with the construction."

Applying for a permit is not the same as granting a permit.

Mr. Reinke said he was trying to put this in perspective, because it sounds like the Building Inspector is saying two different things.

Mr. Buckley said I value what the Building Inspector, aka, Zoning Enforcement Office, is saying and he agreed with that and not grant a variance. The circumstance on how this came around is very strange. Even if the Board were to grant this variance, it doesn't mean the porch can stay. Does that mean the Building Inspector would then issue a building permit for the porch?

Mr. Hathaway said right now, the porch is violating the setbacks and they need the variance to say it's okay to build in the setback.

Ms. Rondeau explained when she'd asked the Building Inspector how he wanted her to go forward with this, he recommended to have the property surveyed, show everything on the plot plan and then file for a variance.

Mr. Kirwan said if this deck had the variance for the setback issues; it would then go to the Building Inspector for the building permit to build the deck, which still may not meet the building standards and then it would have to be corrected.

Mr. Orth said if there was a permit issued and the Building Inspector found that the deck did not meet the building codes, what would be the course of action then?

Mr. Hathaway said all this Board is doing, is saying whether or not it's okay to violate the setback. Mr. Orth agreed.

Mr. Kirwan said he would like to know the answer, because if the deck wasn't constructed in a manner that would make it safe, it could collapse.

Mr. Kirwan continued. As we all know, this request is being approached in the wrong fashion, but this is here now. We all have to deal with it as if it hadn't become such an issue and had already gone through the building permitting process.

Ms. Rondeau admitted she misunderstood that when she took out the permit to repair the front porch, she assumed it included extending it.

Mr. Kirwan proposed to the Board that, if the proper process had been followed and the fact that a building permit had been pulled, the Building Inspector would then have had the opportunity to inspect the site. He would provide his opinion and then have it come to the Zoning Board. He asked if the Board could view this as, and based on the needs of the individual, would the Board have been likely to approve the variance. Could the Board do this like that, knowing that it would get sent back to the Building Inspector so he can now do his due diligence and the end

result maybe that it will have to be taken down anyway. She would then have to rebuild it with the proper permits and correct methods.

Mr. Hathaway said he agrees with the perspective described, but the one difference is, that if the building permit had been applied for, it would have been denied and before any construction took place, she would have needed to and then a permit could have been granted. It's only because it is already constructed that we are looking at this exact location. He agreed that the Board should be looking at this as if nothing happened.

Mr. Orth agreed the Board should be looking at this as if nothing happened and that the only image of a porch being viewed should be from the plans and not actually on the property.

Mr. Kirwan said if that's possible, he's comfortable moving forward with this and whichever way the vote goes, it goes. He noted that it's hard not to get caught up in the Building Inspector's comments and not have it reflect on how the Board may otherwise vote.

Mr. Orth said the Building Inspector is the Zoning Enforcement Officer, but agreed that if the construction of the deck had never taken place, where would the Board have gone with this?

Mr. Kirwan said he would feel a lot more comfortable with a variance, knowing that it would have to go to the Building Inspector for the safety inspection.

Mr. Hathaway said if the Board was to vote on this and if it were approved, the Building Inspector would get involved with the intent of making sure it was safe.

Whether it's safe or it isn't safe, shouldn't be the matter before the Board now.

Mr. Orth agreed.

Mr. Schold asked that if the variance was approved, would Ms. Rondeau have to go back to the Building Inspector and get a new permit.

Mr. Orth said she would have to get a separate building permit for the porch and then have it inspected.

Mr. Buckley agreed with Mr. Kirwan in that the Board should be looking at this as if the porch was never built, but it still needs to meet the requirements for granting a variance. He felt hardship had not been demonstrated. Mr. Orth noted it could be shown as a self-imposed hardship.

Mr. Kirwan said he would like to give Ms. Rondeau the opportunity to express her opinion on why the variance should be granted, and if she was aware of the requirements for granting a variance..

Ms. Rondeau said yes, she was aware of the requirement. It's a hardship trying to maneuver the wheelchair when taking her husband out. With a bigger porch it makes it easier for her husband to be taken out to sit outside.

Mr. Kirwan asked about the current ramp coming off the house. Ms. Rondeau said that ramp comes off the back porch.

Mr. Kirwan asked that if the variance wasn't granted, what kind of difficulty that would bring. Ms. Rondeau said it wouldn't be a tragedy, but it would make it harder for her to get him outside onto the porch.

Mr. Hathaway asked if making the porch 5-feet would be easier.

Ms. Rondeau said even at 5-feet, she would have difficulty getting him outside because it's not enough room. She probably could get him out there, but it would take a lot of maneuvering and with a deck this size, it makes that turn around a lot easier.

Mr. Orth said with the porch extended, he can be taken out onto the porch and be able to turn him around.

Ms. Rondeau said as it is now, trying to bring him out the front door, she has to hold him and then lift him up and turn him over to the other side where there's more room.

Mr. Reinke asked the size of the porch now, the one built, is that adequate in size, square footage wise? Ms. Rondeau said yes.

Mr. Reinke asked could you have not put it on the other side of the house.

Ms. Rondeau said on the other side of the house is where the current ramp is.

Mr. Reinke said the ramp was just put in, correct? Ms. Rondeau said yes, they knew the ramp was going there.

Mr. Reinke explained that if she put the porch on that side, she wouldn't necessarily have the need for a variance and just reconfigure the ramp.

Ms. Rondeau said right, but the VA requires two forms of egress.

Mr. Reinke said he didn't understand the capacity of the VA in this regard.

Ms. Rondeau said it's because they are financing the addition and they gave them the ramp. The addition is for a handicapped bedroom and bathroom that is to be put on the back of the house..

There will also be a ramp from the addition going down the side, so there is no room for a porch on the side.

Mr. Reinke said the addition is 7-feet from the lot line to the side of the house and if the same size porch was put there, wouldn't that provide the same benefit?

Ms. Rondeau pointed out where the front porch was located and pointed out where the side deck was located. The ramp shown on the plan was removed and where the new addition was going. She noted the plan the Board had was an old plan.

Mr. Reinke said that was the one submitted with the application.

Ms. Rondeau noted that it was the correct plan. She pointed out Pleasant Street and where the addition was located. She showed where the ramp was coming off the addition to the back deck and where the stairs came down from the addition leading onto the ramp.

She agreed that extending the back deck would be ideal, but felt because the ramp was coming too close, it wouldn't work.

Mr. Reinke disagreed and felt it would work out better. The handicapped van would be able to pull into the driveway right to the back porch. The ramp would go between a walkable surface and would be more conducive.

Ms. Rondeau said she had no idea when construction on the addition would start. They are supposed to start on the addition tomorrow, but at that point in time, when this was all going through, she had no idea when things would start. That was why she had to put the current ramp in right away, and they had to take that ramp down.

Mr. Reinke said the ramp was just put in a couple of days ago, correct?

Ms. Rondeau said the ramp has been there for about two weeks.

Mr. Reinke said it's a temporary ramp. Ms. Rondeau said it's put up as temporary, but it's permanent, because it has to stay there. They need two ramps, two forms of egress.

Mr. Reinke asked if the permits were pulled for the ramps.

Ms. Rondeau said that her contractor pulled the permit.

Mr. Reinke asked if he went past the Town Hall tomorrow, would the permit be there.

Ms. Rondeau said it should be.

Mr. Reinke said in the ADA world, sometimes a lot of things can't be overcome. Either it costs too much or it just can't be done. So what happens is that you program around it. You can accommodate the disability by putting the porch on the other side, which is the southeastern corner of the house. There would be the same, if not better, line of sight, if the whole purpose is to gain visual enjoyment out of Pleasant Street. They would gain the advantage and accommodate their purpose.

Adding to the front, where the existing house and existing deck is, the same problem would still exist, if it is a problem, turning the wheelchair out from the house. Instead of taking a left, you take a right and it would reverse the ramp back to a common area, which would be accommodated to a level walkable surface. It just makes more sense and a variance wouldn't be needed.

Mr. Hathaway explained that whenever the Board hears a variance, the Board looks for alternative solutions that do not require a variance.

Mr. Reinke said the lowest part of the ramp is at the Pleasant Street end and the highest point is at the back. If she put the deck in the southeastern corner and the same size to accommodate the needs her husband and turn the ramp the other way, she would accomplish a lot more.

Ms. Rondeau noted it was all downhill.

Mr. Reinke disagreed and said it was actually up hill and would reduce the slope and it would reduce the length of the ramp.

Ms. Reinke reviewed and tried explaining his suggestion to Ms. Rondeau, so she could get a better understanding as to what he was recommending. Ms. Rondeau didn't agree.

Mr. Hathaway pointed out the inconsistency that, 1) we are to think of the porch as not being there, and 2) that the porch has to be there. If it has to be where it is, we should be told why that is the only acceptable location.

Ms. Rondeau said as it is now, her house is going to be all ramps.

Mr. Hathaway said that's not shown on the plan.

Mr. Reinke said the ramps will still exist in the same place, but with one in the opposite direction. So he doesn't see the hardship.

Mr. Hathaway agreed and he didn't see any information on the plan that tells him it's not doable, with supporting reasons why it has to be in the front.

Mr. Reinke said the concerns of having the ability for your husband to be able to go out onto the porch and watch traffic is understood, but this was a viable alternative that would increase his view of traffic on Pleasant Street.

By flipping the location to the back, she could make the porch the same size, which was stated as being adequate, or she could make it bigger.

Mr. Rondeau disagreed because she felt there was no room. There were ramps going along the side of the house, then there's the little deck in back and then the other ramp will come along the other side of the addition.

Mr. Hathaway noted that the applicant may have more knowledge of her own property, but by what was presented to the Board, he couldn't tell that Mr. Reinke's suggestion wasn't workable. He would need to be shown on the plan, that the suggestion wasn't workable.

Mr. Reinke suggested having the surveyor show where the curb cut was and layout the same footprint to see if the porch would fit into that area with the same curb cut.

Mr. Reinke explained that with this variance, she was asking the Board to do something that's not generally in keeping with the neighborhood. The Zoning Laws are there for a reason. The Board is being asked to approve something he felt could be achieved without seeking a variance.

Mr. Orth noted the plan being wrong from what Ms. Rondeau is describing regarding the ramp and porch.

Mr. Hathaway said then that plan needs to be corrected.

Mr. Reinke said even still, there is another alternative.

Ms. Rondeau didn't agree with the alternative suggestion.

Mr. Schold agreed the Board needed a better plan.

Mr. Hathaway said he was not comfortable with granting a variance saying that this is where the porch needs to be, when it can be achieved somewhere else on the lot.

Mr. Orth said the porch didn't go all the way around.

Ms. Rondeau agreed and said the granite stairs go down from the deck and on the other side there are windows.

Mr. Hathaway felt there has not been enough of information submitted showing that was the only place the porch and ramp can go.

Mr. Kirwan said it may be feasible to build a walkway there to a deck on the right hand side, but doesn't that walkway & decking have the same problem, being built within the setback?

Mr. Reinke said it would be on the side of the house.

Mr. Hathaway said putting the deck on the side may still be too close, but it would be encroaching less.

Mr. Reinke agreed that way would be more in keeping with the zone.

Mr. Hathaway felt there was not enough of information to allow him to vote in favor of a variance. He would be comfortable continuing this if the applicant is able to get the surveyor to correct the plan and demonstrate that there was no other place on the property to put this.

Mr. Reinke agreed.

Ms. Rondeau told the Board she would make it easy for them and will take the porch down tomorrow, it will be gone.

At this point, Ms. Rondeau left the meeting.

The Board continued with discussion on how to move forward. They question whether to continue the meeting or take it to a vote given that Ms. Rondeau had left the meeting before it was over.

After a lengthy discussion, the Board agreed to continue the meeting to give the applicant an opportunity to come back to determine whether or not there was sufficient justification that the porch could only be put in its current location.

MOTION: Mr. Hathaway moved to continue the hearing on Margaret Rondeau of 22 Pleasant Street to Wednesday, November 19th at 8PM giving the applicant the opportunity to come back and explain why the porch could not be placed elsewhere that was less intrusive to setbacks.

SECONDED: Mr. Reinke – Discussion: None

VOTE: All in Favor

Meeting adjourned at 9:15PM

Respectfully submitted:

Barbara Knox

Barbara Knox