

## **Zoning Board of Appeals Meeting Minutes**

Minutes of September 24, 2014

Hearing on 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 the front yard setback.

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

Alternate members present: Jim Reinke

Meeting called to order at 7:30PM

Instructions were given on meeting procedures.

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

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

Submitted into evidence: Registered Plot plan, return receipts from the Certified Mailing to abutters and a denied building permit

Correspondence received: a letter from building inspector was read into the record by Mr. Orth. The letter stated he had told Ms. Rondeau to stop working on the deck because she didn't have a building permit. Ms. Rondeau finished the porch even after she was told to stop. The building Inspector felt the existing porch met ADA requirements and that the extension was not necessary.

Mr. Orth opened the meeting to the applicant to present her petition.

Ms. Margaret Rondeau said she didn't understand why the Building Inspector didn't stop at her house when he drove by. If he had stopped and explained that she needed to pull a permit for the work on the deck, she would have had the builders stop the work immediately.

She had a permit for all the outside work on the house; the siding, the roof and repairs to the porch, but she didn't know she could not extend the porch.

Mr. Hathaway asked if the permit included the front porch.

Ms. Rondeau said it included repairs to the roof on the porch, but she didn't know she couldn't extend the porch out. When she got the call from the Building Inspector, she went right outside and told the builders to stop working. At that time, the porch was already finished, even though the Building Inspector stated in his letter that it wasn't. The men picked up their tools and left, because they didn't want to get in trouble.

She noted there's a handicapped ramp off the back porch that was put in by the United Way.

The porch was already done when the building inspector called and she said to him, if she needed to bring the porch back, to let her know and she'll do it, but she cannot turn a wheelchair around on the porch because it's not big enough. She just wants to be able to get her husband outside without too much difficulty.

Ms. Rondeau continued. When she spoke to the building inspector, she asked if he wanted the porch taken down and he (the building inspector) told her no. He advised her to come up to the Town Hall and apply for a building permit. Otherwise, she would have had the builders remove the porch at that time.

The Building Inspector never told her anything that was stated in his letter. It wasn't when she went to his office he told her to stop the work, it was when he called her on the phone that he told her to stop work. She went right outside and told the builders to stop and the Building Inspector was on the phone and heard her tell the builders to stop. He (the building inspector) told her to come up to the Town Hall with her plot plan and apply for a Variance and that's what she did.

Mr. Hathaway asked if her building permit was for extending the deck.

Ms. Rondeau said no. When she took the permit out, she was planning on extending the porch out and thought the permit included that. She did not know it was not included.

Mr. Hathaway asked if she hired a professional contractor. Ms. Rondeau said yes.

Mr. Hathaway noted that they could lose their license for doing something without a permit.

Ms. Rondeau said they are friends of the family and know what they are doing.

Mr. Hathaway asked if they were working under a license

Ms. Rondeau said no, they weren't licensed.

Mr. Reinke noted that if they weren't licensed, they couldn't pull a permit.

Ms. Rondeau said she pulled the permit and at that time, she asked the Building Inspector about a permit for putting up a fence on the side. She was told her she didn't need a permit to put a fence up and that it could be put in right up to the property line.

Ms. Rondeau questioned why she was allowed to put a fence up to the line, but couldn't put a porch up to the line.

Mr. Hathaway explained what the Bylaw states according to the zoning district.

Ms. Rondeau said the Building inspector explained to her that many of the older house lots don't comply because of the setback rules.

Mr. Orth explained that those lots are defined as pre-existing nonconforming properties.

Ms. Rondeau agreed and said it was explained that whenever she wants to do something, she will need to apply for a variance. She was never told her that she wouldn't get the variance, only that she had to apply for one.

Mr. Orth explained that the application for variance was because she was extending a nonconforming structure and was making that nonconformity even greater.

The difference would be if the porch was being rebuilt in the same footprint, then there wouldn't be a problem, because it would be done in the same footprint. The problem comes in because the porch was extended without getting a variance first.

The point of going through the ZBA for a variance was because what exists can't be done under the existing zoning laws. Therefore, to extend something beyond the existing footprint, a variance is required.

This is similar to the variance she was just approved for on the back portion of this house. The proposed addition was too close to the property line; therefore a variance was needed because it didn't meet the side setback requirements.

Ms. Rondeau explained that the permit she got to do the siding, and repair work on the front porch and all the work on the outside of the house, encompassed the porch extension. She may have made the porch too big, it measured 4 ½ and she needed 5-feet.

Mr. Hathaway explained by making the porch 1 inch bigger would have required a variance.

Mr. Reinke asked if the Building Inspector had come out and inspected the porch.

Ms. Rondeau said no.

Mr. Buckley said it was interesting that the Building Inspector commented in writing, saying he (building inspector) felt the variance shouldn't be granted for the increase in the size of the porch. It sounded like what the Building Inspector's intent was for this Board to order the porch be taken down.

Mr. Hathaway explained in order for the Board to make a Decision, the vote had to be a majority of 4 in favor to keep the porch or it could go a majority of 4 in favor to remove the porch. A vote of less than 4, the motion would fail regardless.

Ms. Rondeau noted the ramp she has now will be taken down when they put on the back addition. The ramp is only temporary and the Building Inspector was aware of that.

Mr. Reinke asked where the new ramp was going.

Ms. Rondeau said it is shown with dotted lines on the plan.

Mr. Orth noted the ramp was already approved at the last variance hearing and was going on the back.

Mr. Reinke asked if there was ramp there now. Ms. Rondeau said yes, it's on the side of the house.

Mr. Orth explained the back of the house is being extended and going where the ramp currently is. The current ramp was being removed and will be put off the new addition.

Ms. Rondeau said the VA told her there must be two points of egress. So she has to put in another ramp and the Building Inspector knows all about that.

Mr. Reinke asked where the second ramp was being placed.

Ms. Rondeau said the VA told her she had to have two egresses, so one will come off the back of the new addition and the second egress will be off the side in front, but she wasn't sure.

Mr. Kirwan asked if the existing porch was 5-feet wide. Ms. Rondeau said no, it was 4 1/2 –feet.

Mr. Kirwan asked what the ADA requirements were. Ms. Rondeau said ADA requires a 5-foot turnaround.

Mr. Kirwan asked on the existing deck, prior to the unauthorized addition, was there a 5-foot turnaround. Ms. Rondeau said no.

Mr. Kirwan asked if she could get the wheelchair onto the porch. Ms. Rondeau said yes, but she couldn't turn it around.

Mr. Reinke asked if her husband had any motion in his hands. Ms. Rondeau said no, he was unable to transport himself anymore.

Mr. Kirwan asked what was directly in front of the porch addition before you hit the road. Ms. Rondeau said it's exactly 4.7-feet from the sidewalk.

Mr. Kirwan noted its 4.7-feet from the sidewalk, then there's the road. Ms. Rondeau agreed.

Mr. Hathaway said the Town owns a certain distance from the street, which can go onto someone's property. So it's not certain where the sidewalk ends.

Ms. Rondeau said she measured 5-feet from the grassy part to the porch, but the plan shows 4.7-feet. Then there's the sidewalk and then there's the street.

Mr. Kirwan said in his opinion, he was a little troubled by the Building Inspector's wording in his letter where he states "I am against a variance with this because Ms. Rondeau continued with this porch after she was told to stop". Mr. Kirwan felt because she didn't do what the Building Inspector wanted, denying the variance was the result and he was uncomfortable with that. The situation Ms. Rondeau and her husband are currently in is that porch doesn't meet ADA requirements; he felt she should have the right to expand it.

Mr. Hathaway said according to the Building Inspector's letter, if this was for an ADA entrance or use, it wouldn't need the ZBA approval.

Mr. Reinke said ADA accessibility trumps zoning. He noted being Leicester's ADA Coordinator and suggested if it was decided to put the ramp in that space in the front that would trump zoning.

Mr. Orth asked how long the ramp would have to be if the porch was 2 ½ feet high off the ground.

Mr. Reinke said 30-feet; it would wrap around the house.

Discussion was held regarding a handicap ramp vs. extending porch.

Mr. Hathaway said his concern was having the front porch so close to the road. A car could very easily skid off the road and hit the porch.

Ms. Rondeau said the front exit will be their second form of egress, as required and would be used as an emergency exit only. Her husband's bedroom will be in back, so they would be mainly using the back exit as their egress.

Mr. Orth felt the porch wasn't that close to the road. Mr. Hathaway disagreed.

Mr. Reinke noted the porch and ramp will need to be in accordance to ADA requirements in order to be exempt. He suggested continuing the hearing, so Ms. Rondeau can get the house resurveyed to see if a ramp can be put off the front deck and still meet ADA requirements.

Mr. Buckley felt there was a contradiction.

Mr. Reinke explained there were two different issues. One was the porch being built without a permit and the other issue was building to ADA code. The Zoning review is what bought this all out and the ramp compounded it.

Mr. Buckley asked what the ADA requirements were, because according to the Building Inspector's letter, the porch did meet ADA requirements.

Mr. Hathaway said technically the front porch only had to be another 6-inches.

Mr. Reinke said the 5-foot requirement would be for a turnaround, but for a ramp, more room is needed. With this configuration, she would need a 42-inch ramp.

Mr. Reinke asked if the ramp was temporary. Ms. Rondeau said yes, it's the metal kind. She agreed to contact the surveyor and ask him if a ramp can be put off the front porch and still meet the ADA code.

Mr. Hathaway said maybe the Board's argument can be made for ADA requirements as a solution; otherwise the deck may have to be made shorter or removed.

Ms. Rondeau said ADA requires a 5-foot around ramp and the reason is for emergency services.

Mr. Kirwan agreed that the hearing should be continued to give Ms. Rondeau the opportunity to have the house resurveyed in order to seek a solution agreeable to the Building Inspector, ADA and the applicant.

After some discussion, it was agreed to continue the hearing to Wednesday, October 29<sup>th</sup>.

MOTION: Mr. Hathaway moved to continue the hearing on Margaret Rondeau of 22 Pleasant Street to Wednesday, October 29<sup>th</sup> at 7:30PM.

SECONDED: Mr. Kirwan – Discussion: None

Vote: All in Favor

Meeting adjourned at 8:25pm

Respectfully submitted:

*Barbara Knox*

Barbara Knox

## **General Minutes**

### **Approval of Minutes:**

6/14/2014 (1); 7/9/2014 (2); 8/6/2014 (2)

MOTION: Mr. Hathaway moved to approve the minutes with noted typo corrections of June 14, 2014 on Matthew Schold, 503 Stafford Street; July 9, 2014, Michael & Kate Mercer, 47-48 Salminen Ave; July 9, 2014 cont, Charles Entwistle, 800 Main Street; August 6, 2014, Mark LaPointe, 63 Pine Street Variance & Special Permit.

SECONDED: Mr. Kirwan – Discussion: None

Vote: All in Favor

### **Reorganization of the Board:**

MOTION: Mr. Hathaway moved to remain the same; David Orth – Chairman; David Kirwan – Vice Chairman & Jim Buckley - Clerk

SECONDED: Mr. Kirwan – Discussion: None

VOTE: All in Favor

### **Correspondence:**

- 2014 Fall Workshops Citizen Planner Training Collaborative
- Building & Occupancy Permit report for July & August 2014

Meeting adjourned at 9PM

Respectfully submitted:

*Barbara Knox*

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