

## **ZONING BOARD OF APPEALS MEETING MINUTES**

Minutes of May 30, 2018

Hearing on the petition of Vincent Tiscione of 25 Rawson Drive, Leicester, MA for a Variance from the minimum setback requirements to build a deck onto existing home

Members present: Vaughn Hathaway, Chair; David Kirwan, Jim Buckley, Clerk; Jim

Reinke Alternate members present: Mary Moore, Dick Johnston

Meeting called to order at 7:30PM

Instructions given on hearing procedures

Voting at tonight's hearing: Vaughn Hathaway, Jim Buckley, David Kirwan, Jim Reinke, Mary Moore

Mr. Buckley read the Notice, Application, & a letter from the Building Inspector into the record.

Submitted into evidence: Registered Plot plan, & return receipts from Certified Mail to abutters

Correspondence received: Site Consideration from the Building Inspector & a memo from Board of Health, read into the record by Mr. Hathaway.

### **Variance Hearing**

Mr. Hathaway opened discussion to the applicant to present his petition.

Mr. Vincent Tiscione in attendance.

He is requesting to build a deck on the back of the property. There was a deck there taken down and never replaced.

The reason for this location was that the property sits high from the water and on the left side is the septic system and the right there's only 12ft from the side door. Coming from the driveway out to the backyard, goes straight downhill to the rest of the land. The backyard goes straight down to the water that has a 20ft steep grade. There is limited area for the deck to go.

Mr. Hathaway asked the hardship if not granted.

Mr. Tiscione said every time it rains, his backyard washes out. He is limited to where he can place this deck.

Mr. Kirwan asked the size of the deck. Mr. Tiscione said 10 x 10.

Mr. Kirwan said this deck will become his backyard because he did not have a functional backyard. Mr. Tiscione said yes, he cannot use his backyard at all.

Mr. Hathaway said looking at the topographical map; the property does drop down towards the water. It looks like the deck was closer to the water.

He asked why the deck could not go on the right side facing the water.

Mr. Tiscione said there is a side porch and putting a deck there would block access to the backyard.

Mr. Kirwan asked whether the deck would provide an unobstructed view of the water and were there trees in front.

Mr. Tiscione said there are trees on the left side of the lot.

Ms. Moore asked if he received Conservation approval. Mr. Tiscione said yes.

Ms. Moore asked the drop from the patio door to the land. Mr. Tiscione said 2-feet.

Ms. Moore questioned a patio instead of a deck. Mr. Tiscione wasn't sure.

Mr. Hathaway explained variance requirements regarding hardship and although a deck is not intrusive, he can't see the hardship on not having a deck.

Mr. Kirwan read requirements for the granting of a variance. He noted due to the topography of the land, the septic on one side and the drop off to the water on the other side. Putting something on the left side would make access to the home difficult.

Mr. Tiscione said access would be difficult for someone in a wheelchair.

Mr. Kirwan said by making these changes, would accommodate for a wheelchair person to access the home. Mr. Tiscione agreed.

Ms. Moore said he met the setback requirements on the left and right, it was just to the water. Therefore, he was not encroaching on a neighbor, just the water.

Mr. Hathaway said the wording in the Bylaw states, setbacks are from property lines.

Mr. Tiscione said the Cedar Meadow Lake Association had to buy the land included under the water. There was a lawsuit and the residents along the lake had to pay for it. He asked if that would be taken into account.

Mr. Hathaway understood the lawsuit mentioned. He explained the Lake Association took the person who owned the dam and land under the water to court for ownership. The Lake Association won the case, but lost on appeal and the residents had to buy from that person, the dam and land under water.

Mr. Johnston said there are a number of decks, around the lake, close to the water. This was not unusual and felt it would not be a detriment to the neighborhood.

Mr. Kirwan said waterfront property is unique within itself. One of the reasons people buy waterfront property is to have a deck and enjoy the view of the lake.

If the topography was different, there would be no need for this request. The lot has to be nonconforming because it doesn't meet the 40ft setback even without the deck.

Mr. Reinke said anything prior to when the Zoning Bylaws came into effect is considered pre-existing nonconforming. He questioned whether a special permit should have been required as well.

Mr. Buckley noted the Board had to make a finding when a variance decision is made and part of that finding is why the Board voted for or not voted for the variance. Right now, he cannot articulate what the hardship would be in this case.

He asked if this was denied, what the hardship would be & would the deck still be built, but in a different area.

Mr. Tiscione said he won't be able to build it. Putting it on the side, would make the house look awful. It belongs on the back where the other homes have located their decks.

Mr. Kirwan asked how the elderly handicapped relatives access the property.

Mr. Tiscione explained access through the cellar had 10 stairs; access from the front has a set of 6-stairs and another set of 4-stairs.

Instead of stairs, they wheel them up the side yard and lift them up 2 stairs to bring them in.

Mr. Kirwan asked if there would be an access from the deck to the house.

Mr. Tiscione said a door already exists there for the previous deck.

Mr. Kirwan questioned by building this deck if would it provide easier access for the handicapped relative. Mr. Tiscione said yes, the deck would provide easier access.

Ms. Moore considered the shape of the land being a hardship.

Mr. Reinke agreed and considered the existing door from the previous deck, an egress door that can't be utilized a hardship. He said topography of the property and not putting something in place for an egress use, creates hardship.

Hearing no further comments or concerns, Mr. Hathaway asked for a motion.

MOTION: Ms. Moore moved to approve the petition of Vincent Tiscione of 25 Rawson Drive, Leicester, MA for a Variance from the minimum setback requirements to build a 15 x 20 deck onto existing house, as shown on plan.

SECONDED: Mr. Reinke – Discussion: There was discussion whether a wheel chair ramp should be included in the motion but, because a ramp was not included on the plot plan, all agreed it can't become part of the approval – VOTE: All in Favor

Instructions given on the appeal process and the filing of this decision with the Registry of Deeds

### **Finding of Facts:**

Mary Moore voted in favor of the motion because the topography of the property did not allow the deck to go anywhere else. That there is a hardship having an egress door that can't be utilized and the deck won't encroach on any neighbors.

Jim Buckley voted in favor of the motion because it met the requirements for granting a variance. There was uniqueness with the topography of the property. By granting this won't be a detriment to the public good and met the requirements for hardship because there should be a point of egress at that location.

Vaughn Hathaway voted in favor of the motion because he felt the deck was not intrusive and won't be a detriment to the neighborhood. This met the definition for hardship and providing a second means of egress for safety.

David Kirwan voted in favor of the motion because it met the requirements for hardship, agreeing with the findings already stated.

Jim Reinke voted in favor of the motion due to the topography of the land and the need for adequate egress met hardship requirements.

### **Special Permit Hearing**

Mr. Reinke suggested the Board also consider a Special Permit for alteration of a pre-existing nonconforming structure and save the applicant from having to come back again.

Mr. Hathaway agreed and asked for further comments or concerns, hearing none, asked for a motion.

MOTION: Mr. Reinke moved to grant the Special Permit to Vincent Tiscione of 25 Rawson Drive, Leicester, Ma. for alteration of a pre-existing nonconforming structure.

SECONDED: Mr. Buckley – Discussion: None – VOTE: All in Favor

Instructions given on the appeal process and the filing of the decision with the Registry of Deeds.

MOTION: Mr. Kirwan moved to close the hearing

SECONDED: Mr. Buckley – Discussion: None – VOTE: All in Favor

Meeting adjourned at 8:25PM

Respectfully submitted:

*Barbara Knox*

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