

**Leicester Zoning Board of Appeals
Meeting Minutes**

Minutes of March 22, 2017

Hearing on the petition of Daniel & Colleen Turgeon of 6086 Burnside Landing Drive, Burke, VA for a variance from the 40-foot setback for an addition, porch and deck. Also for a Special Permit to extend a pre-existing nonconforming structure on property located at 26 Lakeshore Drive, Leicester, MA

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

Alternate members present: Jim Reinke, Mary Moore, Dick Johnston

Meeting called to order at 7:30PM

Instructions given on hearing procedures.

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

Jim Buckley read into the record the Notice, Application and a letter from the Building Inspector.

Submitted into evidence: Site Plan and Structure Plan.

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

The Board of Health requested information regarding the location of the well and septic system. Mr. Rick LeBlanc, contractor for the project, explained a new septic and well will need to be installed and they will apply for that upon approval from the ZBA.

Mr. Hathaway noted that if the location of the well or septic affected the location of the structure, they would need to come back to the Zoning Board.

Mr. LeBlanc said an engineer laid out a draft plan that showed the well would stay in the same area and septic located on the other side of the street.

Mr. Kirwan opened the hearing, noting the variance would be discussed first.

Mr. Daniel Turgeon said he currently lives in Virginia and would like to relocate to the family home in Leicester.

Mr. Kirwan asked if the plan submitted was a Registered Plot Plan.

Mr. LeBlanc said no, but they did have a license surveyor go out to the site and survey the property. The surveyor found all the boundary pins, and that allowed to accurately show the location of the existing house, with the proposed additions and setbacks.

Mr. Hathaway explained the submittal requirements did state a Registered Plot Plan be submitted. Not only for the location of the septic and well, but also to confirm the setbacks to what the Board would be approving. A registered plan has someone putting their license on the line stating the plan was accurate. If the Board approved this and found the dimensions weren't consistent to what a registered plan later showed, it would be a mess for everyone.

Mr. LaBlanc told the Board, the Surveyor assured him the plan showed exactly what was there.

Mr. Hathaway said realistically, the Board has heard that before and found it not to be correct. He was not saying that it was done with malicious intent, but it does happen and that's the reason the Board requires a registered plan.

Mr. Buckley agreed the Board requires that everyone submit a Registered Plot Plan.

Mr. LaBlanc wasn't aware that was a requirement for this meeting.

Mr. Kirwan explained the reason for the requirement of a Registered Plot Plan was for the protection of the applicant and the neighbors.

Mr. LeBlanc asked if the Board could make a determination contingent upon receiving a registered plan.

He explained the applicant coming from Virginia for this meeting and instead of continuing, if the Board would consider approving, subject to receiving a stamped plan.

Mr. Orth said the only problem with that would be if the plan ended up different, Mr. Turgeon would have to come back and start the entire application process over again.

He suggested continuing this meeting, to allow the applicant to get a Registered Plot Plan. If the Board approved this on a condition and closed the meeting and the plan was wrong, there would need to be a new meeting with abutter notification, newspaper publication, etc.

Mr. Hathaway was not comfortable making a decision without a Registered Plot Plan. He suggested to continue this meeting, but still hold discussion regarding all the Board's concerns. If the plan comes back being exactly the same, after answering all the Board's concerns, then the owner wouldn't necessarily have to attend that meeting.

Mr. LeBlanc asked to recess this meeting so he could call the surveyor to get confirmation on the plan being accurate and if the surveyor was willing to stamp the plan as is.

Mr. Hathaway said from his perspective, anyone over the phone can say anything they want and there was no way of knowing who was on the other end.

Mr. LeBlanc felt it would at least allow them to find out that if the meeting was continued, Mr. Turgeon would not have to travel up from Virginia to attend.

Mr. Kirwan agreed to recess the meeting.

Meeting recessed at 7:50pm

Meeting resumed at 7:55pm

Mr. LeBlanc explained the surveyor confirmed the existing property lines and the existing buildings were all accurate, as portrayed. What the surveyor could not confirm was location of the new building, because it wasn't built yet.

Mr. Kirwan asked if measurements shown on the plan were for the proposed additions.

Mr. LeBlanc said the additions are shown on the plan.

Mr. Kirwan asked what plan would the surveyor be stamping.

Mr. LeBlanc said the plan before the Board, but what the surveyor said was the additions were not built yet.

Mr. Kirwan noted the location of the additions couldn't change from the stamped plan.
Mr. LeBlanc agreed that the additions would have to be built according to the stamped plan.

Mr. Kirwan asked if everyone agreed with continuing this meeting to allow the applicant to get a registered stamped plan, keeping to the same dimensions, as shown on the current plan before the Board tonight. If anything were to change, then the entire process starts over.
Board members agreed having discussion, noting any other concerns and then continue the hearing.

At this point, Mr. Kirwan confirmed what the applicant needed to bring to the next meeting.
1) a Registered Plot Plan showing the existing house, 2) the additions, the deck, and 3) showing all the setbacks on the stamped plan.
He also confirmed that the Board will not be making a final determination tonight, but will continue discussion on all the other concerns.

Mr. Kirwan asked the applicant what the hardship was, financial or otherwise, and why the variance should be granted.
Mr. Daniel Turgeon said they want to retire and move back to this area. His family has owned the property since the 1940s. The house as it currently exists is too small to live in as a year round home.
They want to keep the house all one level, with the fact of getting older and finding it harder using stairs.
They couldn't afford to buy somewhere else and by renovating this house, would allow them to live there and live out their retirement on the means that they have.

Mr. Orth asked about the property closest to this lot being unoccupied and if they knew who owned it.
Mr. Jim Grant stated being the owner of that property.
Mr. Orth asked if there was a plan to build on the lot at any point in time.
Mr. Grant said no, they didn't have that possibility, but at some point, he may consider selling the lot.
Mr. Hathaway asked to clarify which property Mr. Grant owned. Was it the property to the side of where the deck was being built or the property on the other side?
Mr. Grant pointed out the property to the right.

Mr. Turgeon said for clarity, the property to the right shows a lake access, so looking from the house, was it from the street side to the water on the right.
Mr. Grant said yes, from the street side to the water.
Mr. Turgeon explained on the other side, there was an access road for the residents on the backside and there are two undeveloped lots to the left.

Mr. Orth asked if the side showing the 7-foot setback was located where the access to the lake was shown.

Mr. Grant said that was his lot; there is no access road there, that was located on the other side of his lot. His lot and Mr. Turgeon's lot are side by side.

Mr. Turgeon apologized for the confusion, because he had been told that lot was used predominately by the residents for access to the water.

Mr. Johnston showed a copy of the original subdivision for that area. He marked the two lots owned by Mr. Turgeon and the lot owned by Mr. Grant showing the access to the back lots.

Mr. Kirwan reviewed the information discussed.

That the property being too small to accommodate a full time home and as one ages, single storey homes have become more preferable.

He asked if there was anything further to add regarding hardship.

Mr. Turgeon explained this had been their dream that when they retire, coming back to live in Massachusetts. If they were unable to do this, it would require them to rethink their future. It would force them to sell this lot and look somewhere else.

Mr. Reinke said the closest point in the rear on the right side from the original house is 9.8-feet from the property line. He would not want to see that become more nonconforming than it is already. He felt they could adjust the deck to maintain that distance and not further encroach to the sideline.

Mr. LeBlanc said the deck would have to be trimmed back on an angle, but the addition itself would not have to be.

Mr. Orth said it didn't seem the addition was further encroaching. Mr. LeBlanc said it wasn't.

Mr. Orth noted if the house were to be rebuilt on the same footprint wouldn't be considered detrimental. When further encroaching, it then becomes more detrimental than it was originally.

Mr. LeBlanc noted by moving the deck post by 2-feet, they would stay within the 9.8 feet.

Mr. Orth agreed.

Mr. LeBlanc asked if he should have the surveyor make that change on the map.

Mr. Orth said yes.

Mr. Reinke asked if they had filed with Conservation Commission.

Mr. LeBlanc said not yet, because he was told Zoning Board was the first step.

Mr. Reinke mentioned if the Board of Health wanted something changed, it may require coming back to the Zoning Board.

Ms. Moore suggested having the surveyor include the septic and well on the verified plan.

Mr. LeBlanc agreed.

Mr. Kirwan asked for clarification from the Board that if the applicant gets the registered plot plan, showing the deck no further encroaching on the sideline, were there any other issues.

Mr. Buckley said the addition encroaches 11.9-feet to the sidelines. If the addition was that much narrower, a variance wouldn't be needed. He asked why the addition needed to be that size.

Mr. Turgeon said they looked at the existing site and house, and looked at what they would require for furniture, etc. By making the addition narrower, as suggested, would create a very long narrow addition and change the entire complex of the house. The idea was to make a livable area that would fit all the furniture they had. The existing structure, as it sits, was too small and unlivable.

He had found out after the fact that the family owned the property next door, at one time.

Mr. Hathaway said if his family still owned that property, this issue would not have had to come before the Board.

Mr. Reinke asked if there was a way to achieve the square footage needed, by shifting the deck, taking over the 12-feet of deck space between post and the porch.

Mr. LeBlanc explained the way the roof was laid out, trying to use that 12-feet as living space, would require an unexpected change to the roofline.

Mr. Buckley asked if the change would add substantially to the cost.

Mr. LeBlanc said yes.

Mr. LeBlanc explained that part of the layout had to do with the overall square footage of the house. The house is only two bedrooms and not very big, so to take 10-12 feet out, that's around 600-square feet of living area, which is a significant amount.

Mr. Buckley noted if they took out the section mentioned, would be around 180-square feet and they were proposing to add 1100-square feet.

Mr. Hathaway asked if there was reason why this logically couldn't be shifted.

Mr. LeBlanc guessed it could be done and that there were other ways this could be laid out. He felt it might be doable, but wouldn't give them what they needed.

This is what they were looking do and what will suit their needs best. If there is no way this will be approved, then they would have no choice but to alter the plan.

Mr. Turgeon asked if they shifted the deck, they wouldn't need approval from Zoning.

Mr. Hathaway said they wouldn't need a variance, but would still need a special permit for the alteration and extension of a nonconforming structure.

Mr. Hathaway explained possible solutions. One was the applicant purchasing the lot next door and second was to redesign the plan, so that it was not encroaching any further, but still adding the space needed.

He said the Board would like to say yes, to what people want, but a more specific description on hardship was needed. There wasn't a specific reason for hardship mentioned, other than that is what they would like to do.

Mr. Turgeon said reducing the square footage by 180-square feet meant some things will have to be removed from what they can bring that has become part of their life style.

Mr. Reinke noted the 180 feet could be added somewhere else.

Mr. Hathaway said the house sits 55 feet from the road, so technically they could go out a little further toward the road.

Mr. LeBlanc asked to confirm that this meeting will be continued, so they can redo the plan, making sure they stay at the 9.8-feet on the left side and 40-feet on the right side and from the road. They will then come back before the Board with a new plan stamped, looking for just a special permit. Mr. Kirwan agreed.

Mr. LeBlanc asked if the property owner needed to be present at the continued meeting.

Mr. Orth said it wouldn't be necessary, as long as the Board was presented with the same plan.

Ms. Kathleen Clifford felt hardship was met because this property had been in her family since 1947. Her grandfather bought the property and built the house from the ground up. This property went from her grandfather, to her mother and now to her sister, so it can stay in their family. Hardship would be losing this property from their family. It's a lot more than furniture and brick and water, it's history and living on the lake, long before any other home was built on the lake. Hardship was leaving history behind and she hoped the Board took that into account when making a decision.

Mr. Jim Grant asked if the abutters would receive a copy of the plan.

Mr. Orth explained at the next meeting the abutters will have the opportunity to view the plan.

Mr. Grant asked about the septic system being placed on the other side of the road and was it going to be just the leach field or the tank as well as the leach field.

Mr. LeBlanc said just the leach field. Mr. Grant said his well was 100 feet back from the road and he was concerned with the placement of the leach field.

Mr. Kirwan noted the plan would also need approval from the Board of Health on placement of their well and septic.

Hearing no further comments or questions, Mr. Kirwan asked for a motion to continue.

MOTION: Mr. Buckley moved to continue the hearing of Daniel & Colleen Turgeon for a Variance and Special Permit on property located at 26 Lakeshore Drive to April 5th at 7:30PM

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

Meeting adjourned at 8:35PM

Respectfully submitted:

Barbara Knox

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