

Zoning Board of Appeals Meeting Minutes

Minutes of April 5, 2017

A continuance from March 22, 2017 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; David Orth, Vaughn Hathaway, Jim Buckley, Clerk

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

Meeting called to order at 7:30PM

Instructions given on hearing procedures.

Mr. Kirwan noted the Variance discussion will take place first. The meeting opened to the applicant to address the Board.

Mr. Rick LeBlanc, contractor & Maureen Clifford, executor to property, in attendance.

Variance

Mr. LeBlanc submitted a Registered Plot Plan of the property.

He explained the new plan just submitted will no longer need a variance and they will be applying for just a special permit.

The new plan shows 41.7 feet on the right side, 41.4 & 44.7 feet in the front and on the left side, they angled the deck to go no closer than 9.8 feet, as the house currently sits.

Ms. Maureen Clifford explained her sister and brother-in-law looking to retire and wanting to move back to Leicester and live on this property that had been owned by her family for many years.

The structure was a camp and in order to make it livable, it needs to be upgraded.

She explained hardship the Board spoke on came after the last meeting and it was an emotional hardship.

The first plan presented two weeks ago was drawn up to be a mirror image of the original house her grandfather built 70 years ago. An extension was added years later to accommodate her father's handicap issues, so they could continue to use the camp.

The extra 11-feet needed would provide the room needed.

She pointed out that along this road, all the lots do not meet zoning and were developed years ago.

Mr. Hathaway explained one of the requirements for variance was the lot being unique from the general neighborhood and the requirement to follow the current Bylaw as written. The Bylaw could be amended in order to reflect undersized lots around lakes and not have to meet the 40-foot setback requirement, but the Board has to work with the Bylaws that exist now.

Ms. Clifford said they did take offense to how much objection there was at the last meeting. It's a small lot on a lake and many structures around lakes have been upgraded on small lots.

Mr. Orth explained it wasn't so much the encroachment, but how much of an encroachment there was from the original house to the proposed house.

Ms. Clifford said they need 11-feet from that 40-feet.

Mr. Hathaway explained the purpose of the Zoning Board was to make decisions based on the Bylaws. Whether anyone personally liked something or not, should not enter into decisions. The Board makes decisions all the time, whether for something they personally don't like or against something they personally liked.

Mr. Kirwan further explained variance approvals being difficult because of having very stringent rules on granting a variance and hardship can be understood in several different ways. Although, the Board understood the different emotions and family history, it didn't come under the interpretation of hardship.

Ms. Kathleen Nicholas, 32 Lakeshore Drive said the variance would directly affect her property. She asked by stating no objection to the variance, if it would make a difference in the Board's decision.

Mr. Hathaway explained the Board can't make decisions based on that, especially if another solution was possible without having to get a variance.

Mr. Kirwan read Section 10 of Chapter 40A definition of Hardship and explained some of the reasons stated didn't answer substantial hardship as defined

Mr. Hathaway gave a couple examples on substantial hardship as having no other way to configure the house and only able to live on one floor for medical reasons.

Mr. LeBlanc felt there was financial hardship because this change would cost the applicant around \$30,000 more than planned. There would be the same amount of square footage, but now the house would be a big box and won't look as nice.

Their intent was to use the original roofline, but now that won't work because it will be a box shape rather than a U-shape.

Mr. Kirwan noted by a literal enforcement of the Bylaw, will cost the applicant \$30,000 more than originally planned.

Mr. Richard Nicholas, 32 Lakeshore Drive said trees and lawn divided their property line from this property and even with the new addition; it would still be 29-feet off from their property.

That 29-foot was 10 times more than most houses have around the lake and he felt that would not affect their lot at all.

Mr. Kirwan felt the zoning, in this particular instance, was causing a financial hardship. That the variance, if not granted, would cause a financial impact by not being able to build the way they wish to build. He felt it wouldn't impact anyone in the neighborhood and was in line with what was going on with properties beside lakes.

Mr. Reinke felt the original plan kept within the harmony of the neighborhood and the change would cause a financial hardship. He considered the testimony from the neighbors stating they were fine with the original plan goes a long way and should be taken into consideration by the Board. In his opinion, based on the new information and the abutter's opinion, he would be in favor of the old plan, based on the financial hardship.

Mr. Buckley said he would have some concerns voting for the original plan because it comes down to what the Bylaw states right now. He felt it was difficult to determine financial hardship, because this can be built within the current setback. It may not be exactly what they wanted, but there is a way to do without encroaching further.

Mr. Orth said the original plan encroaches a lot more and although there was a financial difference, the question was whether that can be considered a hardship or not.

Mr. Kirwan asked for any further comments or concerns, hearing none, asked the applicant how they wanted to proceed.

Ms. Clifford requested to withdraw their request for variance.

MOTION: Mr. Buckley moved to grant the request of Maureen Clifford on behalf of Daniel & Colleen Turgeon to withdraw the request for variance without prejudice for property located at 26 Lakeshore Drive, Leicester, MA, for relief from the 40-foot setback requirement for an addition, porch and deck.

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

Special Permit

Mr. Kirwan asked for any further comments, questions or concerns, hearing none, asked for a motion.

MOTION: Mr. Orth moved to grant the petition of Daniel & Colleen Turgeon of 6086 Burnside Landing Drive, Burke, VA for a special permit to extend a pre-existing nonconforming structure on property located at 26 Lakeshore Drive, Leicester, MA

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

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

MOTION: Mr. Buckley moved to close the hearing

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

Meeting adjourned at 8:15PM

General Discussion

Letter received from Town Counsel regarding Town of Leicester vs Rte 56 Cell Tower.

This letter was a quick update on the status of appeal in Federal District Court.

Nothing has occurred since 12/5/2016, and no official ruling has been made.

Memo from Kevin Mizikar regarding Verizon cell tower legal proceedings noting the Selectmen's Office will be working with Attorney Cove on this matter and will keep the Board up to date as proceedings progress.

Meeting adjourned at 8:30PM

Respectfully submitted:

Barbara Knox

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