

**Zoning Board of Appeals
Meeting Minutes**

Minutes of January 7, 2015

Continued Hearing from October 15, 2014 on the petition of Jonathan Poulin of 299 Princeton Road, Sterling, Ma. for a Variance to build a new home within 20 feet from the water side, 17-feet and 29 feet respectively from the east, northeast property line and 34 feet from the nearest front property line and a Special Permit to extend a pre-existing nonconforming structure on property located at 35 Burncoat Lane, Leicester, Ma.

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

Alternate members present: Paul Schold, Jim Reinke

Meeting called to order at 7:30PM

Mr. Orth noted this hearing being continued because the proposed work was within the 25-foot No Disturb Zone and the Board agreed that this should go before the Conservation Commission first and also for a revised plot plan.

Mr. Jonathan Poulin, Poulin Construction made the presentation.

In Attendance: Mr. Richard Lane, Mr. Glenn Krevosky

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

Mr. Poulin submitted the revised plot plan that showed the existing house and the proposed house with the deck, and the proposed dock. He noted this was all approved through the Conservation Commission at their December 10th Meeting.

Mr. Orth asked about the well being shown in a different spot and where the new location for the well was.

Mr. Poulin showed the proposed well being located in the north corner of the property and the proposed septic being located in the front part of the property.

Mr. Hathaway asked if approval was received from the Board of Health. Mr. Poulin said yes.

Mr. Hathaway asked where the driveway was located.

Mr. Poulin said it will be a gravel area located in the front and will be made so vehicles can pull off the street.

Mr. Reinke asked how many bedrooms there would be. Mr. Poulin said it will be 2-bedroom and 2-bathrooms.

Mr. Richard Lane introduced himself. His brother, Brian Lane, is the owner of the property and currently lives in New Jersey. He was present to answer any questions on behalf of his brother.

Mr. Glenn Krevosky introduced himself. He was the wetland specialist and advisor to the applicant.

Mr. Lane said the house was taken down and where the foundation was, still exists and has not been restored yet.

Mr. Krevosky explained that part of the house sat on cinderblocks and nothing was removed from the site. The original foundation, which was stone, was extended out as a crawl space on top of the other blocks that was a support to one corner of the house.

The Building Inspector allowed the house to come down due to safety concerns.

Mr. Hathaway noted the 3 conditions that need to be met in order to grant a variance. He asked Mr. Lane if he could address those conditions.

Mr. Lane explained his brother currently lives in New Jersey, but is originally from Massachusetts. Their entire family resides in Massachusetts.

His brother has 3 children; the two oldest are in college and there's a 16-year old who lives at home and is a special needs child.

His brother was hoping to move back to his family here in Massachusetts and find a nice quiet place to retire. When they saw this piece of property, they felt it was perfect for what they wanted to do. They don't want anything big, because they don't want a lot to take care of.

The footprint from the original structure was 16 x 30 and was basically a hunter's shack. The architect was asked to design a house that would be as close to the original footprint in which three adults could live.

They were told, at 16-feet wide, a house can't be built for three adults to live, which is why they are asking for the extension. They tried to keep the size as close to what it originally was and this is about the smallest a house can be for three adults to be able live.

The house is compact and self-contained and there won't be a garage or any outbuildings added.

Mr. Lane continued. The original house was falling down and a person could almost walk underneath it. It was being held up by 2 x 6s from one side to the other, meeting in the middle with two more 2 x 6s overlapping by 4-inches with nothing left holding it up, which was why the structure was falling down. This structure was basically an attractive nuisance, especially being right next to the beach, which is right next door to this lot.

His brother is requesting to build something that isn't nearly as big in comparison to some of the newer homes around there. He wants to build something that fits the area and lifestyle. There was no way they could build a house for three adults on the original footprint.

This will be new construction, better than the eyesore that was there and it fits within the intent of the zoning, because it will be a single-family home. This will also improve the aesthetics of the area and will actually improve some of the neighbors' view to the pond.

Mr. Hathaway noted the three conditions for a variance to be approved. He said that some of the conditions were touched upon, one being the uniqueness and topography of the lot. The second was that it wouldn't be detrimental to the neighborhood and would actually improve the neighborhood. The third condition was hardship and he asked what that hardship would be if a variance was not granted.

Mr. Lane said the hardship would be, having to build a house 16 x 30 and three adults trying to live comfortably. The hardship is financial or otherwise and attempting to build a house that is that size, as a permanent residence for three adults, would be a substantial hardship.

Mr. Kirwan asked if the property owners were aware that their plans couldn't just be implemented and knew a variance was needed. Mr. Lane said they knew a variance would be needed.

Mr. Kirwan noted the applicant going forward and purchasing the property anyway.

Mr. Lane asked if a variance should have been requested before the property was bought, because he thought they had to own the property before requesting a variance.

Mr. Kirwan said yes, they could have requested a variance before owning the property.

Mr. Orth agreed and noted that it could have been made a condition on the sale.

He explained the question being made on the hardship and whether this was a self-imposed hardship; i.e. did the applicant create his or her own hardship.

Mr. Kirwan said he had seen the house before anything was done to it and if what is being proposed was going to be an improvement; he was just trying to get a better understanding. He questioned why buy a piece of property that ultimately might end up just being a piece of land.

Mr. Hathaway explained that a variance wasn't something that can just be asked for and received, there has to be a reason or a hardship given for having to deviate from the Bylaw.

Mr. Lane felt what they were doing, was consistent with what other people have done.

Mr. Orth said this is a small piece of property and because this is for a variance, the Board has to see the hardship. It's not considered a hardship for buying a piece of property and now wanting to do something with it.

Mr. Krevosky said the Burncoat Watershed District representatives were at the Conservation Commission's meeting and they would rather see a house on the property that was consistent with how other houses in the area. The septic system received Board of Health approval.

Mr. Lane said they were trying to stay within the footprint as much as possible. Since the last meeting, the architect was able to reduce the size some even more. They just didn't go and buy the property without first talking with the neighbors and the Building Inspector. The Building Inspector didn't know of any variance that had been denied so far in that area.

Mr. Lane agreed it was a calculated risk, but anything is a risk. They could have received a variance before buying the property and then failed some type of environmental issue after. Mr. Kirwan said the safest thing would have been to look into, before purchasing; the right within X-amount of time, to assure that there would be no opposition to the project. He asked if there was anything relating to the special needs son that makes this a particularly valuable piece of property.

Mr. Lane explained that the boy was 6'9", 270-lbs and he's only 16 years old and that was something the architect designed around. They were trying to make it livable for someone of that size, with special needs that are emotional and psychological.

Mr. Kirwan noted that perhaps they envisioned this location by the water would provide type of calming effect. Mr. Lane said that was exactly why.

Mr. Schold questioned that at some point, the boy would probably go off on his own.

Mr. Lane said they would like to have the boy with them for as long as they can.

Mr. Hathaway said he would like to see some assurance that parking would be off-street, because the lot is on a corner and given where the septic is located, vehicle parking should not be allowed.

Mr. Lane agreed and that was one of the Board of Health requirements that vehicles not be allowed to park on it. Their engineer designed the plan leaving enough room to allow vehicles to park head in. They will have only one vehicle because the 16-year old doesn't drive.

The parking area is consistent to the other lots in the area. It will be a gravel space right off the roadway for parking.

Mr. Hathaway wanted to make sure that if this was approved, parking would be only off-street.

Mr. Lane asked if that would be a condition on the variance. Mr. Hathaway said yes.

Mr. Lane agreed to that condition.

Mr. Reinke asked what the proposed use for the basement was.

Mr. Poulin said it will remain unfinished for now.

Mr. Reinke asked if there were any plans to finish it in the future.

Mr. Lane said there weren't any plans other than being on a lake, with no outbuildings and the basement would be used for storage.

Mr. Orth noted there wouldn't be enough room on that lot to put a shed anywhere.

Mr. Reinke asked if the property to the north was an easement.

Mr. Lane said that is what the residents call their Town Beach and the Watershed District owns it. That is where people launch their boats.

Mr. Orth asked for any further comments or concerns; hearing none, asked for a motion on the Variance first.

MOTION: Mr. Hathaway moved to approve the petition of Jonathan Poulin of 299 Princeton Road, Sterling Ma. for a variance to build a new home within 20-feet from the waterside, 17-feet and 29-feet respectively from the east, northeast property line and 34-feet from the nearest front property line on property located at 35 Burncoat Lane, Leicester, Ma. with the condition that the property owners have only off-street parking.

SECONDED: Mr. Reinke – Discussion: Mr. Reinke asked to include a stipulation that the basement be used only for storage and not living space.

Mr. Hathaway asked the reason. Mr. Reinke felt there would be more vehicles and the septic is only good for a two bedroom home.

Mr. Orth said what if they were to finish off a section for a bar or something like that. He felt there wasn't anywhere else they could put storage.

Mr. Hathaway asked if the septic was designed for a 2 bedroom home. Mr. Lane said yes.

Mr. Hathaway said as far as enforcement, he felt if they added more bedrooms, they would have to increase the septic.

Mr. Orth asked if Mr. Reinke wanted the stipulation to remain as a condition. Mr. Reinke no, and agreed to not include that condition.

Mr. Orth asked for any further discussion; hearing none, asked for a vote.

VOTE: 4 in favor / 1 opposed (Mr. Kirwan) - VARIANCE APPROVED

Finding of Facts:

Vaughn Hathaway voted in favor of the motion because he felt it met the conditions for the granting of a variance. It is a small lot and has a unique shape. The biggest concern was the parking and wanted the condition that there be off-street parking only. Although he agrees that if this was purchased with the idea that all they needed was to get a variance, it would be a self-imposed hardship, but there will be someone living there indefinitely who needs extra help; he felt was a reasonable hardship.

David Orth voted in favor of the motion because he felt it was in harmony with the neighborhood. He did have somewhat of an issue with hardship, but felt that it did benefit their special needs son and that met the hardship.

Jim Buckley voted in favor of the variance because he felt it met the criteria of the Leicester Zoning Bylaws and Chapter 40A, Section 10 for the granting of a Variance.

Jim Reinke voted in favor of the motion because he felt it was in harmony with the neighborhood and that the hardship was demonstrated because the home would be too small for three people to live.

David Kirwan voted in opposition of the variance because he felt the hardship was self-imposed and that a proper investigation would have shown this wasn't the best piece of land available.

He felt that the applicant took a large risk by not seeking a variance before making the final purchase and decision.

Special Permit

Mr. Hathaway explained the condition for granting a Special Permit is to show the use being in harmony with the intent and purpose of the Bylaw and the extension or alteration would not be more detrimental to the neighborhood. He felt those were met and were answered during the variance hearing.

Mr. Orth asked for any further discussion; hearing none, asked for a motion.

MOTION: Mr. Buckley moved to grant the petition of Jonathan Poulin of 299 Princeton Road, Sterling, Ma. for a Variance to extend a pre-existing nonconforming structure on property located at 35 Burncoat Lane, Leicester, Ma.

SECONDED: Mr. Reinke – Discussion: None

VOTE: All in Favor - SPECIAL PERMIT APPROVED

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

MOTION: Mr. Reinke moved to close the hearing.

SECONDED: Mr. Buckley – Discussion: None

VOTE: All in Favor

Meeting adjourned at 8:10PM

Respectfully submitted:

Barbara Knox

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