

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

Minutes of April 25, 2018

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

Alternate members present: Dick Johnson, Mary Moore

Hearing on the petition of Shailesh Patel of 875 Pleasant Street, Rochdale, MA for a Variance for a proposed addition 9.5ft from rear property line and a Special Permit for alterations and extension of a nonconforming structure.

Meeting called to order at 7:30PM

Instructions given on hearing procedures.

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

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

Submitted into Evidence: Return receipts from Certified Mailing to abutters, T & G legal ad fee, Registered Plot plan and Architectural drawings on addition

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

Mr. Hathaway opened the hearing to the applicant to present his petition on the variance, then the special permit.

Mr. Shailesh Patel, owner of the property, in attendance.

Mr. Patel explained needing additional room for storage to run his business/package store.

The addition will be built on the backside of the building. One side will be a walk-in dry storage and the other side will be a walk-in cold storage. The addition will measure 20 x 40-feet.

Mr. Hathaway asked why this variance was needed, what the hardship would be if the variance was not granted, to address the hardship to the property and explain why it won't be a detriment to the public good.

Mr. Patel said by ordering in bulk helps keep his costs down and will allow him to have a ready supply of stock on hand to sell. If not allowed to build addition will have an economic impact to his business and he will lose business if he does not have the quantity on hand.

Mr. Kirwan asked if the variance was denied, how that would affect his business, if he was unable to have this extra storage.

Mr. Patel said he would lose business because he won't have the extra supply on hand, and would cost him more to order in smaller quantities. If he is unable to make more money, he can't order the quantity.

Mr. Hathaway asked to confirm that if the Board didn't grant the variance, supplies would cost more and he would have to raise the price.

Mr. Patel said he didn't want to raise prices because then he would lose business. He can drop the price if he can keep costs down.

Mr. Kirwan asked if the walk-in cooler would have an outside compressor and would there be any additional noise.

Mr. Patel said the cooler will run on the existing compressor on site.

Mr. Kirwan asked the difference in distance in back.

Mr. Hathaway said it will go back an additional 20ft and will be 9.5ft from the property line.

Mr. Hathaway asked where the dumpsters currently in the back will be placed if the Board granted the variance.

Mr. Patel said probably on the parking lot side.

Mr. Orth asked whose property the cement wall in back was on.

Mr. Patel said it's on his neighbor's property.

Mr. Kirwan asked what the impact would be by putting the addition on the side as opposed to the back.

Mr. Patel said he would lose parking because it would take part of his parking area away.

Mr. Orth asked if storage containers were considered rather than building an addition.

Mr. Patel said he has storage containers there now, but needs to have access from inside the store.

Mr. Hathaway noted storage containers weren't climate controlled.

Ms. Moore asked if the delivery schedule would change and trucks come less often or not come at all if not bought in large quantities.

Mr. Patel said the trucks will still come, but it will cost more money.

Mr. Kirwan asked if the addition was allowed, how much room there was from the end of the new addition to the rear fence.

Mr. Hathaway said 9.5ft.

Ms. Moore asked if the addition was approved, will the storage container remain.

Mr. Patel said yes, he'll keep empties in it.

Mr. Reinke said this will be a 40 x 20ft addition. He asked why it could not be moved to the south side of the building.

Mr. Orth said that was where his parking was.

Mr. Reinke said there was 68ft to the property line and the addition was 20ft wide, there would still be 40ft remaining. He asked how many parking spaces were required and if the current lot was lined.

Mr. Orth said the parking lot was not lined, and agreed with 68ft, there still could be parking on that side.

Mr. Hathaway said if the 20 x 40ft was approved and if it was moved to the south side, the length of the current building was 40ft, so it would only come out 20ft into the parking lot.

Ms. Moore noted a variance would still be needed because it was 11ft off from the street.

Mr. Orth said it would not be further encroaching, so he would only need a special permit.

Discussion opened to the public.

Mr. Paul Hammond, 885 Pleasant Street said this addition will cause a hardship to him. He has a fence that goes down the side of the property that is constantly damaged. The cement blocks that are out there, belong to him, to keep people from hitting and breaking his fence.

The cement blocks in back are his also and were placed all along the property line.

Mr. Orth asked if he owned the property on the other side of the block.

Mr. Hammond said yes.

Mr. Hathaway said the Board was discussing the possibility of putting the addition on the south side of the building, which would make it closer to Mr. Hammond's property. If that location was feasible, would that be more of a nuisance to Mr. Hammond's fence.

Mr. Hammond said if there is 68ft there now and vehicles are hitting it now, he would say there would be more of a chance on someone hitting it.

He was not anti-business, but this was a hardship to him and there has been no help from the owner of the store to remedy the situation.

Mr. Kirwan said if the variance were to be granted and the addition goes back an additional 20ft, will that no longer be a parking area?

Mr. Hammond felt people would still park there.

Mr. Kirwan said the neighbor's fence is being compromised by the store customers and by the snowplow.

Mr. Orth asked Mr. Hammond if he was against the addition.

Mr. Hammond showed pictures of the damaged fence, explaining the damage and submitted the pictures as part of the public record.

Mr. Kirwan asked Mr. Hammond if there was a way to resolve the situation, would he still be against the addition.

Mr. Hammond said he does not appreciate the addition coming closer to his property line. If he can put it anywhere else and still be within the Town's Bylaw, he did not have a problem with it.

Mr. Hathaway asked Mr. Hammond with the addition on the south side it would be more likely the fence would be damaged. Mr. Hammond agreed.

Ms. MaryAnne Hammond, 885 Pleasant Street said where the cinderblocks are, there was a fence. Around 10-years ago, there was a fire in the dumpster and their fence caught on fire, which is why there wasn't a fence there now. If this should happen again, will there be enough room for the fire truck to get back there? She didn't feel 10ft would be wide enough for a fire truck.

Ms. Moore said the dumpsters would have to be moved.

Mr. Hathaway said the fire department had hoses that could get in back and they wouldn't necessarily need a truck to get behind there.

Ms. Hammond asked why the Board didn't go by what the Bylaw states.

Mr. Hathaway said the Zoning Board exists for the purpose of hearing cases that vary from the Bylaw.

Mr. Orth explained with a structure built prior to zoning, and the owner wants to put on an addition, he can't because it is not in compliance with zoning.

For example, this building was built before zoning existed, which is why it is 11ft from the front. So right now, in order for anything to be done to that building, the owner has to come to Zoning Board, because it's a pre-existing nonconforming structure on a pre-existing nonconforming lot. One of the issues the Board evaluates is how this change will affect other people and what type of impact it could have.

Mr. Hathaway asked Mr. Patel to speak to the concerns of the neighbors.

Mr. Kirwan explained to Mr. Patel that the neighbors were upset over damage that has occurred over time to their property by customers backing into their fence or the snowplow pushing the snow and damaging the fence.

Mr. Patel said he would put up a new fence around his property.

Mr. Hathaway asked for confirmation it will be Mr. Patel's fence that would get impacted and not Mr. Hammond. Mr. Patel agreed.

Mr. Kirwan said the request is for a 40 x 20ft addition. He asked what the impact would be if it were a 40 x 10ft storage area, rather than a 20ft. Mr. Patel said it would be too small.

Mr. Kirwan asked if there was a minimum width for this addition that would still make it functional. Mr. Patel wasn't sure.

Mr. Hathaway noted Mr. Patel may need to talk with his contractor to balance the cost and still satisfy his needs for storage.

Mr. Orth asked what would be a reasonable width.

Mr. Hathaway said Mr. Patel wasn't sure, but in terms of cost, would it be more costly to make it 20ft versus 10ft.

Mr. Reinke said a small addition like this; the cost goes per square foot, but it involves the same amount of work. He felt it would create a hardship for the owner, because going smaller won't make the cost less.

Ms. Moore pointed out by making the addition smaller, gives more opportunity for people to drive back there and create problems. If the addition stays as proposed, would give less opportunity for people to go back there.

Mr. Kirwan asked whether the back area could be blocked off.

Mr. Patel said yes, and suggested putting the dumpster there so no one goes in back.

Ms. Hammond said in the Bylaw, it states they are not to exceed 30% of the lot.

Mr. Hathaway said that had to do with impervious areas. This lot is grandfathered and won't become more impervious from the addition.

Mr. Orth said where the addition was going its already impervious.

Mr. Kirwan asked if the Board were to grant this, can there be a condition to ensure a new fence be installed around the lot.

Mr. Reinke suggested parking be part of this plan, because that was part of the problem with the neighbors. He would like to see how many parking spots exist now; in addition, how many spots will be available if the building goes on the south side.

Mr. Hathaway further explained the need for parking space lines so people could see where to park.

Mr. Reinke advised parking regulations were available at the Planning Office. He asked for the applicant to provide a parking plan before the Board votes on this application.

Mr. Orth agreed to having a parking plan. The owner claims parking would be impacted with the addition, but no one seems to know where the parking was or what the impact would be. Mr. Hathaway agreed a parking plan would address the concerns of the abutters, and if the lot was lined, people were more likely to park where they should park. Mr. Kirwan felt a plan would improve parking, because right now, it's just a free-of- all and having marked spaces, might accommodate more vehicles.

Mr. Reinke advised handicapped parking needs to be included with the parking layout, as well as ADA Compliance, because of the dollar value, if the addition is 30% or more of the value on the current structure.

He reviewed what to provide for next meeting:

- 1) updated plan showing existing conditions;
- 2) specific layout of parking spaces, showing addition on back;
- 3) specific layout of parking spaces, showing addition on southern side;
- 4) incorporate fencing on the plan, include curb stops along the fence line;
- 5) signage needs to come into compliance; and
- 6) show dumpster location

Mr. Hathaway said the Board was hearing about an addition and not sign compliance. He questioned whether signage was within the hearing purview and whether it should be something brought to the Building Inspector.

Mr. Reinke agreed the Zoning Enforcement Officer should review the signage, but hasn't.

Mr. Kirwan agreed the hearing was on an addition and not the size of the sign. He would need to take out an application for a sign and he hasn't applied for a sign, therefore it should not be included as a condition.

Mr. Reinke disagreed. When someone applies for a permit due to code violations on a property, all violations should be corrected before any construction.

Mr. Hathaway questioned whether that should be a separate application.

Mr. Reinke said there should be an application for a sign, but it's in violation now and should be corrected.

Mr. Hathaway said the meeting will be continued to allow Mr. Patel to address the Board's concerns.

Mr. Buckley questioned how much the applicant explored where else this addition could go. The owner states parking would be eliminated if the addition was not in back. The plan shows the parking area as paved. If the addition were put on the side, people could park in back, because it's a paved area.

If Mr. Patel explored a different area for the addition, such as the side, that didn't require a variance, all he would need is a special permit and the same conditions can be included with that permit.

Speaking for himself, Mr. Buckley had an issue having the addition in back. It appears there can be another spot for the addition and parking wouldn't be the reason to not explore another option.

Mr. Hathaway asked for any further comments or concerns, hearing none, asked for a motion to continue.

MOTION: Mr. Orth moved to continue the public hearing on the petition of Shailesh Patel of 875 Pleasant Street, Rochdale, MA, to May 23, 2018 at 7:30PM, to allow the applicant additional time to address the Board's concerns related to preparing a parking plan, and showing on the plan, the locations of the dumpster, the fence, the addition on the east side with parking, and the addition on the south side with parking.

SECONDED: Mr. Reinke – Discussion: Mr. Reinke gave Mr. Patel a list of the Board's concerns for his Engineer and Architect review.

VOTE: All in Favor

Meeting adjourned at 8:50PM

Respectfully submitted:

*Barbara Knox*

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