

MINUTES
Danvers Board of Appeals

#16-4674
January 9, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca
Kilborn, John Boughner, Kenneth Scholes

Also Present: Building Inspector, Richard Maloney
Secretary, Marybeth Burak-Condon

JOYCE BUCCHERI, TRUSTEE, TWENTY NEWBURY TRUST (#16-4674)

Requesting a variance to allow outdoor storage of motor vehicles
in accordance with Section 6, Table 1 of the Danvers Zoning
Bylaws at **20 NEWBURY STREET**

Joyce Buccheri said we have submitted a new parking plan, we
have scaled it down to 70 and we have also made access for fire
trucks.

Robert Cignetti said this is going to be gravel, how are you
going to denote the parking area? Ms. Buccheri said my husband
is always on site so he manages it. There will not be free rain
for the people renting the space it will be explained to them.
They discussed putting up cones.

Rebecca Kilborn said thank you for getting the plans to us and
you have gone from 96 spaces to 70, this plan looks much better
to me.

John Boughner said I was able to read the minutes from the last
meeting, one of the dimensions on the drawing it mentions
dimensional requirements and I see 25 foot in this zone as a
side yard setback is it because the building is on the property
line? Ms. Buccheri said correct, if the building ever came down
then we would have to comply with current zoning. Mr. Boughner
said I can just see this being a problem where people are
parking, can you put up plow sticks or something. Mr. and Mrs.
Buccheri discussed the location of the parking spaces and
putting stakes in the ground and installing cones to mark the
parking areas.

Robert Pariseau said are you responsible for inventory. Ms.
Buccheri said we will only have the 70. Mr. Pariseau asked if

carriers were delivering the cars or are they brought in individually. Ms. Buccheri said individually. Mr. Pariseau asked about the lighted area in the back. Mr. Buccheri said they are welcome to install any lighting they require.

Robert Cignetti said you will take as a condition giving up the special permit for the contractor's yard? Ms. Buccheri said yes.

John Boughner said is there certain hours that you will allow the lot to be operational? Mr. Buccheri said 8-5, but I don't think they will be selling a vehicle at 1 am, they have a key to the gate. We have surveillance cameras and the fence is locked at all times. They discussed access to the lot in further detail. Mr. Boughner asked if this will go to site plan. Mr. Maloney said yes.

AUDIENCE COMMENTS

Bill Bradstreet said they mentioned the gate is locked, does the fire department have a key or will they need bolt cutters to access the yard.

The owners of the property said there is a lock box with a key on the property.

Robert Cignetti said I think this is reasonable with the condition I will vote for this.

Rebecca Kilborn said I will also vote for this I think you are probably going to end up leasing this to one or two tenants. Car dealers typically have their cars lined up very neatly and I don't see them creating a problem.

John Boughner said I would also vote in favor of this I think it is a better use with the condition that you relinquish the special permit and I would like to see the markings.

Kenneth Scholes said I would vote for this I think it is great that you are at 70 it is more manageable.

Robert Pariseau said I look favorably upon this as a much better use, if you make any changes please come back to us.

Robert Cignetti motioned to grant the variance to allow outdoor storage of motor vehicles with the condition that the applicant gives up the special permit for a contractors yard, and the new parking layout is for 70 cars in accordance with the plans submitted and dated 10/31/16, the hardship is the shape of the land; this condition does not affect other [properties or structures] in the same zoning district; a literal enforcement of the zoning bylaws would involve a substantial hardship to the applicant; and granting this variance will not create a substantial detriment to the public good and will not nullify or substantially derogate from the intent or purpose of the zoning bylaws. John Boughner seconded. All in favor.

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NICOLE M. LAMAR AND MARYELLEN HALSTED (#17-4676) Requesting a special permit to construct an addition for an Extended Family Living Area (EFLA) on an undersized lot in accordance with Section 9.3.3.2 of the Danvers Zoning Bylaws at **19 MASS AVE**

David Lamar said I am the husband to Nicole Lamar and son-in-law to Maryellen Halsted and we would like to construct an extended family living area at this property.

Kenneth Scholes said where the garage is now is that going to be living area now and you are going to put a driveway over to where the two car garage is and this one will be gone? Mr. Lamar said yes.

John Boughner said I went by the property yesterday this is just an undersized lot.

Rebecca Kilborn said I also went by there and it is a corner lot and you are dealing with a corner, I don't have any questions.

Robert Cignetti said all of your setbacks are okay and you just want to build an EFLA on an undersized lot.

Robert Pariseau said there is a lot of digging going on in that area, are you going to be impacted in any way?

There were no questions or comments from the audience.

Kenneth Scholes said I have no problem with this I will vote for this.

John Boughner said it seems like a lot of house for a small lot but it is in keeping in what has gone on in that neighborhood so I would vote for this.

Rebecca Kilborn said I would be in favor of this we have done other houses similar to this, and the EFLA is within our standard 750 square feet.

Robert Cignetti said I have no problem with this.

Robert Pariseau said I would look favorably upon this it is within the parameters of the bylaws.

Robert Cignetti moved the board to grant the special permit for the 734 square foot EFLA addition on an undersized lot;

- The municipal water and sewer systems shall not become overloaded by the proposed use.
- The public streets shall not become overloaded by proposed use.
- The value of other land and buildings will not be depreciated by the proposed use.
- The specific site is an appropriate location for this use or structures.
- The use developed will not adversely affect the neighborhood.
- There will not be an undue nuisance or serious hazard to vehicles or pedestrians, and adequate and appropriate facilities will be provided to ensure the proper operation of the proposed use.
- The proposed use or structure will be in harmony with the general purpose of this bylaw.

Kenneth Scholes seconded. All in favor.

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KUNAL JHAVERI (#17-4677) Requesting a variance from side setbacks to allow existing addition overhang to remain in accordance with Table 2 of the Danvers Zoning Bylaws at **7 ASH STREET**

The contractor said we were renovating this property, when we got to this section of the house we found a lot of rot and we had to re-build it.

Richard Maloney said this is an old two family house, there was an old rotted part on the right side of the house which they removed but when they re-built they extended it. Mr. Boughner said so they didn't have a permit? Mr. Maloney said well they had a permit but it wasn't for that. Mr. Boughner said so they didn't re-build what they removed. Mr. Maloney said it got extended out about 16 inches, if you look at it now it is overhanging the foundation and it is into the setback. Before it was sitting on the foundation. The owner of the property said it is overhanging by 8 inches.

The board members looked at the plot plan and plans that were submitted with the application and were confused with the dimensions provided.

The applicants discussed the reasons for re-building the space larger than the original space. Mr. Maloney said we try to work with people but this got totally torn down and re-built that is why they are here.

Robert Cignetti said there is not much to say you pulled a building permit to do a certain thing and then you went over what the building permit allows you to do, now you want us to okay it.

Rebecca Kilborn said so it is 8 inches out further than where it was previously. The contractor said yes. Mr. Maloney said it is 19 inches, the total with the soffit, you can see where the foundation ends and they cantilevered out that addition. The whole thing got shifted out 19 inches. The contractor said with the soffit it is 19. Ms. Kilborn said so it is 11 inches.

John Boughner said my question is why you did this. The contractor said when you open the door from the inside of the bathroom you would have had to put a very narrow vanity. Mr. Boughner said but you are renovating and you know you have to pull a permit and you are changing the outside of the building and you have to know that it would require this change. The contractor said when we took it down we just built it back up with this added space.

Kenneth Scholes said so if I am reading this correctly this side setback is 6 feet even from the new 19 inch. They discussed the correct dimensions of the side setback. Mr. Maloney said in the elevation drawing he has it at 42 inches that is why it is a variance, if it was more than 4 feet it would have been a finding.

Robert Pariseau said you have left us in a dilemma here, I understand your reasons if you get down to an area that is rotten it doesn't mean that you add on to the house somewhere else, and you said well that bathroom was going to be small and it hit the door well it is the same bathroom that when you bought the house. Since you did not have a permit to enlarge that, you need a permit to do that.

AUDIENCE COMMENTS

Bill Bradstreet said it is unfortunate that a contractor or anyone would go beyond what was asked for, every time that you allow it it makes a precedent that everyone is going to steal a couple of inches or a foot. That is why we have rules that we try to govern with building in the town, it bothers me.

Robert Cignetti said in lieu of what Mr. Bradstreet said it's the old it's easier to ask for forgiveness than to ask for permission. This has happened in the past with other people, I did it I'm sorry now let it be okay, in this case I am not going to vote for this.

Rebecca Kilborn said I see that you bought this property on foreclosure and you have been working to improve it. The owner said there was water damage from the roof so before we bought it we had the bank put tarps over the building which is probably why these guys nailed it up they saw all the rotted wood. I wanted to see that everything was brought up to a livable standard because I plan on living there. Ms. Kilborn said we want you to improve properties in town we like to see that properties are renovated we are never happy that this happens, to me it is 11 inches I am not happy that it happened but I am happy with what you are doing with the property so I would approve.

John Boughner said I am frustrated by things like this, this is a builder that knows the system so I will not vote for this, I think this was unavoidable if anything the building inspector should have been contacted.

Kenneth Scholes said I would have to agree with Bob and John, if it was an inch or two maybe we would say whoops daisy but here we are 11 inches, I would not vote for this.

Robert Pariseau said the reason that you gave us was that the building was rotted, the bathroom door wouldn't fit, and it looks like it is correctable it is one straight wall so I would not vote for this and I would say go back correct it and make it right. You created the hardship by what you did illegally so work it out with the building inspector.

The owner of the property requested to withdraw without prejudice.

Robert Cignetti motioned to allow the applicant to withdraw without prejudice. Rebecca Kilborn seconded. All in favor.

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ANDREW S. BROWNING (#17-4678) Requesting a variance and a finding to tear down and rebuild new garage with the same right side setback and new rear setback in accordance with Section 3.17 (1,2,3,4) of the Danvers Zoning Bylaws at **9A SPRUCE STREET**

Andrew Browning said the house has an existing garage which sits underneath the porch and the overhangs, you cannot use the back door, and the garage is in severe disrepair and has to come down. We would like to have a roofline in conformance with the rest of the neighborhood and we would have the garage be located where everyone else's in the neighborhood.

Kenneth Scholes said so the garage is going to be on the house edge because you are going to 15½ feet. Mr. Browning discussed the location of the proposed garage. Mr. Scholes said because you are going 15.5 it is going to extend beyond the house edge? Mr. Browning said yes. Mr. Scholes said as the garage is now you cannot fit a car in there, because you've got 25 feet to play with back to the lot line so why do you need to go to 8 feet. Mr. Browning said if I were going to tear down and rebuild it in the spirit of retrospect I am asking for as much as I can get and would like to put two cars in there.

John Boughner said I went by the property and I see your pain as to the location of the garage, with the lot line you could make the garage slightly smaller and still meet the rear setbacks. However you are going to stack two vehicles is that what you are going for? Mr. Browning said yes.

Rebecca Kilborn said so the new garage will not be attached to the house? Mr. Browning said no it wouldn't be it will be far enough back for storage. Mr. Browning discussed the location of

the garage from the house. Ms. Kilborn said the existing garage is 5½ feet from the side lot line.

Robert Cignetti said I understand that you need a new garage and I understand the 5.5 feet because that is what you already have, you are really pushing it in the back, to go from 25 feet to 8 feet that is a big push. You've got a little lot. I would like to tweak it a little bit I could live with 10 feet.

Rebecca Kilborn said can you get two vehicles in 28 feet, a parking space is normally 9 feet by 8 feet. Mr. Browning said it will be tight.

Robert Pariseau said you mentioned several things with toys in the garage will you be able to get between the buildings. Mr. Browning said yes. Mr. Pariseau said I was just wondering if you could give a little more of a setback in the rear. Mr. Browning said I wanted to get it as far back as possible.

AUDIENCE COMMENTS

Charles Ferguson, 8 Washington Street Ext., said I support this application, they have done a great job improving the neighborhood. His garage is very dated and pretty much useless, the next two properties to the right their garages are very tight to the property line. I am in favor of this and it would be good for the neighborhood.

Peter C. Nechtem, Attorney, said I represent Ernie Tremblay, he owns two abutting properties, 107 Pine Street and 13 Spruce Street my client's objection is that the applicant does not meet any of requirements of 3.17 of the zoning bylaw for reconstruction of existing nonconforming. The applicant seems to be adding a new nonconformity with regards to the rear setback. My client would not have an objection to this if the applicant were just seeking to rebuild within the existing footprint but he is seeking to double the size and moving it closer to my clients property in violation of the rear setback requirement. I don't think that there has been any showing of a substantial hardship here that would support the grant for the variance. On behalf of my client I would ask you to deny this application as it stands now.

Kenneth Scholes said my comment is that you gain over three feet in width I think I agree with Robert I would like to see the rear setback to 10 feet to 26.

John Boughner said this board has in the past loosely used a 50% rule in regard to setbacks, I look at the property at 9 Spruce Street and it looks like their garage is one foot off the property line and would not meet today's zoning so I understand what both Ken and Bob are getting at. Seeing as you cannot stack two vehicles in there even with 28 feet I don't see a point of making it 28, however I am okay with it slightly longer than what exists and slightly closer to the setback. I can see that you need a new garage and I don't think it is a detriment to the neighborhood.

Rebecca Kilborn said I think the house looks good and I appreciate that you have tried to clean up the house and the garage needs a little work, I agree with John in that we have at times split the difference with the 50% so it is a 15 foot setback and 8 feet would be more than half however this lot is so small it seems that it would make more sense if you would agree to leave a 10 foot setback.

Robert Cignetti said I agree with Becky, I would vote for this with a 10 foot setback in the rear I will not vote for it with an 8 foot setback in the rear and the 5½ you already have that and as long as that doesn't change I do not have a problem with that.

Mr. Browning said I was unaware that there was opposition to this, I kind of wish that I heard that and maybe would have adjusted the plans accordingly.

Robert Pariseau said if we could just adjust the plan and have you sign it. The building inspector changed the dimensions on the proposed plans and the applicant signed the changes and agreed with the proposed plans.

Robert Cignetti moved the board to grant the finding to tear down the existing nonconforming garage. John Boughner seconded. All in favor.

Robert Cignetti motioned to grant the variance for the construction of the new garage as amended on 1-9-17 through the building inspector to show a 10 foot rear setback, and the

height of the new garage will not exceed 17 feet, the hardship is the location of the building on the lot; this condition does not affect other [properties or structures] in the same zoning district; a literal enforcement of the zoning bylaws would involve a substantial hardship to the applicant; and granting this variance will not create a substantial detriment to the public good and will not nullify or substantially derogate from the intent or purpose of the zoning bylaws. Kenneth Scholes seconded. All in favor.

*Rebecca Kilborn motioned to adjourn. John Boughner seconded. All in favor.