

MINUTES
Danvers Board of Appeals

#17-4721

October 16, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca Kilborn, John Boughner, Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen, Anthony Podesta

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

STATE LLC/KEVIN J. MURPHY & LAUREN D. MCCREA (#17-4721)

Requesting a variance (dimensional) to allow the construction of four townhouse style dwellings on the lot in accordance with Table 2 of the Danvers Zoning Bylaws at **2 POND STREET**

Chair Boughner stated the five regular members will vote on this application.

Attorney Nancy McCann said the owners of the property are here and we are requesting a variance to allow three residential units to be constructed on this property. We listened to your comments after the first meeting and we revised the plans, after that there was some question with regard to the ownership, and at the last meeting we proposed this plan. Attorney McCann discussed the topography issues, drainage issues, noise issues and that the plans are in keeping with the neighborhood homes. The applicants met with the neighbors before even filing and took their considerations into the original application, we presented a partition signed by 13 of the immediate abutters who are in favor of this plan. At the last meeting we ended it with why can't you just do a duplex, there are financial reasons why we can't which come back to the location of the existing structure on the property. We have developed budgets so you can see what the financials are we want to go over those with you. Under the state statute we have to have a situation related to soil conditions shape or topography of the land or the structure that results in a hardship to the applicant financial or otherwise. In this case we have an existing structure that has topographic issues that cause drainage problems and safety concerns with regard to access onto Pond Street that we need to correct whether we leave the structure where it is or move it back. So we came up with a budget, if we were to leave the

existing structure where it is and just make a duplex out of it, if we were to create a duplex based on the existing we end up with a duplex eight feet off of the lot line because that is what the bylaw allows. In order to do that reconstruction our budgeted cost is \$1,783,000. If we were to eliminate that structure and start fresh, demolish the building create a new duplex in the middle the cost is \$1,191,300. The anticipated marketing price and what we think the sell out in both of those conditions, \$885,000., based on leaving the structure where it is, so we don't clear. Demolish the building and create a duplex in the middle, total cost is \$1,191,300., and the sellout is \$940,000., at \$470,000 apiece, it doesn't work. That's the financial or otherwise that is the hardship under the statute. If we create a three-plex which is what we are proposing meeting all the setback requirements demolish the existing home in the front the cost is a \$1,292,000. The sell out at selling those units at \$470,000. a piece which is a reasonable price in this neighborhood you would clear \$1,410,000, so you would make a little bit of money and it makes it financially viable and it makes it financeable. You cannot finance a project when the numbers show that they are going to lose money. These are real numbers we've got the information for you and the applicant prepared those numbers and he can provide more details. We either have to demolish it and remove it completely and do the site work associated with that and the costs associated with demolition, or we have to deal with the topographic problems and create an addition on it. We think this project is the right thing to do it creates a decent place to live and it's in keeping with the neighborhood. Attorney McCann discussed the multi units in the neighborhood and distributed photographs of multi units within the immediate neighborhood. We have a letter that was sent to the building inspector from Mark Hannon, 6 Pond Street. She read the letter stating his approval of this project.

Anthony Podesta said do the financials include the purchase and development price? Attorney McCann said yes, the appraisal on this property was \$419,000, and the purchase price was \$397,500.

Kenneth Jarvinen said I don't think that it reaches the threshold of financial hardship, it seems like it is attached to the owner personally not with the soil. I would have to say that I wouldn't go for this, with the double family it is better for the neighborhood. Attorney McCann discussed the statute on hardship. Mr. Jarvinen said I just think that big structure

coming down the road on that corner it would look better with something a little smaller.

John Colantoni said if we build a two family duplex attached to the existing house because we have to go to the right and put in two garages it would be 120 square feet long and three stories high and it would be a bigger structure than either structure that we have proposed. So the two duplex would be a bigger building by far than anything that we proposed.

Kenneth Scholes said they paid the bank and they probably didn't owe \$417,000? Attorney McCann said which is why my clients bought it under the appraised value.

Rebecca Kilborn asked to review the setbacks. Attorney McCann said we have 40 foot from Holten, 40 foot from Pond Street, and right now from Pond they are right about at 20, a 30 foot setback from the neighbors in the back and about a 34 setback from the neighbors on the right.

Robert Cignetti said did your client do the financials before he bought the property? John Colantoni said we did a lot of research and we did a lot of financial back and forth. When you buy something on foreclosure you don't have as much of an opportunity to go through it as you normally would. When we came to the board the first time we already had the auction and put the deposit down so we had it under our control and when we came back with the three unit we thought the board was happy with it. Mr. Cignetti said so what you are saying is that your financial problems are a result of this board that's what I just heard you say. Mr. Colantoni said we are big boys and this is on our shoulder no matter what happens you have to admit the last meeting that I was here you made statements that we did not do our research and should have done our due diligence before we came to the board, and we did. Not only did we do that we were in front of this board twice before we even purchased it. Mr. Cignetti said you bet that this board would okay your project based on the finances and went ahead and bought the property before knowing what this board's final decision would be. Mr. Colantoni said everything is a risk there are no guarantees, we had an opportunity here, the board, the contractors and neighbors to have a win win situation across the board. We feel that what we have done in the past and what we have presented, the neighbors wanted the two bedrooms, we wanted balconies for

all of them, the neighbors asked to eliminate the end balconies and leave one in the middle. I just don't think that it is fair to say that we purchased this and it's the boards fault, we are not saying that. Mr. Cignetti said what I am trying to say is that the whole basis for your argument is a financial hardship that's what I am hearing and my contention if there is such a thing, you created the hardship and you want us to bail you out. Mr. Colantoni said you are missing the first part of the hardship, we have that which brings us to the financial part. Mr. Colantoni discussed the location of the house on the lot, the topography. Mr. Cignetti said if you knew all of the problems why did you buy it? One other point you keep mentioning the sound from the Electric Dept. you can make it soundproof. Mr. Colantoni said we can make that better with new construction. They discussed the noise issues.

AUDIENCE COMMENTS

Matt Duggin said the projects in the immediate area were built in the past when it was allowed and Town Meeting decided they didn't want, in terms of the financial hardship that should apply to anybody if it's something specific to the soil or topography and its not to the applicants financial situation which I don't think comes in to play here. Attorney McCann said that is not what the statute says, and she discussed what the statute says.

Susan Monroe said I live on the corner of Peabody and Holten that house was pink about eight years ago. When my dad died we moved my mom into that house and painted it pink. The noise across the street until you are really there you don't notice it, but it really is a factor if you are going to live there. It is an eyesore, we take care of our homes and we are in support of the application.

Ashley Coombs, Charles Street, said I am in favor of this application, we walk that area every day.

Jeffrey Sauer said I am struggling with this. In recently provided documentation from the building inspector it is clear that a variance sets a very high bar and we grant it when there is absolutely no other way that the project can be done.

Robert Pariseau said I can see it is an improvement but I still haven't changed my mind, I am not in favor I do not see the hardship with the land.

Rebecca Kilborn said in the last meeting I voted in support of this I appreciate that the developer worked with the neighbors we know that he will do a quality project this property meets all of the setbacks and we need to take them into account, and I also feel it fits within the neighborhood. I understand the variance and the difficulty of the variance, but we need housing and I would vote for this.

Robert Cignetti said the whole crux of the argument here is a financial hardship if they don't get this project they are going to lose money etc., etc. My contention is that there is such a thing as a financial hardship the applicant created it, I cannot support a hardship that the applicant created so I would not vote for this.

John Boughner said my feeling on this is mixed, I think that if this house were bought at auction for \$200,00 or \$100,00 it still wouldn't be a house that is fine, I don't see a problem with taking this home away and creating something better there. The density concerns me a little bit, I wouldn't want to see a two family and because of the financials you have to work with it could be a monstrosity of a structure that nobody wants there. I would vote in favor of this.

Jeffrey Sauer said I guess I would vote for this.

Attorney McCann said I guess I could give you the paperwork with the financials and I am happy to give you those numbers between now and the next meeting. Really we think that we have given you a great deal of information, more than in many variance situations but we do have a hardship situation. Robert Cignetti said have you considered a three bedroom two family? Attorney McCann said yes if we do duplexes here either with the addition or with new build that's what we assumed, but they still don't sell for enough.

Robert Cignetti said I have reconsidered and will vote for this.

Rebecca Kilborn motioned to grant the variance for the property located at 2 Pond Street, to build a three family three unit

structure as described on the latest plans provided and dated September 5, 2017, the hardship is the existing structure on the land and the configuration of the site as it presently exists; 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. Jeffrey Sauer seconded. Robert Pariseau opposed. Vote 4-1.

MINUTES
Danvers Board of Appeals

#17-4722

October 16, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca Kilborn, John Boughner, Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen, Anthony Podesta

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

ARISTON CUSTOM HOMES, INC. (#17-4722) Requesting a finding to demolish one story garage and construct a two and a half story two-family dwelling in accordance with Section 3.10.3 of the Danvers Zoning Bylaws at **39 CLARK STREET**

Attorney Jill Mann said this project has undergone some changes, the property had been used as a single family home with a five car commercial bay garage. The proposed new structure is a single family home it is 36 feet wide with a single car garage, you can see with the architectural rendering it is a cape style and only 29 feet tall, and it provides with a large deck between the existing home and the new home. Previously the other structure went right up to the deck we reduced it by close to 50%. This home meets all setback requirements for a single family home.

John Boughner said the five regular members will vote on this. I want to thank the applicant for downsizing this project.

Robert Cignetti said I like it.

Rebecca Kilborn said how will the ownership be for these units? Attorney Mann said it will be a condominium, we will have to number them 39, with A & B, and there will be a one car garage. Ms. Kilborn said and we are talking about a 7,000 square foot lot for two houses? Attorney Mann said yes.

John Boughner said so this is going to Site Plan? Attorney Mann said no because it is only a single family dwelling. Mr. Maloney said it is a two family. Mr. Boughner said two units, 39A and 39B.

Rebecca Kilborn said what are the setbacks for a two family?
Attorney Mann said the same, it meets all setbacks.

There were no questions or comments from the audience.

Robert Cignetti said I like it, I will vote for it.

Rebecca Kilborn said I think that it is too small for two houses, I was hoping that it would be one house so there would be more outside space than separating two houses, but I also understand that we are getting rid of a commercial use in a residential area so I will vote for it.

Robert Pariseau said I am appreciative that Attorney Mann was able to work with us and try to get that down, I think that getting rid of the five commercial bays for a potential commercial use is a big asset here so I will vote for it.

Jeffrey Sauer said I agree with Bob, I don't like two houses on a lot but we are looking for a finding to replace something that was commercial with something less.

John Boughner said I think that we started at three total and to think that we are here now, we are losing a commercial element in the neighborhood I think this is a better fit, I will vote for it.

Robert Cignetti moved the board to grant the finding for the proposed new home as shown on the plans dated 9/22/17 as it will not be substantially more detrimental than what presenting exists. Robert Pariseau seconded. All in favor.

MINUTES
Danvers Board of Appeals

#17-4729
October 16, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca Kilborn, John Boughner, Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen, Anthony Podesta

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

JENNA FREEMAN AS TRUSTEE OF 2 PARK STREET REALTY TRUST (#17-4729) Requesting a variance to change the use of an office to a residential unit in accordance with Section 6, Table 1 of the Danvers Zoning Bylaws at **2 PARK STREET**

Attorney James Cote said when we were here last time there was some question about whether this was going to have to go before the planning board, the building inspector has told us that it does so we did not have a parking plan at this point because we will have to go before planning. We are not sure on the inside how we are going to arrange the units so we will have to work with the planning board if you were to approve the change of use in terms of how to configure units. There would not be any more than four units, but as of right now we do not know the number of bedrooms for each particular unit.

John Boughner said just to clarify you are looking to take what is a mixed used building currently of commercial and residential and make it all residential. Attorney Cote said correct. John Boughner said and you are looking to go from three units to four. Attorney Cote said correct.

Jeffrey Sauer said I am unclear about how you are going to get enough parking spaces. Attorney Cote said at this point we don't know what number of bedrooms we can get per unit based upon the current parking conditions that is why we have site plan to go over that. It is at least eight cars right now.

Robert Pariseau said I thought that after the last meeting Attorney Cote was going to provide a parking layout, I know it is going to go before the Planning Board for site plan but I would like to see how you are going to park the cars there.

John Boughner said the five regular members will vote on this application.

Robert Cignetti said what is the hardship? Attorney Cote said the location of the building on the lot. Mr. Cignetti said I am a little disappointed that we don't have a parking plan, I remember yourself saying that you might as well come up with a parking plan because I need to for Planning Board.

John Boughner said I am looking at the minutes and this is what the board wanted. Attorney Cote said we would be here for a finding if it weren't for the third residential unit put in in the 60's. The business portion of it is nonconforming, so we are just looking for a substitute in use, the parking is what it is we have three residential and one business, all we want is to take the business and make it residential. Mr. Boughner said so is this parking more detrimental or less detrimental? Attorney Cote said less detrimental we don't have any foot traffic during the day.

Kenneth Jarvinen said so the cars will be two deep and the cars will straddle the sidewalk, just wondering how people will walk by if there are cars on the sidewalk.

AUDIENCE COMMENTS

Matt Duggin said I was hoping to see a parking plan, there is a plow in there with piles of gravel, to go ahead and allow this to move forward with the assumption that planning will take care of the parking situation I think will allow this to fall through the cracks. Also for the detrimental use, commercial has less detrimental use because cars may come and go, for residential the cars are there at night and on weekends.

Jeffrey Sauer said I agree with Mr. Duggin I will not vote for this without a parking plan, I also agree that overnight parking residential vehicles is going to be more difficult with this spot than daytime commercial on the street and out front, I don't see it as less detrimental.

Robert Pariseau said I agree.

Rebecca Kilborn said I agree also and the commercial use is not a permitted use anyway so there is nowhere that we got an approval for a commercial unit. Mr. Maloney said the building

inspector at that time but today they would have to go to zoning board. Mr. Maloney said this was all done with permits. Ms. Kilborn said I need a parking plan.

Robert Cignetti said I came here tonight thinking I was going to get a parking plan and did not so I cannot vote on this.

Attorney Cote said it is not a tweaking through the planning board, right now we have the parking that we have with three units and a commercial. Mr. Cignetti said why don't you want to give us a parking plan? Attorney Cote said because I don't know if we meet parking currently. Attorney Cote said I wish to withdraw.

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

MINUTES
Danvers Board of Appeals

#17-4732
October 16, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca Kilborn, John Boughner, Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen, Anthony Podesta

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

MICHAEL R. MOORE (#17-4732) Requesting a finding to add a three season porch to a pre-existing non-conforming residence, addition will not be any closer than existing house, in accordance with Section 3.11.1 (A & B) of the Danvers Zoning Bylaws at **91 WATER STREET**

Mr. Moore said we currently have a deck on the back of the house and we plan on staying within the existing inch of the house. Mr. Boughner said so this will be a three season porch. Mr. Moore said yes.

Robert Cignetti said I saw the deck you had so you are just going to put this addition the same dimensions as the deck and in the same place? Mr. Moore said the deck is 16 X 10 and the proposed is 16 X 12. Mr. Cignetti said but you are still within the setbacks and it is going to be where the deck is? Mr. Moore said correct.

Rebecca Kilborn said so this is a duplex? Mr. Moore said it is a three family, I live on the one side and I own the whole building.

Jeffrey Sauer said this is RI and the rear setback is 8 feet. Mr. Maloney said because he is on a corner lot and he has to deal with two frontages.

There were no questions or comments from the audience.

Robert Cignetti said I don't have a problem with it I will vote for it.

Rebecca Kilborn said is this a legal three family? Mr. Moore said yes. Ms. Kilborn said I will vote for this.

Robert Pariseau said I did visit the site and they have done a very nice job with this home and I will vote for this.

Jeffrey Sauer said I agree with Bob I will vote for this.

Kenneth Jarvinen said I would vote for this.

Anthony Podesta said I agree with the board.

John Boughner said I agree as well I think the property is nice.

Robert Cignetti moved the board to find that the proposed addition as shown on the plans increases the nonconformity. Rebecca Kilborn seconded. All in favor.

Robert Cignetti motioned to grant the finding for the proposed addition as shown on the plans as it will not be substantially more detrimental than what presently exists. Rebecca Kilborn seconded. All in favor.

MINUTES
Danvers Board of Appeals

#17-4733
October 16, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca Kilborn, John Boughner, Jeffrey Sauer, Kenneth Scholes, Kenneth Jarvinen, Anthony Podesta

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

SAGAPO REALTY TRUST C/O KATHY KALOGIANIS, TRUSTEE (#17-4733)

Requesting a variance and a finding to install a new deck and finish existing living area in basement for an Extended Family Living Area (EFLA) in accordance with Table 2 and Section 9.3 of the Danvers Zoning Bylaws at **6 BUNTING WAY**

Representative for the applicant said we would like to discuss the setback for the deck and steps. We are proposing to take the steps and move them to the side of the deck and direct them toward the driveway. We would like to keep the 14 foot setback of the deck at that corner the only spot where it encroaches. The EFLA, the owner only wants a kitchen area in that space to be used as a family room entertainment space. In the middle of that kitchen is sliding doors that go out to the patio so it is not an in-law apartment it is going to be an entertainment space, they just want to have toilet facility, laundry facility and a kitchen so they can entertain back there, it is not an in-law apartment.

Richard Maloney said I have not been involved with this application. Mr. Boughner said it looks like they would like to have a second cooking area with a bathroom in the basement and extend the deck that encroaches the side setbacks, they are not asking for an EFLA. Mr. Maloney said the Assistant Building Inspector did not want to issue a permit once we see a second kitchen, when we issued the EFLA Bylaw we grandfathered 99 illegal apartments, more than ¾ of those were done with permits and people put in a wet bar, so the history of the wet bar has proven to bite us so we are leery every time we see a second kitchen.

The representative for the applicant said it is my understanding that the reason that the EFLA is being presented is because it was addressed as such by the building inspector. It was not intended by the client or us. Mr. Maloney said I think that was the only way they were going to get the kitchen through Dave. The representative said I want you to clearly understand what the intent was there is not an in-law issue here this is an entertainment space.

Rebecca Kilborn said I will never approve a plan that looks like this because mortgage inspection plans can be off by 5 feet so just as a comment from me tonight you would have to get this surveyed properly. Mr. Maloney said I believe this is from our files we got an as built all the houses in Choate Farm have them, we are comfortable with what we have. They applied for an EFLA and I think that is the only way that we are going to feel comfortable putting a kitchen down there.

John Boughner said just understand that this will come with a deed restriction if it is granted. It would be recorded on the deed as an Extended Family Living Area.

Kathy Kalogianis said we renovated the kitchen upstairs and I didn't want to throw the cabinets away so I thought we could put them downstairs so I won't have to always run upstairs. I like entertaining and having my family over so it is convenient for me to have that downstairs that is all that I am looking for. I am not looking to have anyone move in, or in-laws, it is just for convenience. Mr. Boughner said I think what I am hearing from the Building Inspector is that we would do it with an EFLA which allows you to have that second kitchen. I just want to make it clear that you understand what this board would vote on is what an EFLA requires, which is square footage, common areas all the things that are in the bylaw.

Anthony Podesta said you are currently taking the deck that you have and extending it and taking the stairs out and relocating them. The representative discussed the plans in further detail.

Kenneth Jarvinen said it looks like it is 13 ½ not 14. Mr. Boughner said that is the stairs. Mr. Jarvinen asked if there were a limited amount of EFLA's per year. Mr. Maloney said we have 25 per year and we don't even come close to that.

Kenneth Scholes said what is the square footage of the room that the cabinets will go in? The representative said it is 18 X 12.

Jeffrey Sauer said why didn't you consider putting the stairs on the side of the house to prevent more of an encroachment on the setback? The representative said I was requested to put the stairs where they are drawn, so now that it is an encroachment we will move them to the side.

Robert Pariseau said how many people live in that house right now, and are you contemplating an EFLA down the road? Mr. Kalogianis said we have a sister in-law who is having trouble and we might have her move in with us. Mr. Pariseau said so the potential is there.

Rebecca Kilborn said the drawing that you submitted here you are showing a deck and a set of stairs is that what we are building. The representative said the existing deck is being extended to the corner of the house and the steps that are showing at the back of the deck we want to move them to the end of the new deck. Ms. Kilborn said so this drawing is not exactly what you want to do. The representative said we decided that outside before we came into the meeting. Ms. Kilborn said so the corner of the deck would be 14 feet and what is the setback on the other? And if we are considering this an EFLA I would need the square footage for this entire area because if it is over 750 then you need additional approval, so we have two concerns here that I don't feel comfortable with.

Robert Cignetti said so you want the 14, but you don't want the 11 or the 13.6? The representative said that's right. Mr. Cignetti said so it's a foot off then. The representative said yes. Mr. Cignetti said the space in the basement, the bathroom is included. The representative said in the note at the bottom of the drawing the entire basement area is 1369.5 square feet. Mr. Cignetti said what is the square footage of the area that you are requesting to be an EFLA? The representative said 1369.5 square feet. Mr. Cignetti said I don't have a problem with you having a kitchen in the basement.

John Boughner said I like to get all the numbers in my head. The representative asked him to look at the corner of the plans where all of the dimensions are listed. Mr. Boughner said with EFLA's our footprint for that is 750 square feet so you are almost looking for double. So currently this 1369 is a finished

basement, I see a fitness room and is it a finished area. The representative said yes.

There were no questions or comments from the audience.

John Boughner said I think that we would want an updated drawing on how you are going to handle the stairs, and this is a very large EFLA is there any input from the building inspector?

Richard Maloney said we issued a permit a year ago to do the basement over.

Kathy Kalogianis said the basement was already finished from the prior owner, she had one whole section that is all tile for the kitchen area and I need to fill in that section, the rest is rug where you would have a family room. She discussed the basement area in further detail. Mr. Cignetti said it not your kitchen that we are talking about, you are asking for an EFLA twice as large as allowed, so whether that area fits your cabinets or it doesn't it is the square footage that you are asking for. Where you put your kitchen is up to you. Mr. Boughner said if you came before us with a plan that showed 750 square feet and the kitchen and bathrooms were in it we would be good with that. What you have come here with is almost 1400 square feet, again by your own admission is that you really don't even want an EFLA you really just want a second kitchen area. What I am hearing from our other board members is that maybe we need a little bit more information and definition on what the area is going to be. Like maybe some type of firewall, we have gone as big as 1000.

Kenneth Scholes said is the whole issue the bathroom, is that what creates it? Mr. Maloney said it's got all the components it's got a bedroom, a living room a full bath with a laundry and a kitchen. We issued a permit to finish the basement a year ago and then they come back a year later with a kitchen, a full bath with a laundry down there, and what do we think? The representative said they are the new buyers of the house. Mr. Boughner said the intent of the EFLA was to stop illegal apartments, and when stuff like this gets presented to us it looks like an apartment. We just didn't want areas being built without inspections through the building department so that they are safer and built to code.

Robert Cignetti said you are asking for an EFLA but the space is just too big, if you can come up with a smaller space maybe partition it off.

Rebecca Kilborn said if this is going to be an EFLA then I want to see a floor plan, a bedroom, living space, bathroom and kitchen. If it's not going to be an EFLA then they need to decide what that has to be.

The representative said it is the fact that it is a second kitchen that brings us to this point, it isn't just the bathroom, and they denied the permit because of the kitchen. So at that point it is already in EFLA land because of the second kitchen.

Robert Pariseau said we usually look at the internal flow and I think a little further design on this would be beneficial.

Jeffrey Sauer said I agree with everyone else.

Kenneth Scholes said you need to get the EFLA size really close to that 750 because they are not going to approve something this big.

Kenneth Jarvinen said it seems like it doesn't make sense you already have it built to go ahead and put up partitions and just fake not using that area but I guess that is the bylaw.

Anthony Podesta said I think we are okay on the deck but need more information on the EFLA.

The representative requested a continuance to November 13, 2017.

Robert Cignetti motioned to allow the applicant to continue to November 13, 2017. Rebecca Kilborn seconded. All in favor.

MINUTES
Danvers Board of Appeals

#17-4734
October 16, 2017

Present: Robert Cignetti, Robert Pariseau, Rebecca
Kilborn, John Boughner, Jeffrey Sauer, Kenneth
Scholes, Kenneth Jarvinen, Anthony Podesta

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

R. TONY PISA TRUST (#17-4734) Requesting a special permit for an
Extended Family Living Area (EFLA) after a violation in
accordance with Section 9.3.10.2 of the Danvers Zoning Bylaws at
170 OLD BURLEY STREET

Gary Pisa said there was a violation on the property unbeknownst to us we had an assessors report stating it was a two family residence. So we thought we were under the legal limits to rent it out. We asked the residents to move out so it is currently vacant. My father passed away in 2014 and we left the property empty for a while then we decided to rent it. My father's brother Anthony and his wife Diane live on the other side, and it will be my brother Rocky who will be moving in with his son in the EFLA. John Boughner said what is the document saying it is a two family because I have a signed deed restriction by Tony Pisa from August 2010 stating that he understands it is an EFLA. When your dad purchased this property the Code Administration Department gives him 30 days to sign a document stating this is an EFLA and this is how it is to be used.

Richard Maloney said this is one of the grandfathered EFLA's, the Noyes put an addition on they put in a wet bar and it became an illegal apartment, they chose to grandfather that when we passed the in-law bylaw and we did inspections and had them come up to snuff on a few things and issued a Certificate of Occupancy, a single family home with an EFLA with the deed restriction. The Pisa's purchased it and were required to do the same when they purchased it. We found out about this because the tenants who were renting illegally had a furnace replaced without a permit and the tenants complained about not having any hot water.

Robert Cignetti said is the fathers name on the EFLA deed? Mr. Maloney said yes. Mr. Cignetti said you are asking for an EFLA and you already have one. Mr. Maloney said once you violate the bylaw you lose it, the only way to keep it is if this board grants a special permit. Mr. Cignetti said you want us to re-instate the EFLA. How big is the EFLA property? Mr. Pisa said it is either 750 or less.

John Boughner said your father purchased this property in 2010 and within 30 days he came in and signed the deed restriction and acknowledged this is an EFLA and I am going to keep it as an EFLA. Then at some point they decided to rent it.

Rebecca Kilborn said so your dad lived there with who? Mr. Pisa said his brother Tony and his wife. Ms. Kilborn said so you lived on one side and he lived on the other and he passed away in 2014 and after a few months you had rented it. And you own the property now. Mr. Pisa said yes.

Robert Pariseau said who lives there right now? Mr. Pisa said my father's brother and his wife live on one side and the other side is empty until this is straightened out. We would like to have my brother Rocky move into the other side.

John Boughner said I did visit the property and it seems to be incorrectly addressed, it says 170A and 170B. Mr. Pisa said that is how it was when purchased. Mr. Boughner said someone in the trust is going to move in and that would be a trustee person and the person residing there since your dad was there is still residing there? Mr. Pisa said yes.

Robert Pariseau said this is zoned all one family district, the two addresses give you the impression it is a two family. Is there an internal flow? Mr. Pisa said yes.

Rebecca Kilborn said is it clear who owns the property?

John Boughner said so now that this property has gone into trust do they need to resign the EFLA? Mr. Maloney said it is a single family home, owner occupied, so if the property changed hands and we didn't get a new document within 30 days.

Kenneth Scholes said it is not a new owner the trustee is the same name as the grantor and it is a deed for a dollar, same owner. Mr. Boughner said so the same owner and they didn't have

to come in within the 30 days but because they violated the statute they are here. And their argument is they did not understand that it had to be a family member.

Mr. Maloney said we have to figure out who is in the trust and who is living at the house. Ms. Kilborn said who is maintaining the property? Mr. Pisa said once we found out we were in violation the tenants would do the landscaping around the house and they had to vacate.

Robert Cignetti said you were notified about this because the furnace replacement without permits. Mr. Pima said I had over six plumbers going in and out of there, we paid a fine for that. Mr. Boughner said I am told that your tenant did not have hot water and he alerted the building inspector.

John Boughner said as many EFLA's that we have done it is so that this type of situation does not happen, and it has happened. This EFLA was grandfathered in 2007 your father signed on it in 2010 and it was never meant to be a two family house.

There were no comments from the audience. The family members were present and stated their approval of this application.

Anthony Podesta said they made steps to rectify the situation, now you want to use it as the EFLA and it will be a single family house with an EFLA.

Kenneth Jarvinen said it sounds like it was an honest mistake and it sounds like you want to work it out.

John Boughner said has the correct permits been pulled since the furnace. Mr. Maloney said I will not let them put a gas tag on until we get through this process that is where we stand. Mr. Boughner said when did the tenant vacate the property? Mr. Pisa said over the weekend.

Kenneth Scholes said it has to be owner occupied I think that we need to keep a handle on it where it is under a trust, who are the trustees? Does the building inspector need a copy of the trust, does the trust stay with the paperwork.

Robert Pariseau said I would like to see the proper documentation and up to date, let's document who the owner is

and the occupancy is going to be assigned to this particular person.

Rebecca Kilborn said I am concerned about the trust we have trustees but we also have beneficiaries also so who legally can live there. We don't have a floor plan, the house has not been maintained I have concerns, I need further information.

Robert Cignetti said my issue, I believe there were honest mistakes made and I don't have a problem with issuing the EFLA but I echo Ken I would like to see a copy of who the owners are so that we know that an owner is occupying the property. Just something in writing.

John Boughner said I would like to get Town Counsel's input on this, something in writing from him, I would like the address thing situated, and I would like an additional use restriction. So I think I am going to ask that you continue to October 30, 2017. Mr. Maloney said we have a floor plan on file.

Mr. Pisa said if I am not mistaken, I hate to do that but if we eliminated one of the kitchens it doesn't matter who is living there correct? Mr. Maloney said correct. Mr. Sauer said we are not averse to issuing the EFLA we just need the paperwork of who owns it, who lives there.

Robert Pariseau motioned to allow the applicant to continue to October 30, 2017. Rebecca Kilborn seconded. All in favor.

*Robert Cignetti motioned to adjourn. Robert Pariseau seconded. All in favor.