



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road
Tewksbury, MA 01876

Robert Dugan, Chairman
Len Dunn, Vice Chair
Gerald Kutcher
Associate Members:
Jaime Doherty
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES November 19, 2015

The meeting was called to order by Rob Dugan, Chairman, at 6:30 p.m. at the Pike House (temporary town hall). Present at the meeting were Len Dunn, Gerald Kutcher, Jaime Doherty, and Diane Bartalamia.

Approval of Meeting Minutes – October 29, 2015

MOTION: Mr. Dunn made the motion to approve the October 29, 2015 meeting minutes; seconded by Mr. Kutcher and the motion carried 4-0.

NEW HEARINGS

James Heider for a variance from Section 4000, Paragraph 4130 of the Tewksbury Zoning Bylaw to construct a garage on a residential lot in a residential neighborhood that is zoned Heavy Industrial as shown on plans filed with this Board. Said property is located at **12 Forest Avenue**, Assessor's Map 4, Lot 4, zoned Heavy Industrial.

Present was Kenneth Lanier of Cornerstone Land Consultants, Pepperell, MA and James Heider of 12 Forest Street. Mr. Lanier explained that Mr. Heider owns the property located at 12 Forest Avenue. The property is zoned Heavy Industrial as is the surrounding area along Woburn Street. Mr. Lanier noted that they are requesting front, rear, and side setbacks. Mr. Lanier noted that he has provided a plot plan showing the lot is approximately 100 feet deep by 100 feet in length with 100 feet of frontage on Forest Avenue; which meets the heavy industrial zone requirement. Both the front and back yard setbacks are 50 feet leaving no buildable area to construct the garage. Mr. Lanier noted that this matter came about as the result of a letter that was issued from the Building Department to Mr. Heider and explained that Mr. Heider has a business and there is concern that he is running a contractor's yard at this property. In addition, a lean to had been constructed over an existing patio that does not meet the requirements of the setbacks. Mr. Lanier explained that Mr. Heider intends to remove the lean to and restore that area back to original conditions and construct the garage so that he can have a place for his existing vehicles for his everyday use. Mr. Heider has since cease and desisted doing any construction activity through his business on this site.

Mr. Dugan requested an explanation of the garage being proposed. Mr. Dunn requested photographs of the garage. Mr. Lanier provided a rendering of the proposed structure.

Ms. Bartalamia asked if the garage is two stories with rooms upstairs and Mr. Lanier confirmed this and explained that the upstairs is open and will be constructed as a shell.

Mr. Dugan asked if there will be heating and plumbing in the garage and Mr. Heider noted that there will be heat only. Mr. Dugan asked if the property is connected to town sewer and Mr. Heider confirmed this. Mr. Dugan asked how tall the garage doors are and Mr. Heider noted approximately 12 feet.

Mr. Dunn requested a copy of the letter from the Building Department and Mr. Lanier explained that he does not have a copy of the letter dated January 16, 2014; however, Mr. Heider did receive a letter from Attorney Zaroulis dated November 13, 2015 and provided the members with a copy. Ms. Bartalamia noted that she does not have a copy of the Building Department's letter either. Mr. Dugan read Attorney Zaroulis's correspondence aloud. Mr. Heider explained that there were three issues: the lean to, a storage trailer, and there was a belief he was running a contractor's yard. Mr. Heider noted that he does not have any equipment stored at this site and explained that he wanted to review the bylaws to see if there was anything he could do about the violations and he just never got back to the Building Department to see what could be done. Mr. Dugan asked if the storage trailer has wheels and Mr. Heider confirmed this and explained it will be removed.

Ms. Bartalamia asked how the proposal for a garage relates to the issues that were occurring in January, 2014. Mr. Lanier explained that Mr. Heider is required to take some action to address these issues. The lean to was put up for additional space to store vehicles. They would like to take the lean to down and use the space to construct the garage, but there is no viable space on the property. Mr. Dugan asked if the vehicle stored under the lean to was lettered for the business and Mr. Heider explained that the "Tahoe is not lettered". Mr. Dugan asked if the violation was for the trailer or if there is more to it. Mr. Heider noted that he feels it was the trailer as it is a "big trailer".

Mr. Dunn asked if Mr. Heider owns the property behind this site and Mr. Heider stated that he does not; however, his construction company was on that property previously.

Mr. Dugan asked if there is a variance on the site currently and Mr. Lanier explained that there is not and noted that the existing structure was constructed in the 1900's.

Mr. Dunn asked if any commercial vehicles are parked at this site overnight and Mr. Heider explained that he parks his pick up truck there and it is lettered with the company name.

Mr. Dugan asked how tall the proposed garage is and Mr. Lanier explained that it will be the same exact height as the house.

Mr. Dugan opened the hearing to the public.

Edward Johnson, Building Commissioner, came forward and noted that he has a copy of his violate letter from January, 2014 and provided the Board members and applicant with a copy of same. Mr. Dunn asked if the commercial vehicle referenced is the storage vehicle. Mr. Johnson explained that as he recalls a complaint was received from one of the neighbors. As a result, he visited the site and wrote up what he saw at that time. Mr. Johnson noted that the homeowner has had time to either appeal the violation or correct it and neither has been done and explained that the town is seeking Mr. Heider's compliance.

Mr. Kutcher asked the applicant what the reason for the delay was and Mr. Heider explained the delay was planning the garage and what to do about the violations and he has been busy. Mr. Kutcher asked if Mr. Heider spoke with Mr. Johnson about the improvements and Mr. Heider explained that he did not. Ms. Bartalamia asked if an appeal was filed and Mr. Heider explained that it was not.

Discussion took place on the definition of a contractor's yard. Mr. Johnson noted that at the time the violation was issued there was construction equipment at this location. Mr. Johnson explained that the applicant never came to him and requested a denial letter as most all applicants do. Mr. Johnson was never requested to review the matter and he is unsure if all of the items being requested by Mr. Heider satisfy the requirements to clear the violations. Mr. Dugan explained that the normal process is to apply for a building permit and then get denied. Mr. Lanier explained that he thought he was here under the violation letter. Mr. Johnson explained that because the home is in a heavy industrial zone, if it were to be demolished and reconstructed, it would require a special permit from the Planning Board and he is not sure if the garage will also require the same.

Mr. Lanier asked how continuing the hearing benefits anyone. Mr. Dugan explained that the applicant is requesting a variance to clear up violations that the Board is not in charge of and Mr. Johnson is requesting the violations be cleared up prior to the garage being constructed. Mr. Lanier requested the lean to be allowed to remain until construction is ongoing.

Mr. Johnson noted that the matter has been advertised for a variance and not a special permit to expand a nonconforming use; which is what is being proposed as the garage is attached to the existing structure.

Gene Heider of 396 Woburn Street came forward and noted that his property is a direct abutter to this property; the entire 150 feet plus. Mr. Heider explained that he is present to state that he is in favor of this project as it is "in keeping" with the neighborhood. Mr. Heider noted that they are limited to postage stamp size lots and most of the people who live in the area either work or own a business in this area as well.

Ms. Bartalamia noted that the property should be used as either residential or heavy industrial, but not both.

Mr. Dugan noted that he understands that the applicant is requesting to construct the garage to clear the violations; however, they have not applied for a building permit so a denial was never issued. Mr. Lanier explained that they are required to obtain a building permit if the variance is

issued. Mr. Dugan explained that it appears that Attorney Zaroulis would like to see the violations cleared up prior to entertaining the construction of a garage. Mr. Heider explained that they did not apply for the building permit as they knew it would not be granted due to the violations. Mr. Johnson explained that it is the policy of the town to not issue a building permit if there are outstanding violations.

Mr. Dugan suggested the applicant continue the matter to clear up the violations and apply for a building permit; which will be denied, and then come before the Board.

Mr. Johnson asked if the applicant stated the garage doors are 12 feet and Mr. Dugan noted that he is also concerned with this. Mr. Lanier explained that there is nothing in the zoning bylaw or State code that limits the door size. Mr. Dugan explained that the applicant has a violation for conducting a contractor's yard and noted that he has an F350 pick up truck that fits in his 7 foot garage door and asked why a 12 foot door is needed. Mr. Heider explained that his son's pickup truck is large.

The Board took a five minute recess to allow Mr. Lanier to discuss this matter with his client.

Mr. Lanier explained that after speaking with his client they have decided to request the continuance to the next meeting on December 17, 2015.

**MOTION: Mr. Dunn made the motion to continue James Heider for a variance from Section 4000, Paragraph 4130 of the Tewksbury Zoning Bylaw to construct a garage on a residential lot in a residential neighborhood that is zoned Heavy Industrial as shown on plans filed with this Board. Said property is located at 12 Forest Avenue, Assessor's Map 4, Lot 4, zoned Heavy Industrial to December 19, 2015 at 6:30 p.m.; seconded by Mr. Kutcher and the motion carried 3-0.
DUGAN, DUNN, KUTCHER**

New Business

There was no new business.

Old Business

There was no old business.

Adjourn.

MOTION: Mr. Kutcher made the motion to adjourn; seconded by Ms. Doherty and the motion carried 5-0.

Approved: 12/17/15

*List of documents for 11/19/15 Agenda
Documents can be located at the Community Development Office*

Approval of Minutes – October 29, 2015

NEW HEARING

- 6:30 P.M.** **James Heider** for a variance from Section 4000, Para 4130 of the Tewksbury Zoning Bylaw to construct a garage on a residential lot in a residential neighborhood that is zoned Heavy Industrial as shown on plans filed with this Board. Said property is located at **12 Forest Avenue**, Assessor's Map 4, Lot 4, zoned Heavy Industrial.
- *Application packet dated 10/27/15.*