



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

1099 Main Street
Tewksbury, MA 01876

Nancy Rego, Chair
Rob Dugan, Vice-Chair
Daniel Teixeira, Clerk
Associate Members:
Michael Farnum
Joseph Cary

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES April 27, 2023

Call The Meeting To Order

Chairman Nancy Rego called the meeting to order at 6:30 PM. Present at the start of the meeting were Robert Dugan, Daniel Teixeira & Joseph Cary. Michael Farnum was absent from the meeting.

Approval of Meeting Minutes

Hearings

PMW Land Trust, for a variance under Sections 5.3.1 E3 & 5.3.2 of the Tewksbury Zoning Bylaw, for front & side yard setbacks and a Special Permit under Section 8.1.1.C to alter a previously non-conforming structure in order to construct a 21' x 36' second floor addition, update the exterior of the home & the exterior and roof of the garage as shown on plans filed with this Board. Said property is located at 16 Water Street Assessor's Map 94, Lot 156 zoned Residential. (continued from 4/6/23)

Voting members: Nancy Rego, Joseph Cary & Daniel Teixeira.

Ms. Rego read the hearing notice aloud. Jackie Welch appeared for the variance & special permit for 16 Water Street. Ms. Welch stated the existing house was already non-conforming & did not meet the front setbacks. The home already has a second floor, she is just looking to extend it, so it is a normal height over the existing footprint & will not go any further into the front setback. Ms. Welch continued by stating she would like to put a new door, siding & windows on the existing garage that sits 2' from the property line.

Ms. Rego clarified that nothing was being done to the garage to extend or enlarge it, Ms. Welch confirmed it was only siding, windows & door. Ms. Rego then asked if she was just looking to make the house taller, Ms. Welch stated that was correct and that it would stay in the existing footprint.

Mr. Teixeira confirmed that the footprint was not changing at all, she was only before them because the house was already non-conforming. Ms. Welch confirmed that was correct and added she was extending the second floor.

There were no questions from the audience.

MOTION – Mr. Teixeira made a motion to close both parts of the hearing. The motion was seconded by Mr. Cary and Unanimously voted 3-0.

MOTION – Mr. Teixeira made a motion to approve PMW Land Trust for a variance under Sections 5.3.1 E3 & 5.3.2 of the Tewksbury Zoning Bylaw, for front & side yard setbacks to alter a previously non-conforming structure in order to construct a 21' x 36' second floor addition, update the exterior of the home & the exterior and roof of the garage as shown on plans filed with this Board. Said property is located at 16 Water Street Assessor's Map 94, Lot 156 zoned Residential. The motion was seconded by Mr. Cary & unanimously vote 3-0.

MOTION – Mr. Teixeira made a motion to approve PMW Land Trust for a Special Permit under Section 8.1.1.C to alter a previously non-conforming structure in order to construct a 21' x 36' second floor addition, update the exterior of the home & the exterior and roof of the garage as shown on plans filed with this Board. Said property is located at 16 Water Street Assessor's Map 94, Lot 156 zoned Residential. The motion was seconded by Mr. Cary & unanimously voted 3-0.

Timothy & Matthew Penney, for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for front yard setbacks to construct a 3'x 8.33' front porch, & for a variance under Section 5.3.1 E 2&3 for accessory structures within the front setback, accessory structures located nearer than 10' of the principal building & less than 10' from any side or rear lot line as shown on plans filed with this Board. Said property is located at 60 Wamesit Road Assessor's Map 98, Lot 14 zoned Residential.

Voting members: Joseph Cary, Nancy Rego & Robert Dugan.

Ms. Rego read the hearing notice aloud. Timothy & Matthew Penney appeared for the variance for 60 Wamesit Road. Mr. T. Penney stated the current garage and back porch are falling apart so they would like to update that and add a second story with 2 bedrooms & 1 bathroom. The pre-existing structures are the 2 sheds & pool, the building commissioner suggested they get the variance for those as well.

Ms. Rego asked if they had plans for what they planned to add to the house, Mr. T. Penny provided a copy to the board. The board then discussed the plan amongst themselves.

Mr. Dugan asked how long ago they purchased the house, Mr. T. Penney stated about 2 years ago. Mr. Dugan then confirmed they did not build any of the structures, Mr. T. Penney stated they did not. Mr. Dugan asked if they were taking out any of the sheds, Mr. T. Penney stated they would rather not, Mr. M. Penney stated they may have to move the front one and put it back for construction purposes. Mr. Dugan asked the size of the shed in the front, Mr. T. Penney stated about 10x10 or 10x5 on concrete cinder block. Mr. Dugan asked if the one in the back was the same, the applicants confirmed it was. Mr. Dugan asked if the pool was in or above ground, Mr. T. Penney stated it was an inground pool. Mr. Dugan stated the only issue with what they are building is the front setback. Mr. T. Penney stated the front porch would be 6" to close to keep it 3' and they are just trying to make the rest legal.

Ms. Rego opened the hearing to the audience.

Drucilla Palladino, 43 Wamesit Rd – Ms. Palladino asked what the variance was for besides the front porch. Mr. Dugan explained that with this construction it's only the front porch, with the existing it's a variance for the shed and pool because they are within the front setback. Ms. Palladino asked about the extension of the garage to put another story up, Mr. Dugan stated that was fine, Ms. Rego added that they met the setbacks. Ms. Palladino questioned if they were pushing it back, Mr. Dugan stated it was all the same according to the plans, they are adding 5' towards the pool & going up but they can do that by right. Ms. Palladino stated she had a problem with the front porch then because it will be very close to the house. Ms. Palladino again asked if there was a problem with the garage according to the variance. Mr. Dugan stated that was correct and they porch will be 24.5' away from the street, Ms. Palladino stated it was supposed to be 25' Mr. Dugan stated that was correct, Ms. Palladino then stated so it doesn't follow code, Mr. Dugan stated that was correct & Ms. Palladino stated then she had a problem with that. Ms. Palladino continued that she wasn't able to get all the reports from the police department, but she does have one she was given about ongoing parking issues, there's several cars there now, it's a 3 bedroom & they want to make it a 5 bedroom & she does have a problem with that living across the street because that amount of cars and adding 2 more bedroom means there will be more people there, there's been several complaints, if they extend the meeting she will get them from that police department of ongoing parties from Thursday – Sunday, she can't sleep. She fears going outside with her dog because there is drinking going on there, cars speed down the street, there's been a lot of problems that she feels need to be taken into consideration since there letters she read say it was denied.

Laura DiStefano, 35 Brookfield Rd – Ms. Distefano explained she lives behind the applicant's lot. Ms. DiStefano then stated from her deck their deck & patio is right in view, she has a problem with how close that would be to her property she can't have them any closer. Mr. M. Penney stated the deck was actually getting demoed. Ms. Rego stated that those are existing, not even part of this, they aren't adding on to it. Ms. Rego continued that it's the front really, the garage is going up. Ms. DiStefano then stated, so this isn't really going to affect her, it's just the shed. Ms. Rego stated that was correct. Ms. DiStefano then stated she would prefer if these variances did not go through.

MOTION – Mr. Dugan made a motion to close both parts of the hearing. The motion was seconded by Mr. Cary and unanimously voted 3-0.

Mr. Dugan stated issues with parking are not the board's concern, that more of a police matter. Ms. Rego agreed and stated there was nothing they could do with the partying concerns either, their main concern

is just the variance. Mr. Dugan stated the building commissioner is making them change the front porch, Ms. Rego stated aesthetically it looks nice. The board members had some discussion amongst themselves.

MOTION – Mr. Dugan made a motion to approve Timothy & Matthew Penney, for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for front yard setbacks to construct a 3'x 8.33' front porch, & for a variance under Section 5.3.1 E 2&3 for accessory structures within the front setback, accessory structures located nearer than 10' of the principal building & less than 10' from any side or rear lot line as shown on plans filed with this Board. Said property is located at 60 Wamesit Road Assessor's Map 98, Lot 14 zoned Residential. The motion was seconded by Mr. Cary and unanimously voted 3-0.

Mr. Dugan added that it seems like the neighbors are unhappy with the way they are acting over there, don't make the board regret this, do the right thing please.

Denise Bergeson, for a variance under Section 5.3.1 E3 of the Tewksbury Zoning Bylaw, for side setbacks to install a 15' x 30' above ground pool as shown on plans filed with this Board. Said property is located at 96 Maplewood Avenue Assessor's Map 94, Lot 85 zoned Residential.

Voting members: Daniel Teixeira, Joseph Cary & Robert Dugan

Ms. Rego read the hearing notice aloud. Denise & Jeremy Bergeson appeared for the variance for 96 Maplewood Ave. Mr. Bergeson stated they were proposing to put in a 15'x30' above ground pool 2' from the fence, if they put the pool any closer to the house they would still need a variance because of safety issues.

Mr. Dugan asked how close the pool would be to the house, Mr. Bergeson stated 20.' Ms. Bergeson then explained they added a family suite in 2016 and there is a deck on the side of that & the pool will be 20' from that deck.

Mr. Teixeira asked if there was a fence on the property line, Ms. Bergeson stated yes, it's their neighbor's fence & they've spoken with them, and they are ok with the pool.

Mr. Dugan asked if they had already purchased the pool, the applicants stated the box was already in the driveway.

There were no comments from the audience.

MOTION – Mr. Teixeira made a motion to close both parts of the hearing. The motion was seconded by Mr. Cary & unanimously voted 3-0.

MOTION – Mr. Teixeira made a motion to approve Denise Bergeson, for a variance under Section 5.3.1 E3 of the Tewksbury Zoning Bylaw, for side setbacks to install a 15' x 30' above ground pool as shown on plans filed with this Board. Said property is located at 96 Maplewood Avenue Assessor's Map 94, Lot 85 zoned Residential. The motion was seconded by Mr. Dugan and unanimously voted 3-0.

Garrett & Louie Berube for a special permit under Section 8.1.1 B of the Tewksbury Zoning Bylaw, to relocate an existing dwelling from the abutting lot as shown on plans filed with this Board. Said property is located at 1187 Main Street Assessor's Map 61 Lot 107 zoned Town Center.

Voting members: Nancy Rego, Daniel Teixeira & Robert Dugan.

Ms. Rego read the hearing notice aloud. Don Borenstein & Jim Hanley appeared for the special permit for 1187 Main St. Mr. Borenstein explained they were attempting to clean up a bunch of lot lines. There's a collection of buildings on a collection of parcels, they're basically consolidating those into two complying lots under the new town center bylaw. That lot is the home of the McClellan Oil delivery business, that business will be consolidated on one lot and the second lot will be a complying lot under the town center zoning. Mr. Hanley then walked the board through the existing site plan in detail, showing 3 lots and the buildings on the lots. Mr. Hanley then showed how they plan to move the original part of a single-family home about 70' over into the new lot to be used as office space for that location. Mr. Borenstein explained they need the special permit because the oil business is a long pre-existing legal non-conforming use that they are expanding by moving the house. Mr. Dugan stated it's basically a special permit for the oil company, Mr. Borenstein agreed. Mr. Dugan asked if the only remaining use was the oil company, Mr. Borenstein stated it was.

Mr. Teixeira asked for clarification on the oil company structure and if the house they are relocating has anything to do with the oil company currently, Mr. Hanley stated currently no it did not. Mr. Teixeira clarified that they were looking for a Special Permit to move the dwelling and nothing else, Mr. Borenstein stated he believed that is correct. Mr. Teixeira asked if when the house is moved, if it will meet all the town's bylaws, Mr. Borenstein stated it would meet all the setbacks and dimensional requirements.

Mr. Carey confirmed the plans they were viewing were how the lots currently exist. Mr. Borenstein confirmed that was the case and stated that it was a crazy configuration, the lots wrap around each other, and buildings are scattered about the site. Mr. Borenstein continued by stating they are trying to modernize the lots & bring them into conformity with the town center bylaw.

Mr. Teixeira clarified again that if they approve the special permit, they are only approving of moving that structure, and asked if it would still meet the needs of the rest of the reconfiguration. Mr. Hanley stated yes, they still have to go through the ANR process to solidify the property lines. Mr. Borenstein stated the lot lines would change through an ANR plan endorsed by the planning board, but they didn't want to do that without having the zoning all teed up already. Mr. Borenstein agreed that the only thing triggering the special permit is the structure being moved and repurposed in the oil business. Mr. Teixeira stated it was because the structure was non-conforming and they were moving a non-conforming structure, Mr. Borenstein correcting him that it was a non-conforming use, not structure.

Mr. Dugan referenced the denial letter clarifying that they need the special permit for a non-conforming use, they are just going to take the building and use it for a non-conforming use because they are attaching it to the oil company.

There were no questions from the audience.

MOTION – Mr. Teixeira made a motion to close both parts of the hearing. The motion was seconded by Mr. Dugan and unanimously voted 3-0.

MOTION – Mr. Teixeira made a motion to approve Garrett & Louie Berube for a special permit under Section 8.1.1 B of the Tewksbury Zoning Bylaw, to relocate an existing dwelling from the abutting lot as shown on plans filed with this Board. Said property is located at 1187 Main Street Assessor's Map 61 Lot 107 zoned Town Center. The motion was seconded by Mr. Dugan and unanimously voted 3-0.

Margaret S. O'Brien c/o Johnson & Borenstein, LLC under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated December 9, 2022, to construct a 40' x 60' single-family dwelling with a 30' x 60' garage. Said property is located at Foster Lane, Assessor's Map 24, Lot 26, zoned Residential. (continued from 4/6/23)
Voting members: Robert Dugan, Nancy Rego & Joseph Cary

Ms. Rego read the hearing notice aloud. Don Borenstein & Kevin O'Brien appeared for the party aggrieved for Foster Ln. Mr. Borenstein stated they were there to appeal the building inspector's denial of a building permit. Mr. Borenstein then gave a history of how they ended up in front of the board stating the frontage is slightly less than what is required today but it is a long-preexisting lot that is subject to the zoning freeze afforded to isolated residential lots. Mr. Borenstein then referenced the plan showing the existing lot and stating they have obtained an OOC from the Conservation Commission & a land disturbance permit was granted by the planning board but was appealed by an abutter. Mr. Borenstein continued that after some back and forth with the building inspector he clarified the denial was because of lack of access rights in the private right of way Foster Ln. They applied with the denial letter regarding lack of frontage but do believe that 88-page package clearly establishes the lot itself would be protected by the zoning freeze under section 6 of the state act. Mr. Borenstein stated that documents from a 1994 appeals court case have been submitted by David Plunkett and the conclusion in that case is what the building inspector was citing about access rights over Foster Ln. Mr. Borenstein then gave a presentation going over the history of the property and surrounding area, speaking on a previous appeals court case and the findings. Mr. Borenstein continued by sharing his research and his opinion on what he has found.

Mr. Cary asked when Mr. O'Brien obtained the lot, Mr. O'Brien stated 1985.

Mr. Teixeira asked if Foster Lane was paved all the way up to the lot. Mr. Borenstein stated that the road is not constructed presently.

Mr. Carey asked if Foster Lane was owned by the town. Mr. Borenstein stated that was an interesting question & used the plan to show a newer subdivision and a strip of town owned land behind that

subdivision that runs along Foster Ln. Mr. Teixeira asked who owned the other half of Foster Ln, Mr. Borenstein stated he believes Mr. Plunkett's client would claim ownership.

Mr. Dugan asked who owned specific parcels on a displayed plan. Mr. Borenstein outlined who owned each parcel.

Ms. Rego asked if there was anything else the applicant wanted to add. Mr. Borenstein highlighted specific documents in the package he would like the board to view.

Mr. Dugan stated that the board requested advice from town counsel & then read out the letter. Mr. Dugan stated by coming as a party aggrieved, they are being asked to overturn minimum frontage, not right to access or ownership of Foster Ln. Mr. Borenstein stated this had not been communicated to him before this meeting, he does have communications from the building inspector which he read aloud to the board. Mr. Dugan stated they would ask for further advice from town counsel. Mr. Borenstein stated he would be interested to hear directly from town counsel as well.

Ms. Rego opened the hearing to the audience.

David Plunkett, 257 Fiske St – Mr. Plunkett stated he was representing JDB Realty Trust, direct abutter to the proposed lot. Mr. Plunkett stated the appeals court decision was after years of litigation, it wasn't made on a whim. Mr. Plunkett continued by giving his reasons and opinion on why Mr. O'Brien does not have access to his lot.

Mr. Dugan stated they should ask town counsel what their role in this should be, if any & requested something in writing for the next meeting.

MOTION – Mr. Dugan made a motion to continue Margaret S. O'Brien c/o Johnson & Borenstein, LLC as a party aggrieved for the property located at Foster Lane to May 25, 2023 at 6:30 PM. The motion was seconded by Mr. Cary and unanimously voted 3-0.

Correspondence

Other Business Not Known at the Time of Posting this Agenda

Adjournment

MOTION – Mr. Teixeira made a motion to adjourn the meeting at 8:11 PM. The motion was seconded by Mr. Cary and unanimously voted 4-0.

Approved: June 29, 2023

List of documents for the 04.27.2023 meeting

Documents can be found in the Community Development Office

6:30 P.M. Call meeting to order

6:30 P.M. Approval of Minutes: None

6:30 **PMW Land Trust**, for a variance under Sections 5.3.1 E3 & 5.3.2 of the Tewksbury Zoning Bylaw, for front & side yard setbacks and a Special Permit under Section 8.1.1.C to alter a previously non-conforming structure in order to construct a 21' x 36' second floor addition, update the exterior of the home & the exterior and roof of the garage as shown on plans filed with this Board. Said property is located at **16 Water Street** Assessor's Map 94, Lot 156 zoned Residential. **(continued from 4/6/23)**

- **Application Packet dated February 6, 2023**

6:30 **Timothy & Matthew Penney**, for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for front yard setbacks to construct a 3'x 8.33' front porch, & for a variance under Section 5.3.1 E 2&3 for accessory structures within the front setback, accessory structures located nearer than 10' of the principal building & less than 10' from any side or rear lot line as shown on plans filed with this Board. Said property is located at **60 Wamesit Road** Assessor's Map 98, Lot 14 zoned Residential.

- ***Application Packet dated April 3, 2023***

6:30 **Denise Bergeson**, for a variance under Section 5.3.1 E3 of the Tewksbury Zoning Bylaw, for side setbacks to install a 15' x 30' above ground pool as shown on plans filed with this Board. Said property is located at **96 Maplewood Avenue** Assessor's Map 94, Lot 85 zoned Residential.

- ***Application Packet dated April 4, 2023***

6:30 **Garrett & Louie Berube** for a special permit under Section 8.1.1 B of the Tewksbury Zoning Bylaw, to relocate an existing dwelling from the abutting lot as shown on plans filed with this Board. Said Property is located at **1187 Main Street** Assessor's Map 61 Lot 107 zoned Town Center.

- ***Application Packet dated April 6, 2023***

6:30 **Margaret S. O'Brien c/o Johnson & Borenstein, LLC** under MA General Laws, Chapter 40A, Section 8 as a party aggrieved by a decision made by the Building Inspector in a letter dated December 9, 2022, to construct a 40' x 60' single-family dwelling with a 30' x 60' garage. Said property is located at **Foster Lane**, Assessor's Map 24, Lot 26, zoned Residential. (*continued from 4/6/23*)

- ***Letter from David Plunkett dated March 23, 2023***
- ***Memo from Town Planner dated April 6, 2023***
- ***Memo from Town Planner dated April 27, 2023***
- ***Chain of Titles submitted by Donald Borenstein April 27, 2023***

Old Business
New Business
Correspondence
Adjournment