



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

1099 Main Street
Tewksbury, MA 01876

DEPARTMENT OF COMMUNITY DEVELOPMENT

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

MEETING MINUTES May 25, 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, Michael Farnum & Joseph Cary.

Approval of Meeting Minutes

New Hearings

Colleen Hennigan, for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for lot coverage to construct a 986 square foot family suite on existing single-family home as shown on plans filed with this Board. Said property is located at 3 Amos Street Assessor's Map 70, Lot 48 zoned Residential.

Voting members: Daniel Teixeira, Michael Farnum & Robert Dugan

Ms. Rego read the hearing notice aloud. Colleen Hennigan appeared for the variance under section 5.3.2 for lot coverage for 3 Amos St. Ms. Hennigan informed the board they would like to build the family suite for her stepfather & mom to move into.

Mr. Dugan confirmed they were before the board for lot coverage & asked what the lot coverage would be. The applicants stated they did not know but were told they were using more than 20% of the lot but were not told how much.

Mr. Teixeira asked if the applicants had plans to show what they wanted to build, the applicants stated they submitted everything in the packets & that they already had their permit from the planning board. Mr. Teixeira confirmed the existing and proposed areas on the plan.

Mr. Dugan asked if they knew the dimensions of the existing house, Ms. Hennigan stated about 1,000 sf. Mr. Dugan then asked the size of the addition, Ms. Hennigan stated it would be 986 sf and the existing house is 1,075 sf. Mr. Dugan confirmed they already had the special permit to build, the applicant confirmed they did.

There were no comments from the audience.

MOTION – Mr. Dugan made a motion to close both parts of the hearing. The motion was seconded by Mr. Teixeira and unanimously voted 5-0.

MOTION – Mr. Dugan made a motion to approve Colleen Hennigan, for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for lot coverage to construct a 986 square foot family suite on existing single-family home as shown on plans filed with this Board. Said property is located at 3 Amos Street Assessor's Map 70, Lot 48 zoned Residential. The motion was seconded by Mr. Teixeira and unanimously voted 3-0.

Continued Hearings

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 4/27/23)

Voting members: Nancy Rego, Robert Dugan & Joseph Cary

Ms. Rego read the hearing notice aloud. Kevin O'Brien appeared as the party aggrieved by a decision made by the building inspector for the property located at Foster Lane. Mr. O'Brien stated his attorney gave a presentation at the last hearing and he believes they have something from town counsel, and he will rest on that. Ms. Rego stated they did receive something from town counsel and asked Mr. O'Brien's opinion on what was written in the letter. Mr. O'Brien stated he had nothing to say.

Mr. Dugan clarified the applicant came in as a party aggrieved benefiting under a lot zoning freeze because it is an older property, but he is not there to overturn that, he needs a variance for frontage. Mr. O'Brien stated they have a plan into the board for the property that is the same as the building inspector has, he would agree they are not dealing with access. Mr. Dugan stated Mr. O'Brien is not an aggrieved party because he's not fighting the decision on the zoning freeze because his application is for frontage. Ms. Rego stated that yes, this application was for frontage. Mr. O'Brien agreed that frontage was the issue. Mr. Cary asked if the lot didn't have frontage, Ms. Rego answered that it did not have the right amount of frontage, they are not there to determine anything else. Ms. Rego and Mr. Dugan discussed the application, Mr. Dugan confirmed there was 120' of frontage, Mr. O'Brien stated that was correct. Mr. Dugan clarified that coming in as a party aggrieved is saying the building commissioner was wrong because it shouldn't have been 150' since the lot has been there since 1926, if they went for a straight variance then they are trying to comply to the dimensional requirements now.

Ms. Rego opened the hearing to the audience.

David Plunkett, representation for abutter – Mr. Plunkett referenced town counsel's letter stating it was still difficult decision. Mr. Plunkett handed out a document and discussed 48 section 6 and how it related to this parcel. He continued to discuss his interpretation of this statute and how it doesn't apply to this lot because it doesn't have physical frontage due to lack of access to Foster Lane. Mr. Plunkett discussed the history, previous hearings & court decisions between the applicant's lot and his client's lot.

Mr. O'Brien stated they have been given an opinion from his attorney & they now have an opinion from town counsel. He asked the board go with what town counsel recommends, he understands Mr. Plunkett doesn't agree with any of this, but the only way they move forward is to do what town counsel has recommended. Mr. Plunkett approached the podium again to state it is the board's determination, they have to consider all the information provided. Mr. O'Brien stated he understands that it's the board's decision.

Ms. Rego stated she would be sticking with town counsel's recommendation. They are going to move forward by voting only what they were asked to vote on. Mr. Teixeira asked what existed currently, Mr. O'Brien stated it was just woods that you could drive to. Mr. Plunkett again approached the podium to state there were trees there until they were taken down & heavy equipment plowed through to make an entryway without permission of any of the owners of the surrounding land, it is not a way that has been in existence they have the ariel photo showing mature trees that have been demolished. Mr. O'Brien stated he answered the question because he is the one that drives out there in his truck, he knows the reference points for his lot when he is out there. It is accessible, it was accessible before he started cutting trees back in November, he did clear the lot itself & the driveway going in, he has an OOC but they are at the point that they have stopped. To make it perfectly clear yes, he's been driving out there since 1994 after the appeals court case, he's owned the property for 38 years, 27 years before Mr. Plunkett's client bought the property so he does think he has rights to the road, he has been driving out there for many years before his client bought it 12 years ago.

MOTION – Mr. Dugan made a motion to close both parts of the hearing. The motion was seconded by Mr. Teixeira and unanimously voted 5-0.

Mr. Dugan stated he felt the letter from town counsel was very enlightening, Ms. Rego agreed. Mr. Dugan continued he feels they now have the information they need to vote, Ms. Rego agreed. Mr. Dugan reiterated the paper street was not their issue at all as a board they can only look at this as a party aggrieved to the frontage and that is it, the rest will be taken up in another court. Ms. Rego again agreed with Mr. Dugan.

MOTION – Mr. Dugan made a motion to approve 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. This determination is solely based on the plan that is before the ZBA and they make no finding on the applicant’s legal right to access their lot from Foster Lane. The motion was seconded by Mr. Cary and voted 2-1 with Mr. Cary voting nay.

Correspondence

Other Business Not Known at the Time of Posting this Agenda

Adjournment

MOTION – Mr. Cary made a motion to adjourn the meeting at 7:08 PM. The motion was seconded by Mr. Farnum and unanimously voted 5-0.

Approved: June 29, 2023

List of documents for the 05.25.2023 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:

NEW HEARINGS

6:30 **Colleen Hennigan**, for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for lot coverage to construct a 986 square foot family suite on existing single-family home as shown on plans filed with this Board. Said property is located at **3 Amos Street** Assessor’s Map 70, Lot 48 zoned Residential.

- ***Application Packet dated May 4, 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 4/27/23***)

- ***Letter from Town Counsel dated May 23, 2023***
- ***Document submitted by David Plunkett May, 25, 2023***

Old Business
New Business
Correspondence
Adjournment