



TOWN OF
STONEHAM
MASSACHUSETTS
Town Hall
35 Central Street
Stoneham, Massachusetts 02180
BOARD OF APPEALS
781-279-2695

Stoneham Board of Appeals Minutes
Thursday, July 28, 2022
Town Hall Hearing Room
6:00 PM

Members of the Board present: R. Michael Dufour, Vice Chairman Robert Saltzman, Chairman Tobin Shulman, Kevin McLaughlin and Associate Member Mark Russell sitting in as a voting member. Mr. Rubin and Mr. Sullivan were not present at the meeting.

Also present: Attorney Sheila Grant, Daniel Kraby & Maria Lourdes Kraby of 14 Charles Street, Peter de Bernardo of Gibraltar Pools representing 14 Citation Avenue, Attorney Charles Houghton, the Casazza family of 4 Sherwood Rd and Lydia Wise, 122 North Street.

Meeting was brought to order by Chair Tobin Shulman at 6:05 PM. Mr. Shulman began the meeting by introducing the board members and explaining that associate member Mark Russell would sit in on the meeting in Mr. Rubin's absence. He set out the procedure to be followed and instructions for the public hearings.

First order of business would have been reorganization. With Mr. Rubin missing, the Board chose to table this matter until their next meeting.

The Board then confirmed their next meeting for September 8, 2022. The Board was made aware that they have been invited to a Summit Meeting with the Select Board, Planning Board, Conservation Commission and the Stormwater Board on September 13, 2022.

Mr. McLaughlin made a motion to approve the minutes from June 23, 2022 which was seconded by Mr. Saltzman. A roll call vote was taken. All members present voted in favor (Dufour, Saltzman, Shulman, McLaughlin, Russell)

The Chair recused himself for the discussion of 20 Seward Road. Mr. Saltzman took over as Chair temporarily. He explained that the Board had granted a variance on November 19, 2020 for relief of a side setback of 6.3 feet on a two story garage. The As Built plan showed the garage to be 6.2 feet from the property line. The Board is being asked to allow the Building Commissioner to consider the .1 foot discrepancy for the side setback from the variance granted as being de minimus and as such to consider the petitioner as being compliant with the variance as granted. Mr. McLaughlin made a motion to consider the petitioner as being compliant with the variance granted which was seconded by Mr. Russell. All members present voted in favor 4-0. (Dufour, Saltzman, McLaughlin, Russell).

Mr. Shulman returned to the meeting. The first public hearing for 14 Charles Street had been continued from June 23, 2022.

Mr. Shulman re-read the legal notice into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing on Thursday, June 23, 2022 at 6:00 p.m. in the Hearing Room, Town Hall to hear all persons interested in the application by Daniel J. Kraby and Maria Lourdes Fama-Kraby, 14 Charles Street, Stoneham to construct a 4’ x 16’ deck, 4’ x 8’ porch, above ground pool, shed and a pergola at 14 Charles Street. The petitioners are requesting variances from the Stoneham Town Code, Chapter 15, Section 5.2.1 Dimensional Requirements – The required front setback in Residence A is 20 feet. The proposed deck is 10.9 feet from the property line and the porch is 10.3 feet from the property line. Section 5.2.1 (note 4)- No part of any structure shall be within 15 feet of any street. The proposed porch is 10.5 feet from Charles Street. Chapter 15, Section 4.2.2.2 (c) Accessory building-One accessory building is allowed in the Residence A District. Two accessory dwellings are proposed, a shed and a pergola. Section 4.2.2.2 (c) also states that the required setbacks for accessory buildings under 130 square feet is 5 feet for the side and rear. The proposed setback for the shed is 3 feet and the proposed setback for the pergola is 2 feet. Chapter 15, Section 5.2.1 (note 10) Pool-Required setback for a pool is 10 feet. The proposed setback for the above ground pool is 1.5 feet. A plot plan for 14 Charles Street prepared by Edward J. Farrell, Professional Land Surveyor may be seen daily except Friday afternoon in the Town Clerk’s Office.”

Attorney Sheila Grant appeared for the petitioner Daniel Kraby. She begins by explaining that the property is in Residence A. It is a two family, existing nonconforming lot due to the lot size and configuration. The building was built in the 1920s and it is a corner lot. Ms. Grant continues that her client was unaware of any of the prohibitions or violations until he had a contractor try to pull a building permit for the front stairs, landing and a deck which acts as a landing to the second unit. All of the other items in the Building Commissioner’s denial letter had been there for some time. He had no knowledge that there was any violation. Unfortunately due to the configuration of the structure and the parking, there’s not much he can do by way of moving anything. She stated that the entryways and landings are not detrimental to the neighborhood and to let this stand would not derogate from the purpose of the bylaw. As to the shed, it was there when her client purchased the property in 2014. The pergola and the pool are not permanently affixed to the ground. She states that her client removes the pool each winter. She states that due to the configuration of the lot there is no way to move these structures to be in compliance. Certainly there is a hardship there due to the existing nonconformity. They respectfully ask the Board to grant findings or variances to each item as they do not increase the nonconformity.

Mr. Saltzman asks if the property were 10,000 square feet conforming instead of the 6,000 square feet it is, you’d have a better chance of conforming to all of the requirements. Ms. Grant agrees.

Mr. Shulman asks about the notice mentioning two accessory dwellings. He clarifies that it is two structures? Mr. Saltzman asks if the pool is above ground. Mr. Kraby states that it is an Intex pool that he puts up and takes down at the end of the summer.

Mr. Dufour mentions that most of it is actually existing. Mr. Saltzman mentions that the pool is not really a structure. Mr. Shulman agrees that it’s temporary like a kiddie pool would be.

No one from the public was present to speak on the matter. Mr. Shulman reads a letter of support into the record from William Sullivan, 15 Charles Street.

Mr. Dufour made a motion to close the public hearing which was seconded by Mr. McLaughlin. All members present voted in favor. (McLaughlin, Russell, Saltzman, Dufour, Shulman))

Mr. Saltzman made a motion to grant the relief, certainly on the preexisting nonconformity scheme of things, what's proposed is not more substantially detrimental to the neighborhood. It certainly meets the requirements. Mr. Dufour seconded. A roll call vote was taken. All members present voted in favor 5-0. (McLaughlin, Russell, Saltzman, Dufour, Shulman)

The Chair read the legal notice for the second public hearing on 14 Citation Avenue into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing Thursday, July 28, 2022 at 6:00 pm in the Hearing Room, Town Hall to hear all persons interested in the application by Paul M. Gualtieri and Christine M. Gualtieri, 14 Citation Avenue, Stoneham, MA to construct a 12' x 20' above ground pool with cantilevered safety edge. The petitioner is requesting a variance at 14 Citation Avenue of the Stoneham Town Code, Chapter 15, Section 5.2.1 Dimensional Requirements note 10. The required side and rear setback for a pool is 10 feet. The proposed is .5 feet from the rear property line. A plot plan by Gloral Associates dated May 24, 2022 shows the proposed pool. The plan may be seen daily except Friday afternoon in the Office of the Town Clerk.”

Peter de Bernardo with Gibraltar Pools of Topsfield appeared before the Board. His clients were looking to put a pool in their backyard but the backyard is not what the homeowner thought it was. He explains that there is a large rectangular area, mowed and maintained with hedge rows around the perimeter of the yard, perimeter fencing with woods behind the fence. He stated that when the survey was done it revealed a large jog that comes in which isn't even shown on the Town's GIS maps which show the lot to have a rectangular yard. When they consulted the Registry of Deeds they found this jog. The homeowner has opted for the smallest sized pool which is 12' x 20'.

Mr. Saltzman asks if the land went straight across, they would have met the required footage? Mr. de Bernardo agrees. He stated that the homeowners were surprised that piece of the property in the back was not theirs. Mr. Dufour asks about the land that is not theirs, the land in question, who does it belong to? Mr. de Bernardo responds that it is Town property belonging to Colonial Park School. Mr. Russell asks if they considered any other spot on the lot. Mr. de Bernardo stated that there was not another spot it would work.

Mr. Dufour made a motion to close the public hearing which was seconded by Mr. McLaughlin. All members present voted in favor 5-0.

Mr. McLaughlin made a motion to grant the relief as requested. It doesn't derogate from the intent of the bylaw. Mr. Russell seconded. A roll call vote was taken. All members present voted in favor 5-0. (McLaughlin, Russell, Saltzman, Dufour, Shulman).

The Chair read the legal notice for the third public hearing 4 Sherwood Road into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing Thursday evening, July 28, 2022 at 6:00 p.m. in the Hearing Room, Town Hall to hear all persons interested in the application by Alfonso Casazza and Carmela Casazza, 4 Sherwood Road, Stoneham, Massachusetts for the conversion of the existing dwelling at 4 Sherwood Road, Stoneham, Massachusetts to accommodate an additional dwelling unit which requires a variance of Section 4.2.3.1. A variance of Section 4.2.3.1(a) is also required as the building was not in existence at the time of the adoption of Section 4.2.3.1. as it was built in 2010 [*Mr. Houghton clarified that the house was built in 2005*]. Further, the existing lot size is 14630 square feet and a variance of Section 4.2.3.1 (b) which requires 20,000 square feet is required and Section 4.2.3.1 (d) requires that each unit shall be a complete and independent dwelling unit. The proposed use will have all common utilities. A plan filed with the petition by Civil Environmental Consultants dated 5/23/2022 entitled, “Existing Plot Plan 4 Sherwood Road Stoneham, MA For Alphonse Casazza.” Plan may be seen daily except Friday afternoon in the Town Clerk’s Office.”

Attorney Houghton appeared on behalf of the petitioner. Mr. Houghton explains to the Board that they are here under section 4.2.3.1 because they cannot make the accessory bylaw work. As background he explains that the father and son built the house in 2005. As time went by the son got married and eventually moved to North Reading with his wife and kids. The father has a health scare and asks the son to move back. The accessory bylaw comes in to play here. The house is 5360 square feet of living area and they would like to make an accessory unit of just over 1300 square feet over the garage. When the house was built it had a second Italian kitchen that was then taken out in order to be in compliance. Mr. Houghton explains why they are before the Board relative to the accessory bylaw. He reads section 4.2.4.1 Accessory Dwellings (family apartments) subsection b from the bylaw.

- (b) In the event a change in residence of either family member occurs, or a conveyance occurs that is to someone other than a family member, or a voluntary surrender of the Special Permit, the subject property will automatically revert to a single family dwelling and no longer enjoy the rights granted under the Special Permit that allowed for the accessory dwelling. This does not preclude a new application for a Special Permit in accordance with the described use at any time in the future.

Mr. Houghton states that they would like to stipulate that if either the son and daughter in law or the mother and father as a pair were not living in the house, it would revert back to a single family. They would like to follow the intent of the accessory dwelling bylaw. As the Board can see in subsection (c), the square footage of 750 square feet just wouldn’t work. The house has well over 5,000 square feet as a living area. Mr. Houghton continues to say that the family do not allow family members to go into a nursing homes. The family keeps the family at home. They want to continue to live there. They have nowhere to go except before the Board for relief under the section to create a second unit. Again, they’d be happy to stipulate that if one of the family members is not living there. Mr. Houghton states that if the Board should grant the variance they would like that stipulation in there in accordance with section 4.2.41.(b). They are

not trying to create a rental or second unit. They are asking for a variance from the part of the bylaw that requires separate utilities. They are keeping on set of utilities.

Mr. Shulman clarifies that they are not putting two electrical meters or gas meters. Mr. Houghton agrees. Mr. Shulman asks if they are putting back in a kitchen, a second kitchen. Again Mr. Houghton agrees. They had an Italian kitchen in the lower level of the split entry. They removed it when it was found not to be legal. The parents would like to have a kitchen so they will be putting one in the part of the house they are making the unit.

Mr. Shulman continues to say that this should be added to the list when we talk about planning [at the Summit Meeting]. He states that the idea that you cannot have two kitchens in your home, especially in a community that has a number of Italian Americans in it, it's common to have two kitchens. If you're Jewish you may have a kitchen that keeps Kosher and one that does not. Mr. Houghton agrees. Mr. Shulman is confused as to why it gets triggered when you don't have separate utilities, you don't have separate means of egress. It seems like this should just be a by right thing that should happen. It's one family. You're not trying to make another unit.

Mr. Houghton mentions that they are here because the accessory dwelling bylaw only allows for 750 square feet. Mr. Houghton believes that if they updated the bylaw, if you allowed an in law in an existing dwelling, maybe it should be 25% or 30% of the square footage.

Mr. Dufour believes that this will keep coming up because of the cost of living and the housing shortage. Mr. Saltzman states that this is what can be discussed at the meeting on September 13th.

Mr. Shulman clarifies what Mr. Houghton had previously stated that a condition of this, with the acceptance, would be to enact 4.2.4.1 (b) to say if a change of residents occurs this would revert back to a single family home. If one of the couples is gone. It was drafted with the parents being gone at some point.

Mr. Shulman opens the meeting up to the public. Lydia Wise, 122 North Street speaks as a direct abutter behind/to the side of 4 Sherwood. She lives in a small cape. They bought their house, knocked it down and built a big house. She doesn't want to challenge who is living in the house. She is concerned with what is already constructed. She is bothered by the deck the looks out over her small garden. Her bedroom window is right across from it. She feels like the deck encroaches on her privacy. It is a second floor deck. Ms. Wise shows the Board some pictures. Mr. Shulman asks Mr. Houghton to comment. Mr. Houghton responds that it is permitted already. It is twelve feet from the lot line and it only requires ten feet. Mr. Houghton mentions that it will be another means of egress. Ms. Wise asks what the twelve feet is from. Mr. Houghton answers that it's twelve feet from the edge of the deck to the lot line.

Mr. Shulman asks if there could be some plantings. Mr. Houghton mentions that they could plant arborvitaes. Mr. Shulman explains to Ms. Wise that they are tall, privacy plantings. Mr. Houghton explains that they grow fast and could be planted across the fence. Mr. Shulman shows the photos to the homeowners so they can see it from her perspective. Mr. Casazza mentions that there is another deck that they would sit on. That deck is primarily to get in and out. Mr. Shulman believes landscaping would easily solve this. Ms. Wise says that she would appreciate that courtesy.

Mr. Saltzman made a motion to close the public hearing which was seconded by Mr. McLaughlin. All members present voted in favor.

Mr. Dufour believes that zoning changes should be brought because these things come up. It's happening more and more, so that we don't have to get to this point, it should be someone's right to do it. He continues to say that this doesn't derogate from the intent of the bylaw. To Mr. Shulman's point it should be someone's right to do it if it is family. Mr. Saltzman believes that this is changing faster than the Town is changing. This is a necessity.

Mr. Dufour makes a motion that they accept this, with whatever wording needs to be in there. They will plant the arborvitaes, five of them, three feet apart. With the condition that Mr. Houghton mentioned [similar to what is spelled out for a Special Permit in section 4.2.4.1 (b)]. In the event a change in residence of either family member occurs, or a conveyance occurs that is to someone other than a family member, the property will automatically revert to a single family dwelling and no longer enjoy the rights granted with this variance. Mr. Saltzman seconded the motion. A roll call vote was taken. All members present voted in favor (McLaughlin, Russell, Saltzman, Dufour, Shulman).

Mr. Saltzman made a motion to go into executive session pursuant to M.G.L. c. 30A, sec. 21(a)(3) to discuss pending litigation involving Weiss Farm and the Stoneham Board of Appeals v. Housing Appeals Committee, et al and not to return to open session. Mr. Dufour seconded the motion and a roll call vote was taken. All members present voted in favor 5-0. (McLaughlin, Russell, Saltzman, Dufour, Shulman).

The open session adjourned at 6:54 PM.

Documents and other exhibits used by the Board of Appeals during this meeting to be made part of the official record but not attached to these minutes:

Minutes dated June 23, 2022

Board of Appeals decision for 20 Seward Road dated November 19, 2020

A plot plan for 14 Charles Street prepared by Edward J. Farrell, Professional Land Surveyor

Letter of support for 14 Charles Street by William Sullivan, 15 Charles Street

A plot plan of 14 Citation Avenue by Gloral Associates dated May 24, 2022

A plan by Civil Environmental Consultants dated 5/23/2022 entitled, "Existing Plot Plan 4 Sherwood Road Stoneham, MA For Alphonse Casazza."

Respectfully submitted:

Maria Sagarino
Town Clerk