



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

Stoneham Board of Appeals Minutes
Thursday, April 27, 2023
Town Hall Hearing Room
6:00 PM

Members of the Board present: Vice Chairman Robert Saltzman, Chairman Tobin Shulman, Eric, Kevin McLaughlin and Associate Members William Sullivan and Mark Russell.

Also present: Town Clerk Maria Sagarino acting as Clerk to the Board of Appeals, Attorney Charles Houghton, Town Counsel Attorney Robert Galvin remoted into the meeting briefly, Town Administrator Dennis Sheehan, Ellen McBride 30 Butler Ave, Peter Mahoney from Weiss Farm Apartments LLC, Attorney William Heney and many residents from the 26 Broadway neighborhood.

The meeting was called to order at 6:05 PM. Chairman Tobin Shulman opened the meeting by making introductions and explaining the procedure for the public hearings. With two regular members absent, both associate members would be sitting in as voting members this evening.

The Board discussed upcoming meeting dates. The next meetings would be held on May 18, 2023 and June 22, 2023.

The Chair moved on to approval of minutes.

Mr. Saltzman made a motion to approve the minutes from March 23, 2023 which was seconded by Mr. McLaughlin. A roll call vote was taken. Mr. Sullivan, Mr. McLaughlin, Mr. Saltzman and Mr. Shulman voted in favor having been present at the meeting.

Mr. Shulman moved on to the discussion and vote on Notice of Project Change by Weiss Farm Apartments, LLC pursuant to 760 CMR 56.05(11). He invited Peter Mahoney of Corcoran & Company to speak. Mr. Mahoney requested a determination that the recent plans submitted along with a Final Comprehensive Permit were an insubstantial change. They believe that this is a more concise permit.

Town Counsel remoted in to the meeting. He explained to the Board that this Final Comprehensive Permit and the plans are similar to what they have seen before. It does not reduce the number of units. The developer will pay all applicable fees not waived by the Housing Appeals Committee. He further explained that this has nothing to do with DEP and the Final Order of Conditions. Mr. Galvin concurred with the developer that they are insubstantial changes.

Town Administrator Dennis Sheehan added that since the Board last met, Attorney Galvin and the developer were in contact. There was discussion of the building permit fees which had previously been a point of contention for some of the board members. He did point out that this

agreement would remove the \$400,000 in water mitigation previously offered but it does include plans for a left hand turn lane on Franklin Street.

Mr. Sullivan mentioned that he lead the charge last time when the Board voted that the changes were substantial. Mr. Sullivan continued to say that they have made some changes, deleted some language, Conservation has given Attorney Galvin authority to dismiss their case with Donna Weiss and they will address the pump and the weir dam. He can't say he's happy with what is in front of the board, but he said he is satisfied. Mr. McLaughlin added that he was satisfied also.

Mr. Saltzman explains that they are asking if what is before the Board is a substantial change to the HAC decision. He doesn't believe it is. Mr. Saltzman moved to accept as an insubstantial change. Mr. Sullivan seconded. A roll call vote was taken. All members voted in favor 5-0. (Sullivan, Russell, McLaughlin, Saltzman, Shulman)

Mr. Shulman moved on to the release of executive session minutes previously approved regarding Weiss Farm Apartments LLC. Mr. Saltzman made a motion to release the executive session minutes which was seconded by Mr. McLaughlin. A roll call vote was taken. All members present voted in favor 5-0.

Mr. Shulman explained that Mr. Sullivan and Mr. Russell would be sitting in on the hearings as voting members, however, Mr. Russell has a conflict with 26 Broadway and cannot sit on this matter. With only four members, Mr. Shulman asked Attorney Houghton if his client wished to continue. Attorney Houghton indicated that his client would like to move forward with the four members.

Mr. Shulman read the legal notice for 26 Broadway into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing THURSDAY EVENING, March 23, 2023 at 6:00 p.m. in the Hearing Room, Town Hall to hear all persons interested in the application by Lynn Homes, LLC, 105 Salem Street, Suite B, Malden, MA to convert the existing structure to accommodate more than one (1) dwelling unit at 26 Broadway, Stoneham, Massachusetts. Petitioner is requesting a variance of: Section 4.2.3 This use requires a variance granted by the Board of Appeals. The use of the converted portion of the structure was originally to be used as an indoor tennis court but has been used for storage in recent years A plan filed with the petition by Benchmark Survey, dated, February 27, 2023, entitled, “Plan of Land 26 Broadway Stoneham, MA” shows the proposed three-family dwelling. Plan may be seen mornings except Fridays in the Board of Appeals office and daily except Friday afternoon in the Town Clerk's Office.”

Attorney Houghton appeared before the Board on behalf of his client. He gave a brief explanation of the petition. His client would like to convert an attached structure at 26 Broadway that has been around since 1981 when it was permitted. When his client bought the property the structure was full of debris. His client removed 15 dumpster loads to clean it out. At the request of his insurance provider he was asked to board up the windows. He started to explain the proposal before the Board. The petitioner would like to add two units inside the existing attached structure. Mr. Houghton brought some pictures for the Board to take a look at which showed various views of the structure. Some pictures showed the existing structure inside and out. Other pictures are the exterior being proposed. Mr. Shulman asked if the windows shown in the picture are in the same openings that are present today. Mr. Houghton responded

that they planned to replace the windows using the existing openings. They are trying to keep the existing architectural design of the structure. The building was well built.

Attorney Houghton explained that Section 4.2.3 allows on a variance a conversion. The Board needs to determine if there is reason to grant the variance. They are not asking for any variances of 4.2.3.1 (a) – (e). Mr. Houghton walks the Board through 4.2.3.1 (a) – (e) as well as the definitions of buildings, buildings attached and buildings detached. He then mentioned 4.2.1.2.1 dwellings and read that definition to the Board. He went over lot area equivalent. The Lot has well over the 30,000 square feet required for three units. Mr. Houghton mentioned that he went over the parking requirements with the Building Commissioner. This plan would require 1.7 spaces per unit under Section 6.3.3 for a total of 5.1. There are currently eight spaces and they could easily add another. He addressed 6.3.4.2, with the parking layout, none of the spaces would require backing out onto Broadway.

Mr. Houghton continued to say that this use variance is one that is rarely used. It's clearly to allow a use. He then referenced Chapter 18 Section 18-27 which states that the Board cannot grant a use variance unless it is an allowed use permitted in the district where the structure is located unless the zoning bylaw expressly authorizes it. He believes that what they are requesting is allowed under 4.2.3.

Mr. Houghton went over the criteria under MGL Chapter 40A Section 10. He believes that there is a substantial hardship to the structure. There are not a lot of uses. He supposed it might be a garage but it would be a twelve car garage which is not allowed. The idea is to make it into a residential use. There's a need for residential.

Public Hearings:

26 Broadway (This public hearing is continued from March 15, 2023)

Represented by Attorney Charles Houghton

An application by Lynn Homes, LLC, 105 Salem Street, Suite B, Malden, MA to convert the existing structure to accommodate more than one (1) dwelling unit at 26 Broadway, Stoneham, Massachusetts. Petitioner is requesting a variance of: Section 4.2.3 This use requires a variance granted by the Board of Appeals. The use of the converted portion of the structure was originally to be used as an indoor tennis court but has been used for storage in recent years A plan filed with the petition by Benchmark Survey, dated, February 27, 2023, entitled, "Plan of Land 26 Broadway Stoneham, MA" shows the proposed three-family dwelling. Plan may be seen mornings except Fridays in the Board of Appeals office and daily except Friday afternoon in the Town Clerk's Office. They believe that they are improving what is there, which is a boarded up building. This should increase everyone's property value. He doesn't believe there to be a derogation from the intent of the bylaw because they meet all of the subsections. He reiterated that this is a unique structure. It's 41' in width, 110' in depth. It was originally permitted as an indoor tennis court in December of 1981. It was built in 1982 and he said that the assessors had picked it up in FY84. Mr. Saltzman asked if they had to go before the ZBA when they built it. Mr. Houghton stated they did not. They were issued a building permit. The accessory bylaw that we have now came into effect in 1985. It wouldn't be allowed now, but that is not the issue before the Board. It's there, it was permitted. Mr. Saltzman asked if anyone ever played tennis in there. Mr. Houghton was inclined to say no. Mr. Saltzman then asked when it became storage. Mr. Houghton stated that the Building Commissioner believed it to be storage

but it seemed more like debris, boat parts and car parts. Mr. Houghton believed that the person who was building it became sick and things unraveled at some point. He continued to say that the structure itself was finished.

Mr. Shulman asked to see the site plan, but first, Mr. Sullivan asked if the building permit was ever closed out. Mr. Houghton wasn't sure. He wasn't sure what they would have gotten for that structure. It wouldn't be an occupancy permit for a tennis court. Mr. Houghton didn't see anything in the file indicating whether it was or wasn't closed out. He didn't see anything that said it was outstanding.

Andy Bramhall from Benchmark Survey handed out some more photos to the Board and proceeded to go over the plan he had just finished revising that evening. Mr. Bramhall had surveyed the property which is registered land. He explained that there is an existing residential house and the tennis court. He heard it had been constructed so that a helicopter could land on it. They used concrete panels that you typically see on the highway. The structure is massive. There is nothing like it in Stoneham and probably never will be. He mentioned that he added lot coverage to this plan. It shows the existing house, the indoor tennis court and a shed that will most likely go. He explained that Residence A allows 30% lot coverage. This is only 20%. There is a depth of 240'. It meets the parking requirement of 1.7 spaces per unit with the three being proposed. There are two spaces in the garage, three outside on the upper level of the property and three spaces proposed for the two new units that would be added. He further explained that Broadway doesn't have the best sight distance. The layout allows for the cars to pull out instead of backing out onto Broadway. He also stated that this plan showed the snow storage on site.

Mr. McLaughlin asked how this structure was connected to the house. Mr. Bramhall stated that it is connected in two places. The first is below the patio and is labelled on the plan as patio width tunnel below. He had given the Board a picture that shows a concrete tunnel. He stated that there are two access points. One was supposed to be a staircase and the concrete for that is attached to the existing house. He indicated a concrete shaft on the plan. He had a picture of the concrete attached to the house. He believed they had built an access point from the house to the tennis court so that you wouldn't need to go outside. Mr. McLaughlin asked if you could walk through right now. Mr. Bramhall stated that you could not as they had halted construction before that was completed.

Mr. Sullivan asked if the tunnel was going through a wall or a floor. Mr. Bramhall explained that you are seeing the floor of the house and the tennis court is lower than the basement of the house. He further explained that it looked like they were going to build a staircase from the tennis court into the house.

Mr. McLaughlin asked Mr. Bramhall to point out all of the parking spaces on the plan and the snow removal/storage area on site.

Mr. Saltzman asked how many other three family structures are in the neighborhood. Mr. Houghton responded that that depends on what they would consider the neighborhood to be. He listed a two family on Broadway but said the lots get a lot smaller as you move up Broadway toward High Street. He explained that this lot is so large that you could tear the house and attached structure down and make three lots, but the bylaw mentions conserving the value of the

land and buildings. That would violate the bylaw to do that. You have the area but it makes no sense.

The petitioner Jumanthro Sianturi speaks on his own behalf. He explained that he believes the structure is usable for housing. It's a unique structure and it would be costly to remove it. He is interested in preserving it. He wants people to use it as a dwelling.

At this time Mr. Shulman read some letters into the record. Kenneth Sousa, 25 Broadway wrote in opposition as did Louis Ferrari of 18 Broadway. John & Marylou Bracciotti of 36 Broadway also submitted a letter against. Mr. Shulman also read a letter from Patricia Jenkyns and Fred Preffer of 30 Broadway who are also not in favor.

Attorney Bill Heney appeared before the Board. He explained that a majority of his practice is appearing in opposition at various town boards. His practice is in Beverly. This is his first time in Stoneham but he did mention working for former Town Counsel Bill Solomon about 25 years ago when he was in law school. Mr. Heney is representing Robert Wopperer of 19 Broadway. He did present the Board with a memo that he prefers not to read into the record as it wouldn't be a good use of time. He believes that if they were in land court the threshold would be if the applicant actually applied for a variance under the Stoneham bylaws. He continued to say that the Town has a bylaw that they refer to as a "poison pill". It prevents people from getting special permits and variances for just anything in the world. He references section 18-27 and states that if the bylaw does not authorize three condos, it cannot be done. Mr. Heney cited section 4.2.3 which permits conversion of existing dwellings. This is the reason Attorney Houghton spent so much time trying to convince you that a sports court built 40 years ago is somehow attached and considered a dwelling. You are constrained by your definitions which he then referred to the definitions for dwelling unit and dwelling. He thinks that it is a bit of a stretch to say that this structure is attached to the main house. He believes from the questions that some of the board members asked that they can see that this is not truly an attachment. It is a sports court. There is no egress from the sports court into the house. He believes that the walls that may or may not touch each other are merely structural, not meant to combine them as dwelling units. So if you take the threshold issue of whether this can even be allowed in Stoneham, he doesn't believe it can. He believes that under 4.2.3 you would need to be remodeling an existing dwelling. The applicant has not pointed out any bylaw that allows for 2 additional units added to this sports structure. It's not properly before you. The application had very little detail. Mt. Heney summarizes his memo to the Board by saying the threshold was not met, it's not properly before the board and it's not an existing dwelling unit. As for parking, this will be a condo and he believes that parking spaces 1,2,3 cannot meet the bylaw. He believes one space would need to be eliminated to avoid backing out on to Broadway. Mr. Heney continued to say that under 40A section 10 variances should be given out sparingly. The applicant has not claimed a hardship due to soil, topography or shape of the lot. The structure is not a hardship. His problem cannot be made everyone else's problem.

Robert Wopperer, 19 Broadway spoke about buying his property sixteen years ago which sits across the street. The structure was hidden behind trees and you couldn't see it. He never thought he'd buy his home and have a three unit condo across the street.

Mr. Houghton responded that he doesn't know why 4.2.3.1 (a) – (e) is there if they cannot use it. The intent is to provide for the conversion. Why else would the bylaw exist? The structure is not

going away. Maybe it could be one unit. Mr. Houghton continued to say that in land court once the standing is raised, the judge would ask where's the harm. What's there now devalues the neighborhood. The improvements to the structure would improve the value. There's no building. No drainage issue. There's no harm to the neighbors other than not in my backyard. I don't want a multifamily. The bylaw states conversion, it doesn't state that you can't do it on Broadway.

Mr. Saltzman asked Mr. Houghton to speak to the issue of whether the structure was a dwelling. Mr. Houghton read the definitions of buildings, buildings attached and dwelling unit. He then explains that this structure is attached to the house. To be a dwelling it only needs to be a part thereof of the house. He believes this is a perfect use of 4.2.3.1. This structure does not create anything new or impact the neighborhood. This is a use variance put in there to be used.

Attorney Heney doesn't know why the Town would have this bylaw. He added that he thinks it's a stretch to say the sports court and house are attached just because they built walls against each other.

Peter Bracciotti of 19 High Street spoke to section 2.1.40 which defines a junk yard. He is opposed to the petition and believes they had been keeping the structure like a junk yard.

Michelle Nuzzo34 Broadway also spoke against. She doesn't believe this to be in line with the single family homes in the neighborhood. Variances can't keep being granted like this. That home was purchased as a single family home.

Paul Crowley from Steele Street spoke against. He believed that this would increase traffic. He talked about more cars and more Amazon and FedEx deliveries with three units.

Gene Ferullo 31 Broadway spoke against. Paul Rotondi, 15 Steele Street wanted to know if the building permit called it an addition or structure? Judy Driscoll of 47 High St was concerned about traffic. Carolyn Ferrari 18 Broadway was fine with a pool and tennis court but is against this project. Patricia Jenkyns 30 Broadway was against. She said there would be more traffic and noise. Marylou Bracciotti 36 Broadway thinks this is spot zoning. This area is zoned for single family homes.

Mr. Shulman believes the board has gotten a good sense of the project and the neighborhood. He asked if there was anything new that anyone would like to share. Mr. Sullivan asked if they could view the locus. He believed a site visit would be helpful. He would like to see the inside of the structure. Mr. Sullivan made a motion for a site visit on May 8th at 6PM which was seconded by Mr. Saltzman. A roll call vote was taken. Members present and voting voted in favor 4-0. (Sullivan, McLaughlin, Saltzman, Shulman)

Mr. Saltzman made a motion to continue 26 Broadway until May 18th at 6PM which was seconded by Mr. McLaughlin. All members present voted in favor 4-0.

Mr. Shulman took a recess at 7:47PM and the Board reconvened at 7:54PM.

For the next two public hearings Mr. Sullivan and Mr. Russell would sit to make a full board.

Mr. Shulman read the legal notice for 9 Unicorn Avenue into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing on Thursday Evening, April 27, 2023 at 6:00 P.M. in the Hearing Room, Town Hall, to hear all persons interested in the application by Grejdi Gjura and Sonya Gjura, 9 Unicorn Avenue Stoneham, MA to construct a 7’ x 28’ front porch at 9 Unicorn Avenue. The petitioners are requesting variances of the Stoneham Code, Chapter 15, Section 5.2.1 Dimensional Requirements. The required front setback in Residence A is 20 feet. The proposed porch front setback is 13’5”. The maximum percent coverage in Residence A is 30%. The proposed percent coverage is 31.4%. A Plot Plan of 9 Unicorn Avenue prepared by Edward J. Farrell, Professional Land Surveyor dated March 1, 2023 may be seen daily except Friday afternoons in the Office of the Town Clerk.”

The petitioner Grejdi Gjura appeared before the Board to explain that he wanted to build a front porch and was seeking variances of the front setback and the lot coverage. He explained that he is on a small street with no sidewalks.

Mr. Saltzman stated that there is a hardship with the land. He asked Mr. Gjura if there was any other place on the property that he could build the porch. Mr. Gjura indicated that there was not. Mr. Sullivan believed it was a modest porch. He commented on the beautiful second floor that had been built and had no problem with the addition of this porch.

Mr. Shulman asked for comment from the public. Seeing none, Mr. Saltzman made a motion to close the public hearing which was seconded by Mr. McLaughlin. All members voted in favor 5-0.

Mr. Saltzman stated that there is clearly a hardship with the land. He made a motion to grant the relief. It doesn’t derogate from the intent of the bylaw and would serve the public good in the neighborhood. Mr. McLaughlin seconded. A roll call vote was taken. All members voted in favor 5-0.

Mr. Shulman read the legal notice for 6 Rowe Street into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing on Thursday Evening, April 27, 2023 at 6:00 P.M. in the Hearing Room, Town Hall, to hear all persons interested in the application by Matthew H. Kilty and Rachel M. Kilty, 6 Rowe Street, Stoneham, MA to construct an addition to the existing dwelling. The petitioner is requesting the following variances of the Stoneham Code, Chapter 15, Section 5.2.1 Dimensional Requirements; Minimum Side Setback Residence B is 10’, proposed addition is set back 3.6’ and Maximum Lot Coverage Residence B is 20%, proposed lot coverage is 33.2%. A plot plan by Benchmark Survey dated March 31, 2023 shows the proposed addition. The plan may be seen daily except Friday afternoons in the Office of the Town Clerk.”

Attorney Steven Cicatelli appeared before the Board on behalf of his clients Matt and Shelly Kilty. Mr. Cicatelli explained the variances being sought. He indicated that there was a hardship due to the topography of the lot and explained that to wrap around to the right would violate the side setback. He didn’t believe this derogated from the intent of the bylaw and it was without detriment to the public good. Mr. Cicatelli indicated that most of the neighbors were in support.

He provided letters from Richard Leed 8 Rowe Street, Jack & Heather Norcross of 4 Rowe Street, Mr & Mrs. Patrick McDough at 7 Flint Ave, the Yancey Family at 12 Lindenwood, William Goos of 5 Rowe Street, Filis Warren at 7 Rowe Street, The Hudsons at 13 Flint Ave and Craig Celli at 17 Flint Ave.

Mr. Sullivan didn't have a problem with the petition. They are just going two stories and squaring off the back of the shed.

Mr. Shulman opened it up to the public.

Megan Mahoney, 16 Flint Avenue offered her full support. Kathy Hudson echoed that the whole neighborhood supported the petition.

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

Mr. Saltzman stated that it's a 6600 square foot lot. Where else would you put the addition? They have the support of the neighborhood. Mr. Saltzman made a motion to grant the relief. The hardship is the size and topography of the lot due to the drop off in the back. It doesn't derogate from the intent of the bylaw and it serves the public good. Mr. McLaughlin seconded the motion. A roll call vote was taken. All members present voted in favor 5-0.

Mr. Saltzman mentioned that they would reorganize next time when they had a full board. He made a motion to adjourn which was seconded by Mr. McLaughlin. All members voted in favor.

Meeting adjourned at 8:11PM.

Respectfully submitted:

Maria Sagarino
Town Clerk

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:

A plan filed with the petition by Benchmark Survey, dated, February 27, 2023, entitled, "Plan of Land 26 Broadway Stoneham, MA" and a revised plan dated April 27, 2023.

Pictures of the interior of the structure at 26 Broadway.

A Plot Plan of 9 Unicorn Avenue prepared by Edward J. Farrell, Professional Land Surveyor dated March 1, 2023

A plot plan of 6 Rowe Street by Benchmark Survey dated March 31, 2023

Letters in support from neighbors of 6 Rowe Street