



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

Stoneham Board of Appeals Minutes
Thursday, June 22, 2023
Town Hall Hearing Room
6:00 PM

Members of the Board present: Vice Chairman Robert Saltzman, Eric Rubin, Kevin McLaughlin, R. Michael Dufour 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, Attorney Patrick Houghton, Attorney Stephen Chaplin and residents from Wolcott Road, Pond Street and Raymond Road.

The meeting was called to order at 6:07 PM by Vice Chairman Bob Saltzman who would Chair the meeting in the absence of Chairman Tobin Shulman. After the Pledge of Allegiance requested by Mr. McLaughlin, Mr. Saltzman opened the meeting by making introductions and explaining the procedure for the public hearings. He explained also explained the one of the associates would sit in on each matter to create a full board for each petition.

The Board chose their next meeting date as July 27, 2023.

Mr. Rubin made a motion to approve the minutes from May 18, 2023 which was seconded by Mr. McLaughlin. All members voted in favor 5-0 including a vote from Mr. Sullivan.

Mr. Saltzman read the first public hearing notice in the record for 240 Hancock Street as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing on Thursday, June 22, 2023 at 6:00 p.m. in the Hearing Room, Town Hall to hear all persons interested in the application by Alejandro Garces of 240 Hancock Street, Stoneham to construct a 6’ x 20.2’ farmer’s porch at 240 Hancock Street. The petitioner is requesting variances from the Stoneham Town Code, Chapter 15, Section 5.2.1 Dimensional Requirements – The required front setback in Residence A District is 20 feet. The proposed front setback is 12.8 feet. Under Section 5.2.1 note 4, the minimum setback of structures from the street is 15 feet. The setback from Hancock Street is 13.4 feet. A plot plan for 240 Hancock Street by Edward J. Farrell, Professional Land Surveyor dated April 13, 2023 may be seen daily except Friday afternoons in the Office of the Town Clerk.”

Associate Member Sullivan would sit on this matter.

Alisson Geofrida of All Matters General Contracting appeared on behalf of the petitioner to describe the requested farmer’s porch the homeowner’s would like to add to the front of the house.

Mr. Saltzman asked if the farmer's porch would go out further than the existing stairs. Mr. Geofrida said it would come out two feet more than the existing stairs. Mr. Saltzman explained that it wouldn't matter if it was the house next door, but this house is a corner lot so the farmer's porch could affect visibility. Mr. Geofrida was unable to give the Board the exact measurements of the farmer's porch beyond the existing stairs. Mr. Sullivan wanted the exact measurements of the farmer's porch out from the house. Mr. Saltzman asked Mr. Geofrida if he may want to continue the hearing until July 27th so that he could produce that information. Mr. Geofrida thought that would be a good idea and asked for the continuance to give him time to come back with more accurate measurements.

Mr. McLaughlin made a motion to continue the public hearing to July 27th at 6PM which was seconded by Mr. Rubin. A roll call vote was taken. All members voted in favor 5-0. (Sullivan, McLaughlin, Rubin, Dufour, Saltzman)

Mr. Saltzman read the legal notice for 9 Middle Street into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing on Thursday, June 22, 2023 at 6:00 p.m. in the Hearing Room, Town Hall to hear all persons interested in the application by Vincenzo Varacalli and Shawna L. Varacalli, 9 Middle Street, Stoneham to construct a 24' x 26' garage addition and a 24' x 24' one and a half story addition for a two bedroom additional unit to the existing single family dwelling at 9 Middle Street. The petitioner is requesting variances from the Stoneham Town Code, Chapter 15, Section 5.2.1 Dimensional Requirements – The required lot size in Residence B for a two unit dwelling is 9,500 square feet. The existing is 8,572 square feet. Additionally, the maximum percent coverage in Residence B is 20%. The proposed percent coverage is 23%. A plot plan of 9 Middle Street by Thomas Bernardi dated May 30, 2023 may be seen daily except Friday afternoons in the Office of the Town Clerk.”

Associate Member Russell would be sitting in on this matter.

The petitioner Shawna Varacalli explained that they are requesting variances in order to add an addition onto their single family home which would create a second unit to be occupied by her mother and father.

Mr. Saltzman asked if they were seeking variances for lot size and percent coverage. Ms. Varacalli indicated that to be the case. Mr. Rubin asked if there was a full foundation. Ms. Varacalli responded that it would be a slab.

Mr. Saltzman opened the public hearing. There were no members of the public present for comment other than the petitioner's mother who was in full support.

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

Mr. Dufour commented that this addition will turn the house into a two family.

Mr. Rubin stated that they are close to being able to do this by right. The lot is the hardship. He didn't believe that it derogated from the intent of the bylaw and would serve the public good. He made a motion to grant the relief which was seconded by Mr. Dufour. A roll call vote was taken. All members voted in favor 5-0. (Russell, McLaughlin, Rubin, Dufour, Saltzman)

Mr. Saltzman read the legal notice for 1 Dale Court into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing on Thursday, June 22, 2023 at 6:00 p.m. in the Hearing Room, Town Hall, 35 Central Street, Stoneham to hear all persons interested in the application by Jonathan Kessler, 1 Dale Court, Stoneham, Massachusetts to appeal the decision of the Building Commissioner denying the request to conduct music lessons and band practice at 1 Dale Court, Stoneham. In the denial letter, the Building Commissioner cites Stoneham Town Code, Chapter 15 Section 4.2.2.3 (h) Home occupations – Home occupations offering services to the public in Residence A are not considered home occupations. Music lessons and band practice does not fall under home occupations and is therefore deemed prohibited. The Building Commissioner further noted Section 4.2.1 which states that any use not specifically listed or otherwise permitted in a district herein established shall be deemed prohibited. The applicant requests that the Board of Appeals determine that the music lessons and band practice are an allowed use at the above mentioned location. A copy of the application may be seen daily except Friday afternoon in the Office of the Town Clerk.”

Mr. Sullivan would sit in on this matter.

Jonathan Kessler appeared before the Board to explain his circumstances. When he plays his instruments it has been recreational. Since COVID he has mainly given private remote piano lessons. Last year, he taught four students in his home. He just plays music for fun.

Mr. Saltzman asked what instruments were being played. Mr. Kessler responded that he played piano, guitar, base and drums. Mr. Saltzman asked if he used speakers or amplification. Mr. Kessler does at times. Mr. Saltzman asked Mr. Kessler if he thought he'd be in this position if it were just piano lessons. He also asked if the police had ever been called. Mr. Kessler agreed that he might not be there if it were just about piano lessons. He then stated that the police had come twice. Once on a Sunday at 4:30 and another Saturday at 7:00 PM. The Police didn't find there to be a problem given the times of day and they left.

Mr. Saltzman read a letter into the record from Attorney Adam Costa on behalf of his client Linda Salera who resides at 3 Dale Court. The letter supports the Building Commissioner's position.

In response to Mr. Costa's letter, Mr. Kessler stated that his bands that they had mentioned seeing online no longer exist. He explained that he never plays music before 8AM or after 9PM which he thought was reasonable.

Mr. Saltzman asked how close Mr. Kessler's house was to Ms. Salera's. Attorney Stephen Chaplin appeared on behalf of Linda Salera, 1 Dale Court as Attorney Costa was unable to attend. He explained that the houses are about eight feet apart with a driveway in between. He

indicated that Ms. Salera had been keeping a log of Mr. Kessler's music. He had played the drums and other instruments 2-3 times a month. There were even occurrences since the Building Commissioner rendered her decision.

Rick Volpe of 94 Franklin Street, an abutter to Mr. Kessler, spoke in support. He didn't have a problem with the drums. He mentioned that the noise from the Boys & Girls Club was worse. He even mentioned that the Boys & Girls Club has a band that practices on Sundays.

Linda Salera of 3 Dale Court stated that with all due respect to Mr. Volpe, her house was a lot closer. She also mentioned that the band sessions run for three or more hours. She's not complaining about piano lessons or even about the drums. She is complaining about the band sessions and the length of time they go on.

Mr. Saltzman asked when nobody is playing any music and it is quiet, whether she could hear people speaking in the house next door when the windows are open. Ms. Salera said that she cannot but if they were to shout she would hear the yelling.

Mr. Kessler responded that after he received the Building Commissioner's letter his band practices were all recreational. They were for fun. Referring to the band, there were months he didn't play at all. He mentioned that they didn't play every weekend. All in all it was probably ten times all year.

At this point, seeing no new comment from the public, Mr. Rubin made a motion to close the public hearing which was seconded by Mr. Sullivan. All members voted in favor 5-0.

Mr. Rubin believed that you should have quiet enjoyment in your home but sometimes you have to live with certain things in your neighborhood. That changes when the Building Commissioner receives a complaint.

Mr. Saltzman added that once it's looked at by the Building Commissioner, the law becomes the law.

Mr. McLaughlin mentioned that he is a former drummer. Growing up he played in his basement when nobody was home. He added that they do make rubber mats which will diminish the sound.

Mr. Sullivan stated that you don't have a right to infringe on other people. You cannot have band practice every weekend for 3-5 hours at a time.

Mr. Sullivan made a motion to grant the request to overturn the Building Commissioner's decision. Mr. Rubin seconded the motion. A roll call vote was taken. Sullivan, Rubin, Dufour and Saltzman voted against, McLaughlin voted in favor. The petition failed. 1 for-4 against.

Mr. Saltzman read the legal notice for 5 Wolcott Road into the record as follows:

"You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing THURSDAY EVENING, June 22, 2023 at 6:00 p.m. in the Hearing Room, Town Hall to hear all

persons interested in the application by Luis C. Figueroa and Martha Posada, of 7 Wolcott Road, Stoneham, MA for variances to build a new single family dwelling on the newly divided lot at 5 Wolcott Road, Stoneham, Massachusetts. The newly divided Lot A does not meet the minimum lot size or frontage and width requirements, as the previous variance granted for this Lot has expired. The required lot size in Residence A is 10,000 square feet. The proposed Lot A is 9,662 square feet. The minimum frontage and width in Residence A is 90 feet. The proposed Lot A frontage and width is 65.16 feet and 61 feet, respectively. A plan filed with the petition by Benchmark entitled, "Plan of Land 5 Wolcott Road, Stoneham, Mass.," dated May 25, 2023, shows the new divided Lot A with a footprint for a proposed new dwelling on Lot A. Plan may be seen daily except Friday afternoon in the Town Clerk's Office."

Mr. Russell would sit in on this matter.

Attorney Patrick Houghton appeared before the Board on behalf of the petitioners. He began by explaining that the Board had granted variances in 2019 after the property had been divided into 2 lots now known as 5 and 7 Wolcott Road. He further explained that although a variance had been granted for lot B and the decision had been recorded at the Registry of Deeds, the Building permit was not issued causing them to come back before the Board. He stated that the petitioners did not go forward with building because COVID caused the cost of building to rise dramatically.

Mr. Houghton indicated that the same hardship exists with the shape and topography of the land. There is not a substantial derogation from the intent of the bylaw nor a substantial detriment to the public good.

Mr. Saltzman asked if they were seeking the same variance as in 2019 when nobody appeared to speak in opposition. Mr. Houghton responded that was the case. Nothing had changed other than the petitioners not applying for the building permit due to the increased building costs due to COVID.

Mr. Saltzman opened the hearing up to the public. Christopher Hertzog of 3 Wolcott Road spoke in opposition. He wasn't able to be present at the hearing in 2019. He thought that the house might be set back with a long driveway. He didn't think it would be house next to house next to house. He also has concerns about drainage.

Mr. Houghton indicated that it meets the setback requirements and maybe they could put up a fence for privacy. He added that they will need to adhere to stormwater requirements.

Martha Posad, owner of 5 Wolcott mentioned that the neighbor at 3 Wolcott Road has a drain pipe that discharges onto their property. Patrick Houghton added that his client allowed that drainage and it meets stormwater requirements.

Rich King of 1 Wolcott Road since 1979 stated that he'd like to preserve the neighborhood.

Megan Jones of 221 Central Street stated that there are several new homes or newly renovated homes in the neighborhood. She welcomes another new home as it's good for the neighborhood and her property from an investment standpoint.

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

Mr. Dufour made a motion to accept as proposed. The lot angles in and he cannot see the benefit of pushing the house back. It doesn't derogate from the intent of the bylaw. It must comply with stormwater regulations. Mr. Rubin seconded the motion. A roll call vote was taken. All members voted in favor 5-0. (Russell, McLaughlin, Rubin, Dufour and Saltzman)

Mr. Saltzman read the final legal notice into the record as follows:

“You are hereby notified that the Stoneham Board of Appeals will hold a Public Hearing in the Hearing Room, Town Hall on THURSDAY EVENING, June 22, 2023, at 6:00 p.m., to hear all persons interested in the application by 25 Pond Street Realty LLC to demolish the existing two-family dwelling at 25 Pond Street, Stoneham, Massachusetts and divide the lot into two separate lots and construct a single family dwelling on each lot. Lot A will contain 6028 square feet and Lot B will contain 5742 square feet. Variances will be requested as follows of: Section 5.2.1 - Dimensional Requirements – Minimum frontage and width in Residence A is 90 feet. The frontage for the proposed Lot A is 60 feet and the proposed lot width is 61 feet. The frontage for proposed Lot B is 64.40 feet and the proposed lot width is 63 feet. Minimum lot size in Residence A is 10,000 square feet. The proposed Lot A size is 6,028 square feet; the proposed Lot B size is 5,742 square feet. The front setback requirement is 20 feet. The proposed dwellings on Lot A and Lot B will be setback a minimum of 14 feet. All dimensions are shown on a Plan entitled, “Plan of Land 25 Pond Street Stoneham, Mass. dated February 15, 2023 and prepared by Benchmark Survey. Plan may be seen daily except Friday afternoon in the Town Clerk’s office.”

Mr. Sullivan would sit in on 25 Pond Street.

Attorney Charlie Houghton appeared on behalf of his client Jason Kearney. Mr. Houghton began by explaining that 90-95% of the lots in the neighborhood do not comply with zoning in regard to the 10,000 square footage and 90 feet of frontage required. This lot was originally two lots in 1919. Mr. Kearney bought the house from his uncle. He wants to build a second single family home set back 14 feet like the existing house. Mr. Houghton stated that there would be no blasting of the ledge. His client would be using Dexpan, a product that breaks up ledge without blasting. He explained that you would drill holes, pour the Dexpan in and wait a few weeks at which time the ledge has broken apart.

Mr. Houghton continued to explain that the ledge is the hardship as well as the topography of the lot.

Mr. Saltzman read a letter in opposition from Colleen Hunt of 12 Raymond Road into the record.

Mr. Houghton responded that the lots have existed since 1919 before zoning regulations. He stipulated that there would be no blasting. They want to maintain 14 feet to minimize the amount of ledge that needs to be removed. The ledge starts 20-25 feet back from the road. Mr. Houghton added that there would be no basement. He indicated that 12 Raymond Road is

located behind 25 Pond Street and it is about thirty five feet higher. Mr. Houghton stated that the alternative would be to create a renovated two family and you'd now have a rental unit in the neighborhood. They thought two single family homes would be better for the neighborhood.

Mr. Saltzman asked if the Historical Commission had any interest in the property. Mr. Houghton indicated that he hadn't heard from MS. Wengen and the house had nothing of value.

Mr. Rubin asked if the lot next to the existing house was just a wide open lot. Mr. Houghton indicated that it was. Mr. Rubin then asked about the ledge. Mr. Kearney explained that the ledge starts 20 feet in from the sidewalk and then it goes up quick. Any relief towards the street helps. Mr. Kearney explained that the Dexpan just requires drilling and use of an excavator to remove the debris.

Marissa Kong-Nutu of 22 Pond Street asked about the parking for each house. How long construction would be?

Mr. Houghton stated that two spaces are required per single family home. Mr. Kearney explained that the Dexpan takes a couple days to drill and three weeks after pouring the Dexpan, you'd scoop out the crumbled ledge with an excavator.

Mr. Nutu of 22 Pond Street mentioned that Dexpan is temperature sensitive. Mr. Kearney was aware and explained that there are several kinds used for different conditions which he is aware.

Colleen Hunt from 12 Raymond Road was concerned that this would set a precedent and everyone would start cramming two houses onto a lot. Mr. Saltzman responded that nothing the Zoning Board of Appeals does is precedent setting. Each case is heard on its own merits.

Mr. Kearney explained why he needs to do this. The existing property cannot be maintained. It is impossible to mow the lawn. He wants to level everything off and straighten it out. Two houses will be more manageable to maintain.

Mr. Houghton stated that the hardship it's the 35 foot grade difference from the street it slopes up real quick and is ledge. There is also an economic aspect. This should improve the values in the neighborhood. He also mentions that if they do the two family which is allowed with an addition, they would still remove ledge. Again he stipulated to no blasting for the removal.

Eleanor Boyle of 28 Pond Street are pleased that they are doing something as long as there is no blasting.

James Ferrante of 23 Pond Street, a retired general contractor, believes that you can't bring in an excavator without causing problems. The steel cleats will vibrate.

Mr. Kearney stated that there is no proof in fact that an excavator will ruin a foundation.

Michael Michetti of 12 Raymond Road asked about the height of the house. Mr. Houghton no more than 30 feet is allowed.

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

Mr. Rubin understands the concerns about the excavator but mentioned that if the Town were to do work on the street, they'd bring in an excavator. He continued to say that he went by the existing house and he wouldn't want to live next to that house in its current condition. A new house would be good for the neighborhood.

Mr. Saltzman stated that nobody is disputing that Dexban is better than blasting except for the resident at 23 Pond Street's comments. Would removing 12 inch rocks do permanent harm?

Mr. Dufour has seen Dexban used. He indicated that it is a very controlled way of removing ledge. It's pretty impressive. He suggested a pre-work survey would protect the neighbors.

Mr. Dufour made a motion to grant the requested relief with the conditions that there would be no blasting as well a pre-work survey offered to the neighbors who request it. It does not derogate from the intent of the bylaw. There is clearly a hardship with the ledge that exists. It would serve the public good as it would add value to the neighborhood. Mr. Rubin seconded the motion. A roll call vote was taken. Mr. McLaughlin, Rubin, Dufour and Saltzman voted in favor with Mr. Sullivan voting against. Relief was granted 4-1.

Mr. Rubin made a motion to adjourn which was seconded by Mr. McLaughlin. All members voted in favor.

Meeting adjourned at 8:11 PM.

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 plot plan for 240 Hancock Street by Edward J. Farrell, Professional Land Surveyor dated April 13, 2023

A plot plan of 9 Middle Street by Thomas Bernardi dated May 30, 2023

A plan filed by Benchmark entitled, "Plan of Land 5 Wolcott Road, Stoneham, Mass.," dated May 25, 2023

A Plan entitled, "Plan of Land 25 Pond Street Stoneham, Mass. dated February 15, 2023 and prepared by Benchmark Survey.

A plan of land for 25 Pond Street by Benchmark Survey dated June 6, 2023.

A letter dated June 21, 2023 from Attorney Adam Costa opposing 1 Dale Court and supporting the Building Commissioner's decision.

A letter dated June 22, 2023 from Colleen Hunt of 12 Raymond Road in opposition of 25 Pond Street.