



TOWN OF WEST NEWBURY

381 Main Street, West Newbury, MA 01985

ZONING BOARD OF APPEALS

Meeting Minutes March 2, 2022

Approved 05-10-2022

APPLICANT(S): Alex & Dorothy Moerlein
OWNER(S): Alex & Dorothy Moerlein
ADDRESS: 40 Maple Street, West Newbury, MA 01985
ASSESSOR MAP: R-10 PARCEL: 45
DEED REF.: BK. 32257, PG. 238 DEED DATE: 3/1/2013,
DOC.# 2013030100366

ZONING DISTRICT: Res C, **REQUEST:** Finding for relief from Section 4.A.1 of the West Newbury Zoning Bylaw, specifically to allow for the removal of an existing screened in porch to allow for the extension of the pre-existing non-conforming structure (along the north side of the structure) northeasterly towards the rear of the non-conforming lot with a left side boundary offset distance of 18.8' and extending 38' with a proposed side offset of 19.2', and the removal of an existing free standing slab on grade 20'x24' garage that is located 2.8' and 3.0' from the right side boundary line on the south side of the property, the garage is proposed to be replaced by an attached garage that is proposed to be 9' from the (southern) right side boundary line. Located in a Residence B Zoning District which requires 150' of frontage, the non-conforming lot has a frontage of 71.45' and Existing Lot Area = 18,490 s.f. (20,000 s.f. Required), Existing Front Yard Offset = 18.8' (40' required), Existing Side Yard Offset = 5.3' and 18.8' (20' required).

Meeting Minutes of Hearing March 2, 2022 for:
Finding for relief from Section 4.A.1 requirements
Application of Alex & Dorothy Moerlein
40 Maple Street, West Newbury, MA 01985

Alex & Dorothy Moerlein, owner/applicant of the property located at 40 Maple Street, West Newbury, MA 01985, filed an application for a building permit for "House addition, replacing non-conforming garage", the West Newbury Building Commissioner denied the application on January 26, 2022, pursuant to Section 4.A.1 of West Newbury Zoning Bylaw. On February 1, 2022, Alex & Dorothy Moerlein, owner/applicant of the property located at 40 Maple Street, West Newbury, MA 01985, filed an application for a Finding for a relief from Section 4.A.1 of West Newbury Zoning Bylaw as per Section 8.A.1 and M.G.L. 40A §8. The Town Clerk's Office was closed at the time that the Board of Appeals application was submitted and was date stamped by another Office in Town Hall on Feb. 01, 2022, subsequently the Town Clerk date stamped the Board of Appeals application the following day on Feb. 02, 2022, Town Counsel has opined that the application was properly filed on Feb. 01, 2022. The applicant's proposed changes are listed above and are clearly depicted on the submitted Certified Plot Plan, originally

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dated: January 31, 2022 and with later revisions dated: March 07, 2022 and April 18, 2022 prepared by William G. Holt, PLS, RS, SE. and on ASB Architecture First Floor Addition (A1) and Addition Elevations (A2) plans dated Feb. 01, 2022, and two perspectives 3D Massing Model of the proposed addition dated February 01, 2022.

West Newbury Zoning Board of Appeals Chairman Paul O. Kelly opened the public at 7:00 PM on Wednesday, March 2, 2022. In attendance were, Chairman Paul O. Kelly, members: Richard Davies, Kim Monahan Borgioli, Dennis Lucey, and Patrick Higgins (PH arrived late). It is duly noted that requirements for publication & posting, and notice of the public hearing on the application for Finding were sufficiently met.

Attorney Philip Schreffler of the Law Office of Finneran & Nicholson, and Aimee S. Bentley, AIA + LEED AP, of ASB Architecture represented the Moerlein Family. The owner/applicants, Dorothy Moerlein was in attendance at the meeting and Alex Moerlein, participated on zoom remotely. Attorney Schreffler and Aimee Bentley introduced to the Board the layout of the current home and existing garage & driveway, and site constraints and where the proposed addition with the attached garage would be, and that the proposed building would be in keeping with the neighborhood, reduce some existing non-conformities while allowing for future access to septic system in the rear, will provide benefits to the neighborhood as the proposed addition to the home will not be more detrimental to the neighborhood, and will add curb appeal and increase property values.

Alex & Dorothy Moerlein had submitted a letter describing the reasons for the requested relief (existing dwelling location & layout of the existing non-conforming garage, driveway, septic tanks & system and need for addition to house aging Family), the Certified Plot plan prepared by William G. Holt, PLS, showing the existing non-conforming home & garage, as well as the proposed new addition and attached garage First floor plan (A1), Elevation plan (A2), floor layout design plans prepared by Aimee Bentley, of ASB Architecture. It was noted that the applicants/owners were planning on fully removing the slab on grade free standing garage and the attached screened porch area at the rear of the structure to allow for the construction of the addition to the rear of the existing home structure by extending the structure 38 feet towards the rear of the property.

Discussion related to the pre-existing non-conforming slab on grade free-standing garage that is proposed to be torn down, concerns related to needing a Variance for the proposed new location of the attached garage were raised, Sam Joslin the Building Inspector supported that if the Board of Appeals felt that what was proposed in the application was not more detrimental than a Finding was sufficient. Attorney Schreffler supported this opinion.

The differences in relation to an addition, and one and two family residences were reviewed by the Board with Sam Joslin, the Building Inspector and Attorney Schreffler. If the proposed addition is approved, the West Newbury Board of Health will require the main house to have a deed restriction to three bedrooms and require changes in the original house structure to reduce to three bedrooms as the proposed addition will have one bedroom, with a total of four bedrooms. The septic system is designed for four bedrooms. Attorney Schreffler and Architect

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Bentley discussed and responded to issues raised by the Board members related to the application. The addition will maintain single billing for utility services, one water bill, one gas bill, and one electric meter. Any attempt to separate the addition into separate unit would require pulling permits through the Building Department to separate utilities, as confirmed by the Building Inspector, Sam Joslin. The proposed storage area located over the proposed addition is accessed from the attached garage and the need for the storage area is attributed to the wet conditions in the current basement.

The Chairman then allowed questions and comments from the public. People in attendance were asked to channel questions and comments through the chairman. Fifteen members of the public were present.

Brandon Conn, Trustee of the Conn Household Trust located at #38 Maple St., submitted a letter in opposition to the proposed addition and that it is not in keeping with 20 historic homes on Maple Street. Brian Conn, a directly abutting resident of #38 Maple Street, raised concerns about a septic tank for service and pumping with the proposed 8.4' side yard setback, was concerned about the view of the addition and rain runoff from the proposed addition. Brian & Claudia Conn, residents of #38 Maple Street, submitted a letter in opposition to the application and are opposed to applicants' proposal, in their opinion due to the doubling of the size of the structure and scope of the project on a non-conforming 0.45 acres lot. The Conn's seemed adamantly opposed to application and felt that the scale and style of the proposed addition are not in keeping with the neighborhood of historically significant homes, saturated the neighborhood, and is significantly more detrimental to the neighborhood. Another concern the Conns expressed is that Maple Street is being considered for Registry of Historic homes and this does not fit with size of most homes on Maple Street. The letter included a list of home owners, home addresses, including the year built, the lot size, and the total square feet of homes. Mr. Conn said that his analysis included unfinished areas. Brian Conn also submitted a "Petition to Deny Finding Authorization Addition", which described the request from the applicants of 40 Maple Street for a Finding from the Zoning Board of Appeals, and stated that "We the residents of West Newbury urge the board to deny the request made by the residents of 40 Maple Street. The petition was signed by 19 people that listed their residents in locations on Maple Street or in close proximity. Brian Conn raised additional concerns related to storm water management, referred to the addition as an apartment and asked if it was going to be deed restricted to permanent affordable housing, other deed restrictions, a definition of a two family home that is not defined in the zoning bylaw.

Attorney Schreffler and Architect Bentley responded to questions and comments. Board members asked about need to address the abutters concern about roof runoff and drainage. Sam Joslin also responded with answers to questions and comments, and said this may need to be reviewed during site plan development review and that no net runoff is allowed onto abutters property, that this site does not trigger storm water management or site disturbance review. Typically roof run off is not a concern, and may need to be addressed due to distance to the direct abutter's property. The Conservation Commission may review issues.

One directly abutting residence sent a letter of support dated February 28, 2022, Timothy & Jessa Haynes, of #42 Maple Street, fully support and have no concerns regarding the application. This letter was read aloud by Paul Kelly the Chairman.

Another nearby residence (4 doors down from the Moerlein) sent a letter of support dated February 14, 2022, Katie Oslin, of # 58 Maple Street, fully support the proposed addition and felt it was similar to many other homes in the neighborhood and was not detrimental. This letter was read aloud by Paul Kelly the Chairman.

Neighboring residents that were in attendance at the hearing and spoke against the relief requested.

- 1) Brian & Claudia Conn, of #38 Maple Street, opposed to the application and their comments are summarized previously above.
- 2) John Durant, #32 Maple Street, opposed the application and felt it was too much and presented and discussed the history of Maple Street, it's build out over time and the historic nature and look of neighborhood. A resident of Maple Street since 1975, Mr. Durant read his comments related to the number and age of homes built over time, and that the charm of the homes on Maple Street are due to being in size and keeping with the rest of the Street.
- 3) Jill Eichhurst, lived at #56 Maple Street since 1968, is opposed to the application and concerned about the size of the addition and felt it was too much building on a small lot and is not in keeping with the neighborhood.
- 4) Claudia Conn, of #38 Maple Street, read a letter from Brandon Conn, Trustee of the Conn Household Trust located at #38 Maple St., submitted a letter against the proposed addition and that it is not in keeping with 20 historic homes on Maple Street.

While Mr. Durant was reading his comments, the Board observed that Brian Conn started to video tape them and asked Brian Conn to stop, Mr. Conn informed the Board that he had informed them at the start of the meeting that he was recording the meeting and is allowed to audio and video tape the public meeting, the Board Chair was aware that Mr. Conn was using devices to audio record the entire meeting and understood it to mean audio only, as he was not video recording the entire meeting, it seemed subjective, the Board said they would review with Town Counsel and respond. Mr. Conn continued to video tape at will during the meeting and simultaneously was recording audio for the entire meeting. After further the clarification with the Board Chair, it is duly noted that Brian Conn and Dennis Lucey were both recording the meeting. (It is noted that Board member Higgins arrived late to the hearing and had not noted this previously)

Attorney Schreffler and Architect Bentley responded through the Chairman to the public questions and comments, and continued to respond to questions from the Board.

Dick Cushing commented on the need for wetland permitting and drainage concerns.

Attorney Schreffler questioned if Brian and Claudia Conn had legal standing as abutters since their son, Brandon Conn, was the Trustee of the Conn Household Trust located at #38 Maple

Street. Brian & Claudia Conn were asked if they had reserved themselves a life estate in the home that is owned by the trust, and Brian stated that they did.

Discussion and questions related to the proposed addition being ADA compliant, as well as reference to case law related to the height of the proposed addition and garage roof heights, Architect Bentley confirmed that the proposed heights would be compliant with zoning requirements.

It was noted that the existing lot is nonconforming due to be pre-existing nonconforming status with regard to: a) lot frontage being 71.45' (150' required), b) lot area is 18,490 s.f. (20,000 s.f. required), c) the existing nonconforming single family home structure with a front offset to the street line being 18.8' (40' required), and d) a side offset to the boundary line being 5.3' and 18.8' (20' required).

The applicant proposes to demolish the existing nonconforming garage structure that is built on a slab of concrete on grade. The existing garage accessory building is nonconforming to side yard setbacks as it is located 2.8' and 3.0' from the right-side boundary line.

The applicant seeks a Section 6 Finding to allow the extension of the preexisting nonconforming house structure to the rear and the razing of a free-standing accessory garage structure to be rebuilt and attached to the right side of the proposed home addition. The proposed attached garage would have an improved offset distance of 8.4' to the right-side boundary line (southern), the existing pre-existing non-conforming garage is currently located 2.8' and 3.0' from the (southern) right side boundary line.

After affording all interested parties present an opportunity to speak on the application for the Finding for relief in the application, Chairman Paul Kelly stated if there was no further discussion that he would call for a motion to approve the request for the finding for relief, Rick Davies made a motion to approve the request for the Finding and Kim Monahan Borgioli seconded the motion, and Chairman Kelly called for a vote

West Newbury Zoning Board of Appeals members voting: Chairman Paul O. Kelly, Richard Davies, Kim Monahan Borgioli, began the voting process, however voting was stopped, out of an abundance of caution, by members Dennis Lucey and Patrick Higgins who both requested that the vote be tabled until further legal guidance could be obtained from Town Legal Counsel.

A motion to suspend the vote was moved and seconded, and voted 5-0 to suspend the vote that was started.

A motion to continue the hearing while seeking Town Legal Counsel guidance was moved and seconded, and voted 5-0 to continue the hearing (inadvertently no continuance date was set, which required future reposting and mailing of notifications of the meeting date, time, place by the Town).

It was noted that the hearing was not closed prior to the initial motion for a vote, and as such people in attendance at the next meeting for this application would be allowed to present as the hearing is still open and will be continued.

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The ZBA decided not to review and discuss the amended Meeting Minutes for the following hearing: West Newbury ZBA Meeting Minutes for 40 Maple Street application that was previously withdrawn without prejudice dated: 11-03-2021, 12-08-2021, 01-19-2022, No Vote.

A call to adjourn the meeting was seconded, Voted 5-0 to close the meeting, Meeting was adjourned at 9:06pm. Respectfully submitted, Patrick Higgins, ZBA Member.