



TOWN OF WEST NEWBURY

381 Main Street, West Newbury, MA 01985

ZONING BOARD OF APPEALS

Meeting Minutes April 6, 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 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 April 6, 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 dated: 01/31/2022 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 02/01/2022.

West Newbury Zoning Board of Appeals Chairman Paul O. Kelly continued the public hearing at 7:05 PM on Wednesday, April 6, 2022. In attendance were, Chairman Paul O. Kelly, members: Richard Davies, Kim Monahan Borgioli, Dennis Lucey, and Patrick Higgins. It is duly noted that the Board voted to continue the hearing during the previous hearing but inadvertently did not set a date for the continued hearing. As such the next meeting had to be posted in the newspaper and at Town Hall, and the Town mailed the notices of the meeting to the abutters. It is duly noted that requirements for publication & posting, and notice of the public hearing on the application for Finding were sufficiently met.

It is duly noted that Brian Conn notified the Chairman of the Board that he was recording the meeting, and duly noted that Dennis Lucey was to audio record.

Patrick Higgins and Dennis Lucey, separately reviewed legal questions with Town Counsel and each independently submitted public disclosure of appearance of conflict of interest, as per M.G.L. Ch. 268A, §23(b)(3), and submitted to the appointing Authority (Select Board) and Chairman of the Appeals Board.

Attorney Douglas Deschenes of the Law Office of Finneran & Nicholson, and Aimee S. Bentley, AIA + LEED AP, of ASB Architecture represented the applicants Alex & Dorothy Moerlein. The owner/applicants, Alex Moerlein was in attendance at the meeting. Attorney Deschenes and Aimee Bentley reviewed the reasons for the request for the Finding. The Family needs the addition to the pre-existing non-conforming structure to make room for the elderly parents to live with them and age in place in an integrated setting. Attorney Deschenes reviewed existing and proposed dimensional offsets and reduction of 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 substantially more detrimental to the neighborhood, and will add curb appeal and increase property values. No new non-conformities proposed, while reducing some existing dimensional non-conformities. Discussed that for the Board of Appeals to approve the Finding, that they must find that the proposed addition “is not substantially more detrimental” to the neighborhood. The proposed addition will: a) meet lot coverage requirements, b) be architecturally aesthetically appealing, c) reduce some existing non-conformities, d) be ADA accessible for elderly parents to age in place, e) allow for future access to septic system in the rear.

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 to raze the slab on grade free standing garage and raze the attached screened porch area located at the rear of the existing home structure, this will allow for the construction of the addition to the rear of the existing home structure by extending along the

pre-existing non-conforming left side of the structure 38 feet towards the rear of the property. The existing rear left corner of the home is 18.8' from the left side boundary line and the 38' addition will start at that location and where the addition ends will be offset 19.2' from the left side boundary line. The proposed attached garage was initially proposed to be 8.6' & 8.4' from the right-side boundary line and the applicants have agreed to move the right side of the proposed garage so that it is proposed to be 9' offset from the right side boundary line.

The Board asked if the applicants Alex & Dorothy Moerlein were open to 1) any type of mitigation to minimize visual impact to the direct abutter, such as arborvitae or green scape to make a visual buffer and 2) increase the side offset from the proposed garage to the right side boundary line from 8.6' & 8.4' to 10' to allow for access service septic system components. Architect Bentley responded that 9.0' (nine feet) for an offset to side boundary line could be achieved, Attorney Deschenes responded that he thought 9.0' seemed reasonable as most parking spaces are that wide and the applicants agreed to move the right side of the proposed attached garage so that it is proposed to be a minimum of 9' offset from the right-side boundary line, as related to the green buffer he wanted to reserve agreeing to anything until later in the meeting.

Attorney Adam Costa representing Brian & Claudia Conn, expressed concern about the size and scope of the project, and then began referring to issues related to the previous application that was withdrawn without prejudice in January. Attorney Costa also expressed that the proposed addition and use is actually a second family dwelling unit that is being incorrectly called an addition, the proposed use increases the intensity of use and is substantially more detrimental to the neighborhood. He further stated, in his opinion, the standard for a Finding is too subjective that there are no statutory guidelines, and described the property as a substantially non-conforming property. Attorney Costa referred to Brian Conn's analysis that was submitted at the previous meeting that clearly showed difference from the neighborhood, and how the certified plot plan graphically speaks volumes as it clearly depicts that the proposed addition is sizeable and a doubling the size of the structure. Attorney Costa said he would save arguments for the courts, referred to what the Courts have said in similar cases, he then distributed a handout containing three case law examples that he felt were relevant. The hand out case law supported concerns with the proposal, concerns with size and scale and intensity use of the proposed addition.

Attorney Douglas Deschenes, responded to Attorney Costa's comments: a) that the applicants are not doubling the size of the home, they are razing a garage and screened porch to add 732 square feet addition to the home, b) the case law cited in the hand out and during the meeting would need to be reviewed before comment, c) the proposed addition does not exceed the Town Lot Coverage limitation. Attorney Deschenes noted that it is up to the Board to determine based on the information provided whether the proposed addition is substantially more detrimental or not, and that he does not know the facts of case law submitted. Attorney Deschenes noted that the applicants Alex and Dorothy Moerlein are amenable to discussing a green buffer in the area along the 38' long proposed addition with the neighbor, by planting three native trees that would grow to be 10-12' diameter and grow to a height of 20-25'. This would provide a reasonable buffer, provided that there is no appeal by the abutters. Attorney Deschenes expressed that this was a demonstration of good faith and reiterated that if the abutters appeal, then he felt the proposed tree planting would not be acceptable and the requirement to plant them punitive.

It is noted that the existing lot is nonconforming due to be pre-existing nonconforming status with regard to lot frontage being 71.45' (150' required), lot area is 18,490 s.f. (20,000 s.f. required), and the existing nonconforming single family home structure with a front offset to the street line being 18.8' (40' required) and 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 proposed addition to the rear as an extension of the preexisting nonconforming home structure, with the current screened porch and accessory garage structures to be razed, and the proposed garage to be attached to the proposed addition and reduce right side line non-conforming offsets.

West Newbury Zoning Board of Appeals members voting: Chairman Paul O. Kelly, Richard Davies, Kim Monahan Borgioli, Dennis Lucey and Patrick Higgins.

After affording all interested parties present an opportunity to speak on the application, a motion to close the hearing was moved and seconded, and voted 5-0 to close. Eight members of the public were present.

Rick Davies made a motion to approve the request for the finding, Kim Monahan Borgioli seconded the motion, the relief requested in the application is from the Town of West Newbury Zoning By-Law Section 4.A.1, as depicted on the design plans and as permitted under Section 8.A.1 of the Zoning Bylaw and Section 8 of M.G.L. Ch. 40A, requires the majority of the Board finding that the proposed application shall not be substantially more detrimental to the neighborhood than the existing nonconforming use, MGL, Section 6 Finding.

The Board began deliberations, members that supported the motion stated their reasoning: Dennis Lucey stated there was decrease in non-conformity, the application reflects the historical nature of the connected structures in the neighborhood and rural farming communities, and that the side line offsets decreased from existing non-conformities. Rick Davies stated that years ago the house was previously increased in size to allow for mixed generations living together and that this application represented a similar goal of allowing parents to age in place. Kim Monahan Borgioli stated that the addition will be a huge enhancement to the neighborhood and add value.

Chairman Kelly called for a vote to approve the motion, The Board Voted 4-1, Chairman Paul O. Kelly, Richard Davies, Kim Monahan Borgioli, and Dennis Lucey all voted in favor, and Patrick Higgins voted against. Therefore, a majority of the Board voted to grant the applicant's request for a Finding of relief from the Town of West Newbury Zoning By-Law Section 4.A.1 as requested in the application for the reasons set forth above, with said stipulation of recording the Decision at the Registry of Deeds after the twenty (20) day appeal period and submission of the revised Certified Plot Plan to be archived in the Town Clerk Zoning Board of Appeals plan file a requirement.

After the appeal period, this Decision dated April 6, 2022 shall be stamped by the Town Clerk and recorded at the Essex South District Registry of Deeds.

The ZBA reviewed and discuss the amendments to the Draft Meeting Minutes for the previous hearing that had been withdrawn without prejudice: 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, Reviewed and A motion to accept the meeting minutes with discussed edits and amendments was made and seconded, Voted 5-0 to approve Meeting Minutes with edits, at 8:14pm.

A call to adjourn the meeting was seconded, Voted 5-0 to close the meeting, Meeting was adjourned at 8:20pm. Respectfully submitted, Patrick Higgins, ZBA Member.