



**TOWN OF WINCHESTER
ZONING BOARD OF APPEALS
Town of Winchester Town Hall, 338 Main Street
P. Francis Hicks Room – 2nd Floor
August 22, 2017 – 7:00PM
Regular Meeting Minutes**

1. CALL TO ORDER:

Vice Chairman Mike DeClement called the meeting to order at 7:02PM.

2. ROLL CALL:

Mr. DeClement reported that a quorum of the board was present: Mike DeClement, Neil Hunt, John Massicotte, John Pollack and Alternates Phillip Allen, Richard Nalette, and Hal Wilkes.

Additionally, Mr. DeClement noted that Dave Villa was absent excused. Mr. Nalette was seated for Mr. Villa.

Also, present for this meeting was Zoning Enforcement Officer/Building Inspector Marc Melanson and Director of Planning and Community Development/Zoning Enforcement Officer Steve Sadlowski.

3. EXPLANATION OF PROCEDURE:

Mr. DeClement explained that approval by the Zoning Board of Appeals requires four votes of the five members seated hearing an application. He explained that while a variance requires an applicant to present and explain a hardship, a Special Permit does not.

4. PUBLIC HEARINGS:

A. ZBA#17-5183 Request for Special Permit – Expansion of Non-Conforming Structure at 124 Shore Drive for Richard Fitzgerald.

Richard Fitzgerald, accompanied by his contractor Matt Closson, appeared before the board regarding this application. Mr. Fitzgerald explained that he has a growing family and is therefore seeking approval to add a couple of bedrooms to the home he has occupied since 1982. He noted that he has approached his neighbors who have all indicated their favorable support for his proposal. Mr. Fitzgerald explained that his intent is to complete the work during the winter months.

Mr. DeClement questioned the dimensions of the deck and the changes to coverage. Mr. Closson explained that the 440 square feet of impervious pavers currently in place under the deck will be replaced with pervious pavers. He noted that the 64 square-foot impervious walkway from the driveway to the house will also be removed. Mr. Closson reported that Mr. Melanson had indicated that a bond will likely be necessary to ensure that the pervious pavers are installed and noted that the applicant is agreeable. Mr. DeClement questioned the plus-or-minus indicated in the percentage figures for coverage. Mr. Sadlowski explained that the plus-or-minus is likely a result of a slight bow or something similar due to the pavers not being exactly straight. He noted that with the drawings being an A2 survey, the rendering is very close. Mr. Melanson concurred.

Mr. Closson noted that the discrepancy with the application and original drawings has been clarified with a subsequent submitted drawing, confirming that the proposed addition will be two stories.

Mr. DeClement opened the hearing up to public comment. None was made.

MOTION: Mr. DeClement, Mr. Nalette second, to close the public hearing in the matter of ZBA#17-5183 Request for Special Permit – Expansion of Non-Conforming Structure at 124 Shore Drive for Richard Fitzgerald; unanimously approved.

The Public Hearing was closed at 7:17PM.

The agenda was modified in that Agenda Item 5.A. *Old Business: ZBA#17-5183 Request for Special Permit – Expansion of Non-Conforming Structure at 124 Shore Drive for Richard Fitzgerald* was acted on immediately upon closing the public hearing on the same.

MOTION: Mr. Hunt, Mr. Nalette second, to grant a Special Permit for Application #17-5183, to construct a new 12'x20' two-story addition according to drawings. New addition will not encroach any closer to property lines than existing home. Existing impervious surface will be reduced by use of pervious pavers; unanimously approved.

The agenda was modified in that discussion and testimony regarding the *Modification of Variance* regarding 142 Laurel Way occurred prior to the *Request for Special Permit – Accessory Apartment* at that location.

B. ZBA#17-5185 Request for Modification of Variance #15-2653.

Alain and Jacqueline Jacques accompanied by their attorney Mark Malley of 30 Main Street, Thomaston appeared before the board regarding this application. Attorney Malley explained that a variance was granted in 1998 whereby his clients were granted approval to construct a garage with the condition that no apartment shall be on the second floor. Attorney Malley noted that in 1998, that condition was not exclusive to the garage but was the condition for the whole town of Winchester as the Zoning Regulations had not allowed such a use. He explained that in the recently adopted new Zoning Regulations, it is an allowed use and therefore moots the variance from 1998. He explained that the request to modify the variance is to allow it to conform to the Zoning Regulations as written now. Mr. DeClement noted that the applicants had asked to do it at that time and were turned down. Attorney Malley indicated that they had not asked. Mr. DeClement agreed but noted that the condition was included as part of the approval. Attorney Malley noted that his clients had not read their approval but explained that there is a regulation that addresses this which would make it not inappropriate to have an accessory apartment whereas in 1998, it would have been. Mr. Melanson noted that he recalls from the approval that when granting the variance, the Zoning Board of Appeals at the time wanted no living space above the garage and were not referring to an apartment. Living space could have been a den or living room and not necessarily an apartment, according to Mr. Melanson.

Attorney Malley explained that as apartments would be permissible now, he questioned why this property should be singled out to not allow an accessory apartment. Mr. Hunt explained that the problem this Board has with the request is that the apartment has already been put in and permission is being sought afterwards. Mr. Nalette explained that when the variance was granted, the condition was for no living space. As he recalled, the condition was imposed so as to not change the character of the neighborhood with this detached garage. If living space was allowed, Mr. Nalette explained, the result would be like a two-family use.

Mr. DeClement likened the situation to a person who has a medical condition that necessitates medical marijuana. He noted that up to a couple years ago, that person if caught in possession, would be arrested. Attorney Malley noted that given the example cited by Mr. DeClement, if the variance had read, "no medical marijuana to be grown on the property", it would have been silly because medical marijuana could not be grown anywhere. Now it would be allowed and this property should not have the exclusion when everyone else could by Special Permit, according to Attorney Malley.

When asked about what hardship exists, Attorney Malley indicated that the hardship is that every other residence in town would be allowed an accessory apartment. The Board disagreed, noting that the garage was constructed outside the setbacks which is why the applicants needed the variance in the first place.

Mr. DeClement questioned the size of the accessory apartment, noting the limit in the Zoning Regulations of a maximum of 900 square feet. Mr. Melanson explained that the applicant has presented with an application indicating that it is under 900 square feet and should the size of it exceed that, the applicants would need to return to seek another variance. Mr. DeClement noted that what is presented is over 900 square feet. Mr. Melanson indicated that the applicants would have to remove living space if it does indeed exceed 900 square feet.

Mr. DeClement questioned the deck on the back of the garage. Attorney Malley referenced the written legal opinion received from the Board's counsel, Attorney Kevin Nelligan, noting that the flyover, the historical aerial photograph, of the site supports the finding that the deck would be considered legally non-conforming as it has been there more than three years.

Mr. DeClement opened the hearing up to public comment at 7:31PM.

Richard Meole of 140 Laurel Way, noting that he has resided there since 1972, spoke in opposition to the application. He explained that with the addition of a deck on the northside of the building, there is currently about twenty-two (22') feet from his property line. Mr. Meole explained that while the apartment might be allowed under the current Zoning Regulations, it was constructed without any proper permits. He also addressed the square footage as calculated by the footprint of the garage exceeding what would be allowed. Mr. Meole objected to the idea of having two separate families living on the parcel, sharing his concern that this could affect the value of his property.

Debra Stewart, explaining that she is a realtor representing the applicants in the sale of this property, reported that the people currently in a contract to purchase it have indicated that they intend to have an older parent occupy the accessory apartment. Ms. Stewart also pointed out to the Board that the Assessor's records reflect knowledge of this apartment and noted that the Town has been collecting taxes on it for several years. She shared the assumption made by realtors in terms of what they find in the Tax Assessor's office.

MOTION: Mr. Hunt, Mr. Nalette second, to close the public hearing in the matter of ZBA#17-5185 Request for Modification of Variance #15-2653; unanimously approved.

The public hearing was closed at 7:49PM.

The agenda was modified in that Agenda Item 5.C. *Old Business: ZBA#17-5185 Request for Modification of Variance #15-2653* was acted on immediately upon closing the public hearing on the same.

MOTION: Mr. Hunt, Mr. Massicotte second, to grant Variance #17-5185 to modify Variance #15-2653 to allow living area above the garage; Motion failed with Mr. DeClement, Mr. Hunt, Mr. Massicotte, Mr. Pollack and Mr. Nalette opposed.

C. ZBA#17-5184 Request for Special Permit – Accessory Apartment at 142 Laurel Way for Alain and Jacqueline Jacques.

It was noted that by denying the Modification of the Variance at this location, the Board would be unable to grant the request for a Special Permit to allow the accessory apartment.

MOTION: Mr. Hunt, Mr. Nalette second, to grant Application #17-5184 for an accessory apartment; Motion withdrawn.

MOTION: Mr. DeClement, Mr. Hunt second, to reopen the public hearing in the matter of ZBA#17-5184 Request for Special Permit – Accessory Apartment at 142 Laurel Way for Alain and Jacqueline Jacques; unanimously approved.

Mr. Meole reiterated the concerns he previously shared during the public hearing relative to the modification of the variance application.

Attorney Malley noted that the Zoning Regulations address the concerns shared by Mr. Meole regarding occupancy, noting that the owner of the property must occupy one of the dwelling units as their principal residence. Attorney Malley also dismissed the comments made regarding the effects on the property values, noting that the use has been occurring since 2008.

Darlene Buzzi, no address provided, indicated that she and her fiancé are the prospective buyers of the property. She noted that their plans do not include renting the garage space out to anyone but instead to provide living space there for her future mother-in-law.

Ms. Jacques addressed the board, explaining that the sheds identified on the survey were constructed where they were due to a misunderstanding with where exactly the property line is noting that the home's well is located directly on the property line.

MOTION: Mr. DeClement, Mr. Nalette second, to close the public hearing in the matter of ZBA#17-5184 Request for Special Permit – Accessory Apartment at 142 Laurel Way for Alain and Jacqueline Jacques; unanimously approved.

The public hearing was closed at 8:08PM.

5. OLD BUSINESS:

C. ZBA#17-5184 Request for Special Permit – Accessory Apartment at 142 Laurel Way for Alain and Jacqueline Jacques.

MOTION: Mr. Hunt, Mr. Nalette second, to grant Application #17-5184 for a Special Permit – Accessory Apartment at 142 Laurel Way; Motion failed with Mr. DeClement, Mr. Hunt, Mr. Nalette, Mr. Massicotte and Mr. Pollack opposed.

6. APPROVAL OF MINUTES – JULY 25, 2017 REGULAR MEETING:

MOTION: Mr. Hunt, Mr. Nalette second, to approve the July 25, 2017 Minutes; Motion passed with Mr. Hunt, Mr. DeClement, Mr. Pollack, Mr. Allen, and Mr. Wilkes voting aye while Mr. Nalette and Mr. Massicotte abstained.

7. OTHER BUSINESS:

No business was discussed.

8. BILLS PRESENTED:

No business was discussed.

9. CORRESPONDENCE:

No business was discussed.

10. DISCUSSION WITH ZONING ENFORCEMENT OFFICER (IF ANY).

No business was discussed.

11. ADJOURNMENT:

MOTION: Mr. DeClement, Mr. Hunt second, to adjourn at 8:15PM; unanimously approved.

Respectfully submitted,

**Pamela A. Colombie
Recording Clerk**