



**TOWN OF WINCHESTER  
ZONING BOARD OF APPEALS  
Town of Winchester Town Hall, 338 Main Street  
P. Francis Hicks Room – 2nd Floor  
July 25, 2017 – 7:00PM  
Regular Meeting Minutes**

**1. CALL TO ORDER:**

Chairman David Villa called the meeting to order at 7:02PM.

**2. ROLL CALL:**

Mr. Villa reported that a quorum of the board was present: Mike DeClement, Neil Hunt, and Alternates Phillip Allen and Hal Wilkes.

Additionally, Mr. Villa noted that John Massicotte, John Pollack and Alternate Richard Nalette were absent excused.

Mr. Allen and Mr. Wilkes were seated for Mr. Massicotte and Mr. Pollack.

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. Villa gave a brief overview of the procedure, explaining that approval of a Variance or a Special Permit requires four affirmative votes by the Board. A brief review of the difference between variances and special exceptions was provided. He noted that applicants usually receive a disposition on the application the evening of the meeting. Mr. Villa explained that the proceedings include the applicant's opportunity to provide information regarding the application, a chance for the Board to question the applicant, a chance for members of the public to question the applicant, as well as closing comments by the applicant. Mr. Villa also explained that either the Board or the applicant may request that the hearing remain open for four weeks until the next meeting should there be additional or supplemental documents to the application. Additionally, Mr. Villa explained that unlike variance applications, consideration for a special permit application does not require the determination of a hardship.

**4. PUBLIC HEARINGS:**

**A. ZBA#17-5182 Request for Variance from Section II.B.2.ii – Side Setback at 619 East Wakefield Boulevard for Magdalena Kruk.**

Matt Closson appeared before the Board along with his client, applicant Magdalena Kruk. It was noted that receipts verifying that proper notice to abutting land owners had been received from the applicant.

Mr. Closson reminded the Board that approval had been received in March of 2015 for a variance for a 30'x28' garage attached to the house with a 12'x15' breezeway. He explained that the applicant deems the area to be tight in terms of getting vehicles in and out of that area. Mr. Closson explained that a solution to that problem was to move the garage to the south side of the property, where the turnaround would have to be excavated and build the garage in that area. He noted that it would mean being

eighteen (18') feet off the side yard boundary. Coverage was discussed, with Mr. Closson noting that these plans will include reducing the amount of impervious coverage.

With regards to a question of hardship, Mr. Closson explained that the slope of the land creates a difficulty in turning vehicles around, noting that retaining walls will be necessary as well as an addition to the amount of impervious coverage.

In reply to a question from Mr. Villa regard the applicant's intention for the second floor of the garage, the applicant indicated that it is for storage and is not intended for living space.

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

The Public Hearing was closed at 7:15PM.

**MOTION:** Mr. DeClement, Mr. Hunt second, to grant a Variance for Application #17-5182 to modify Variance #15-5154 south sideyard setback variance of seventeen feet for the 30'x26' garage with storage area above; Motion failed with Mr. Villa, Mr. Hunt, Mr. Allen and Mr. Wilkes opposed while Mr. DeClement abstained.

Prior to the vote on the preceding motion, discussion on the application had occurred. Mr. DeClement noted that if the applicant were to construct the garage in the middle of the lot, there would be no need for a variance. Mr. Wilkes indicated that it appeared the space above the garage would be used for a residence, noting the window does not resemble something that will be used only for storage. Mr. Villa noted that he did not see a problem with the topography of the land.

It was noted that the reason for denial of approval of the variance application was due to lack of hardship.

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

Mr. Sadlowski explained that this application needs to be continued because it is still pending before the Inland Wetlands and Watercourses Commission.

The Public Hearing was opened in this application. Mr. DeClement questioned whether this application should be considered as part of a variance application. He noted that one part of the application reflects the proposal to be for a one-story building while another portion of the application represents it to be a two-story building.

**MOTION:** Mr. Hunt, Mr. Allen second, to ZBA Application #17-5183 to the next regular meeting on August 22, 2017 at 7:00PM; unanimously approved.

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

Alain and Jacqueline Jacques appeared before the Board regarding this application. Ms. Jacques explained that in 2008, her son and his wife were expecting a baby and their home was too small. The Jacques had intended to move into an apartment over the garage thereby allowing the son's family to occupy the main house. She noted that his family situation did not work out and that presently, no one lives in the main house. Mr. Villa read aloud the Variance granted for this property on August 26, 1998, noting that what was approved at that time was, "...a fifteen-foot side yard setback to build a garage twenty-eight feet width, forty-eight feet deep, twenty-eight point six feet high, twelve feet by twenty-eight feet attached one story pole barn type shed with open floor. Second floor not to be used as living space..." In response to inquiry from Mr. Villa as to whether she recalled receiving this, Ms. Jacques indicated she did not.

Ms. Jacques confirmed that it is being occupied, that there is running water, and septic. Mr. Villa noted that this Board's interests lay with ensuring that people comply with the Zoning Regulations.

It was noted that the Board members received a copy of the engineered septic system plans. Ms. Jacques attempted to provide a copy of an A2 survey but Mr. Villa explained that he does not accept "paper over the counter".

Mr. Melanson noted that the Variance indicates "No Living Space" and that at the time that the variance was approved, there was living space allowed in certain areas and therefore the applicant should be seeking a modification of the variance. Mr. Wilkes noted that he finds it disturbing that the work was installed without permits.

Mr. Villa opened the hearing up to public comment.

Richard Meole of 140 Laurel Way, noting that he has resided there since 1972, spoke in opposition to the application. He explained that he was aware of the original 1998 variance application and was surprised with what the end-result was, noting that the Jacques have added onto the original design along with the addition of a deck on the northside of the building. He noted that they are currently about twenty-four (24') feet from his property line. Mr. Meole explained that should the applicants receive approval and sell their home, he could be faced with two families living at this location. He opined that should the variance be approved, it will induce a hardship to his own property.

John Aurelle (no address given) identified himself as party to a current contract to buy the subject property. He explained that he and his fiancé will reside in the apartment and his mother will reside in the main dwelling. Mr. Aurelle reported that the Town has been assessing the garage at a value of \$160K and that the applicants have been paying taxes on this for years. He also shared his belief that as the applicants have been living in the apartment for eight years, that there must be a statute of limitations. He noted that he is agreeable to installing an engineered septic system, too.

Debra Stewart, explaining that she is the realtor for the sellers, explained that when listing the property, and after a visit to the Town Assessor's Office, the property was marketed as having living space over the garage because the field card indicated the same. She explained that the appraiser acknowledged the living space over the garage from the town records. Mr. DeClement questioned whether the square footage measurements on the field card are the same as what is there. Ms. Stewart indicated that is not the case. She noted that her point is that professionals rely upon the field cards and that there was no flare to indicate differently. Ms. Stewart explained that the discovery was only made after multiple offers to purchase were received, the other unsuccessful prospective buyer complained to Torrington Area Health District which ultimately resulted in a Cease and Desist Order.

Mr. Hunt questioned how long ago the changes were made. Mr. Jacques noted that they began in 2008. Ms. Jacques indicated that they moved in during 2009. Mr. Hunt questioned whether there were building permits taken out. Ms. Jacques indicated there was but Mr. Melanson indicated that there was one for the garage but with storage area above and explained that they were never closed out and had never received approval for occupancy.

The public hearing was closed at 7:48PM.

**MOTION:** Mr. DeClement, Mr. Hunt second, to grant Special Permit Application #17-5184 for an Accessory Apartment; Motion withdrawn.

Prior to the withdrawal of the preceding motion, discussion by the Board ensued.

Mr. Hunt questioned whether accessory apartments were allowed in 1998. Mr. Villa did not think so. Mr. Wilkes questioned why there was a septic system repair plan. Mr. Sadlowski explained that the septic

system that is there presently does not meet today's requirements and in order to obtain a Special Permit for this type of use, sign-off must be received from the Health District. This proposed work as part of this septic plan will update the septic system.

Mr. Villa shared his concerns with the structure, the septic system, and no Certificate of Occupancy. He opined that a change to the variance is also necessary. Mr. Sadlowski explained that the applicants could apply for a variance or a modification to the variance to address some of the other issues for the next meeting. Mr. Allen questioned what would be required with the property to bring it into compliance should the application be denied. Mr. Sadlowski noted it would require demolition work.

The deck off the garage was also noted as needing to be addressed.

**MOTION:** Mr. Hunt, Mr. DeClement second, to continue this application to the next regularly scheduled meeting; unanimously approved.

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

**MOTION:** Mr. DeClement, Mr. Hunt second to approve the April 25, 2017 Minutes; unanimously approved.

**7. OTHER BUSINESS:**

Noting the email he received regarding ZBA Application #17-5184, Mr. DeClement questioned why the application had erroneously been filed with the Planning and Zoning Commission before coming to this Board. Mr. Sadlowski explained that it was a mistake.

**8. BILLS PRESENTED:**

No business was discussed.

**9. CORRESPONDENCE:**

No business was discussed.

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

It was noted that this Board received a copy of the latest revised Zoning Regulations effective July 24, 2017.

**11. ADJOURNMENT:**

**MOTION:** Mr. Hunt, Mr. Wilkes second, to adjourn at 8:07PM; unanimously approved.

**Respectfully submitted,**

**Pamela A. Colombie**  
**Recording Clerk**