

Zoning Board of Appeals

Public Hearing

June 29, 2022, 7:00pm

Attendees:

Board: Amy Fagin, Wayne Hachey, Bruce Dunbar

Minutes by: Hugh Mackay

In attendance:

Roll Call: Jeanne Casey, Chris Lowman, Mark Goldstein, Michael Pill, Brian Casey, Peter Fisher, Vincent Barletta, Sue Arnold, Steven Schoenberg, Gladys Kim Noyes, Lisa Finestone,

Meeting Call to Order, 7:00pm by Amy Fagin ZBA Chair

Reason for Public Hearing: Petition for a Variance by Chris Lowman in relation to the property located at 37 South Main St, New Salem, MA 01355 seeking approval. Petition was filed May 4, 2022.

Opening review : ZBA has been requested for a public hearing twice on the building modifications in question. The first appeal was in response to relief for special permit approval for an extension of a non-conforming lot. Today's hearing is for a petition for a variance for these same modifications.

Opening: Read aloud

Petition to ZBA

ZBA requested Town Council recommend whether it is lawful for us to hear this matter a second time. Atty McCay opinion confirmed that the petition is requesting relief from 8:4:b in our zoning bylaws, which has a "higher bar" and generally considered more difficult to meet.

Review understanding and legal issues from the Massachusetts Handbook of Land Use Planning Law.

8:4:b has to meet the prerequisites for

Unusual Circumstances Affecting Land or Structures Affecting:

1 shape

2 topography

3 conditions affecting structure

Hardship: must be of substantial hardship, nexus must exist

Substantial detriment to the owner (effect)

Amy asks petitioner to review request

Mark Goldstein read aloud his review of memorandum for variance criteria. He cites reasons for variance request: Height of elevator tower; Two structural additions to a building within the side yard setback; extension of stone retaining wall. Atty Goldstein sites substantial hardship given the "historic

nature” of the building, its age and location on the property which are unique and not shared generally within the zoning district.

Vincent Barletta comments: height of tower and design could have been lower with flat roof that would not have been aesthetically pleasing, could have put in a flat roof, and could do by flattening roof to meet zoning regulations. The petition was previously granted as a special permit by the planning board under the towns zoning bylaws 7:a:3, “extension of a non-conforming lot”.

Side off set to meet with fire suppression equipment location, could be anywhere but worked best in the location. Vincent Barletta commented that there are so many other buildings in town that do not meet the codes or have any fire suppression. The tanks are located in the garage and extended garage to keep space.

Issues drove the request for variance.

Review of Conditions to meet -Discussed by Amy Fagin

Understanding that the previous appeal was approved for the issuance of a building permit based on the Planning Board’s issuance of a special permit.

It was reviewed that the ZBA was unsure as to why a second request to review the same building revisions when a building permit was already issued.

Mark Goldstein- Special permits were submitted to planning board, approved and resulted in two appeals that are now in land court. It was recommended by the court that procedure should dictate that this relief should be sought by petition through the ZBA.

Atty Goldstein acknowledges that the variance is a higher standard than the previous ZBA matter.

Atty Pill comments as co-counsel of the abutters review of 6/28 memo that the standards are not sufficiently argued to approve a variance.

Amy comments on the relief sought for hardship purposes in the memo attached to the petition. It appears that the hardship is self-created given that the builder completed the work before permits and zoning matters were appropriately sought.

Mark Goldstein response: Understands this is a difficult standard to meet, they did not create the hardship, Barletta has been in construction for a long time, life and safety conditions were significant considerations as to why would they move these features. He reviewed again the building was constructed prior to the zoning by laws, and location of parts were important to client.

Amy comments on the change of use within a zoned residential area, the hardship must exist as a nexus of the unique conditions of the property and its relationship to hardship for relief for these building modifications.

Brian Casey questioned why garage expansion? Mention of the safety apparatus.

Barletta response: Front and the rear of the garage was expanded, there is no great impact, the expansion was to meet the fire prevention apparatus to flow and function properly. The design was extended for proper function. The roof of the elevator could probably be made flat like the New Salem Academy building but it would not be pleasing or fit into the structure. The deck in rear was extended

due to the elevator, there was always a wall and patio there. The stone wall was installed and extended where the old existing stone wall used to be to give aesthetics and function.

Brian Casey: Read his personal statement aloud. He commented that this would be a great facility on 30 acres, town common is for all of town members, this is a private business for profit, not all residents. They continue to build without regards to permits or regard to the town. Comments on the new structure on the patio scaling 20 feet into the air along Fisher property which is on the set back. What is the purpose of this structure? Barletta needs to explain as none of these are in the drawings. Bylaws must be enforced, if not in the future builders will know it is ok to breach as it won't be enforced. Barletta knew the laws and went ahead anyway. Planning board and ZBA approved despite the public concerns. They did not follow the laws.

Barletta: comments the structure is a fireplace, was not in the plans nor was a permit sought.

Casey asked: Is this to cook and serve food?

Barletta: response is "no".

Kim Noyes: Comments : She reviewed zoning of Main St. This petition expands the use of area in violation of established zoning regulations, and recommended that the variance not be granted.

Atty Pill makes comments that all documents should be reviewed by town counsel. Amy comments that counsel has already reviewed and we read the response out loud.

Phil Delory comments that a fireplace or a wall on residential property does not require his review or a permit. As a resident you do not need to file for a permit for outdoor fireplace construction

Atty Pill comments that Barletta company did all of this at their own risk, they built before petitions or appeals were discussed or concluded, they knew what they were doing and continued to move forward. Now they claim hardship.

Amy asked for other questions:

Question by Barletta: How many variances have been issued in town?

Response: Dunbar: 3-4 maybe since 2013

Amy now moves to deliberation:

Barletta comments again that the roof could be flat like NSA but it would not look good

Dunbar comments/questions: if grant or deny what then happens? No responses.

Amy comments that this question is not relevant to the ZBA vote.

Dunbar puts forward that if Barletta has more information to share to support request, do they need more time?

Goldstein understands the prerequisite statutory criteria required to meet variance approval. He is willing to go back and spend time rewording the petition.

Brian Casey comments that Barletta is a corporation and knew the laws and regulations, they knew the rules.

Mr. Goldstein responded he has been with Barletta Corp since 2019.

Barletta comments he explained this all to counsel and working with on the special permit.

Amy questions ZBA members if ready to consider vote.

Amy questions ZBA on their opinions:

Wayne Comments that it was clear that this petition did not meet the criteria for granting a variance based on unusual circumstances affecting land or structures or hardship for any of the three variance requests (elevator tower height; additions to structure within the side yard setback; new stone retaining wall constructed in place of existing stone wall with additional footage within the side yard setback.)

Amy agrees that the variance criteria were not met for any of the three requests.

Bruce: Reiterated that the petitioners may want more time to re-word their petition to better meet with the variance statutory criteria.

Amy reminds Bruce that the petitioned underlying reasons expressed by the memorandum for the variance petition would not change, nor could they meet the criteria set forth in the variance prerequisites as defined in the Handbook of MA Land Use and Planning Law on Variances.

Bruce agrees that the petition could not adequately be reworded to reasonably meet the statutory factors needed to grant a variance.

Amy makes motion to deny the petition for a variance on all three counts, Bruce seconds motion.

All three members, Wayne Hachey, Bruce Dunbar and Amy Fagin unanimously vote to deny the petition for a variance before ZBA.

Variance is denied.

No further comments

Meeting adjourned: 8:19pm

Meeting minutes respectfully submitted by: Hugh W Mackay