



TOWN OF WEST NEWBURY

381 Main Street, West Newbury, MA 01985

ZONING BOARD OF APPEALS MEETING MINUTES 05-10-2022

Approved 09-20-2022

ZBA Members in attendance: Chairman Paul O. Kelly, members: Richard Davies, Kim Monahan Borgioli, Patrick Higgins, and Remote attendance on Zoom was Dennis Lucey. Zoom login/setup was delayed and once performed the hearing proceeded at 7:09pm. Noted that Kim Monahan Borgioli was operating the computer for zoom during the hearing and was making an audio recording. Also duly noting that Brian Conn was in attendance and had notified the Chairman that he would be recording the meeting.

Remote Participation: Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L.ch. 30A 18, and Pursuant to Chapter 22 Of the Acts of 2022, "An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency", Approved by the Governor, June 16, 2021, which extended permissions for boards and commissions to conduct remote meetings, this meeting of the West Newbury Zoning Board of Appeals was conducted in person and via remote participation to the greatest extent possible.

West Newbury Zoning Board of Appeals Chairman Paul O. Kelly opened the public hearing at 7:00 PM on Tuesday, May 10, 2022. Zoom login/setup was delayed and once ready the hearing then proceeded at 7:09pm.

1st Hearing:

May 10, 2022 for: Finding for relief from Section 4.A.1 requirements as per Application of Robin Pendergast of 613 Main Street, West Newbury, MA 01985

APPLICANT(S): Robin Pendergast

OWNER(S): Robin Pendergast and Daryl Journey, as joint tenants

ADDRESS: 613 Main Street, West Newbury, MA 01985

ASSESSOR MAP: R-22 PARCEL: 7

DEED REF.: DEED BK. 36118, PG. 346

DEED RECORDED DATE: 08/22/2017,

DOC.# 20170822002480

PLAN REF.: Plan BK. 454, PLAN 46 of 2016, Essex.So.D.R.D.

ZONING DISTRICT: Res C,

REQUEST: Finding for relief from Section 4.A.1 of the West Newbury Zoning Bylaw, specifically to allow for the existing single-family dwelling located at 613 Main Street, West Newbury, MA be converted to a two-family dwelling. The proposed change in use is on a pre-existing non-conforming structure. The Dwelling was built circa 1880 and is

located 14.7' from the street right of way, current zoning requires a 40' front offset from the street right of way. The current lot frontage is 153.05' (lot 2 on ANR Plan Book 454, Plan 46 of 2016) and the lot area is 47,687+/-SQR.FT. and is located in a Residence Zoning District which requires a minimum lot frontage of 150' and a minimum lot area of 20,000 SQR.FT.

It is duly noted that requirements for publication & posting, and notice of the public hearing on the application for Finding were sufficiently met.

Robin Pendergast, owner/applicant of the property located at 613 Main Street, West Newbury, MA 01985, submitted an application to convert the pre-existing nonconforming single-family dwelling, the West Newbury Building Commissioner denied the application on February 9, 2022 pursuant to Section 4.A.1 of West Newbury Zoning Bylaw. On March 10, 2022, Robin Pendergast, owner/applicant for the property located at 613 Main Street, West Newbury, MA 01985, filed an application for a Finding for a relief from Section 4.A.1 of West Newbury Zoning Bylaw. The applicant proposes to convert a single-family dwelling into a two-family dwelling.

Robin Pendergast, owner/applicant, introduced to the Board the layout of the current home and existing garage & driveway, and ample off-street parking, the septic is for four bedrooms, and the fact that the building footprint would not be enlarged. Robin Pendergast described the reasons for the request for the relief, the topography and building locations and the frontage and lot area of Lot 2 (613 Main Street) were reviewed on the sanitary disposal system for site plan for Lot 1. It would be a substantial hardship **not** to allow the conversion of the single-family dwelling into a two-family dwelling (allowed by right in zoning district) within the existing dwelling structure, as the owner/applicant wishes to continue to afford to retain ownership and maintain residence. It would be a substantial hardship if the requested findings for relief from Section 4.A.1 of West Newbury Zoning Bylaw requirements were not approved. The existing dwelling structure (1880) is not changing and is in keeping with the nature & harmony of the neighborhood.

Materials Supplied & Reviewed: A completed ZBA Application for a Finding, Inspectional Services Denial Letter from the Building Commissioner, Assessor Map, Assessor card listing and Patriot Properties listing, sketch of the site and buildings prepared by the owner, photos of inside of the home, Cammett Engineering Site Plan for Lot #1 (new lot next door), which also depicts Lot #2 (locus at #613),

Abutter Comments: The Chairman then allowed questions and comments from the public. People in attendance were asked to channel questions and comments through the chairman. eight members of the public were present. Neighboring residents that were in attendance at the hearing (in person and via zoom) raised concerns about current noise, septic system, non-conformity of the lot, parking, traffic and Main Street traffic related the relief requested.

Residents Tim and Loretta Harrigan of 608 Main Street were in attendance brought up their concerns related to noise from trucks that occurs at times and concerns that noise could increase, and questioned about if there was enough off street parking, they asked if there were any plans

for changes outside (none), and if there were any fire code issues, and questioned if the lot had the correct frontage if Finding to allow conversion to two family would allow for future conversion into duplex condominium.

Resident Jennifer Brockway-Peirce of 614 Main Street attended via zoom and brought up questions related to noise, number of visitors and house guests at times, questioned if the garage was actually used, and if the septic system was adequate, if there was one or two kitchens, and starting asking questions of a personal nature that were not pertinent to the hearing at hand and the Board re-directed focus.

Robin Pendergast, owner/applicant, responded to the questions and comments. Robin Pendergast expressed that she did not know there was any issues with the neighbors and that she would address the abutters concern about noise from her son and his friends when he is home from school and asked that they reach out to her in future to work it out directly.

FINDINGS: A majority of the Board concluded that (1) the house is a pre-existing nonconforming structure built in 1880 and is located on a lot with the required zoning frontage and area, that is located closer to the street right of way than the minimum front yard zoning setback of 40 feet, (2) that the location and layout of existing home & garage being in keeping with the rest of the neighborhood, (3) that the existing structure already has two kitchens, (4) the existing septic system is designed for four bedrooms and the house currently has four bedrooms and will continue to have only four bedrooms, (5) the home had previously been occupied as a two-family dwelling, (6) there is sufficient evidence of hardship to the applicant to justify granting the relief, given there will be no structural changes or additions to alter the outside appearance or aesthetics of the dwelling, that the septic system is sufficient for the number of bedrooms, and that the interior reconfiguration will be done so without impact to the neighborhood while allowing for the applicant to continue to afford to retain ownership and residence, (7) and that granting the proposed finding for relief from the Town of West Newbury Zoning By-Law Section 4.A.1 shall not be a substantially more detrimental to the neighborhood. The Board made this determination based upon the fact that the Finding for relief would not alter the essential character of the neighborhood and would be in keeping with the purpose and intent of the bylaw. As stipulated by the Board, the Applicants/Petitioners shall have the West Newbury Zoning Board Decision recorded at the Essex So. District Registry of Deeds, and proof of recording will be submitted to the Building Commissioner, Town Clerk and the West Newbury Zoning Board of Appeals.

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

DECISION: 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. Chairman Paul O. Kelly called for a motion. Rick Davies made a motion to approve the request for the Finding, Kim Monahan Borgioli seconded the motion, a Finding 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, as per MGL, Section 6 Finding.

The Board began deliberations, members that supported the motion stated their reasoning, two members expressed their desire to continue the hearing so that the neighbors' concerns could be addressed, the motion was amended to address concerns of the neighbors, with the following four items being reviewed as a condition: (1) The locus reference plan will be reviewed to confirm whether the lot is non-conforming due to frontage or lot area, the Approval Not Required Plan recorded at the Registry of Deeds as Plan Book 454, Plan 46 of 2016 (ANR Plan) has been reviewed and the locus lot is found to be conforming as to frontage and area, only the pre-existing structure is non-conforming in the front offset distance listed above, (2) the Sub-Surface Disposal System will be verified to be designed for a four bedroom dwelling and if the septic system can be shared if the dwelling is turned into condominiums, the subsurface disposal system has been confirmed to be a four bedroom septic system and can be shared, the Board of Health requires a deed restriction stating that the building is a two-family dwelling with only two bedrooms in each unit for a total of four bedrooms, be recorded at the registry of deeds and proof of recording shall be provided to the Town Clerk and Board of Health, (3) verify that a "Finding" is the appropriate way to legally convert single-family to a two-family dwelling, this has been confirmed with the Building Commissioner, (4) If the two-family dwelling is approved, neighbors are concerned that the two-family dwelling could be converted to condominium units and if there is any review involved and what is required legally as far as structure and utilities if turned into condominiums, the two-family dwelling can be converted to condominiums without further review by the Town as ownership of units is not determined or regulated the Town, when deeds are recorded at the registry of deeds, the Town receives a copy to update the database and assessing information.

Chairman Kelly called for a vote to approve the amended motion, The Board Voted 3-2, Chairman Paul O. Kelly, Richard Davies, Kim Monahan Borgioli voted in favor, and Patrick Higgins and Dennis Lucey 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 conditions to be reviewed and with the stipulation of recording this Zoning Board of Appeals Decision and a Board of Health deed restriction stating that the building is a two-family dwelling with only two bedrooms in each unit a requirement, and proof of recording the deed restriction a requirement, the board voted to grant the Finding for relief to the Petitioners with said conditions to be reviewed and required stipulations, therefore, the motion carried. The Board therefore granted the requested Finding for Relief from the Town of West Newbury Zoning By-Law Section 4.A.1 requirements, as requested in the application and with listed conditions and stipulations. Decision dated May 10, 2022.

APPEALS: Appeals, if any, of the above Decision shall be filed pursuant to M.G.L. Ch. 40 § 17, and shall be filed within twenty (20) days after the date of filing of this notice in the Office of the Town Clerk.

RECORDING: After the appeal period, this Decision shall be stamped by the Town Clerk and recorded at the Essex South District Registry of Deeds and shall not be effective until such time as evidence of said recording of the Decision and Board of Health deed restriction for two-family dwelling with two bedrooms in each unit shall be submitted to the West Newbury Town Clerk,

and the Health Agent, the Buildings Commissioner and West Newbury Zoning Board of Appeals.

West Newbury Zoning Board of Appeals Chairman Paul O. Kelly opened the next public hearing at 8:00 PM on Tuesday, May 10, 2022, and remote participation via zoom was continue.

2nd Hearing:

May 10, 2022 for: Finding for relief from Section 4.A.1 of the West Newbury Zoning Bylaw, As per application of Robert R. Scally, LLC, owner/applicant of the property located at 13 Turkey Hill Road, West Newbury, MA 01985

APPLICANT(S): Robert R. Scally, LLC

OWNER(S): Robert R. Scally, LLC

ADDRESS: 13 Turkey Hill Raod, West Newbury, MA 01985

ASSESSOR MAP: R-19 PARCEL: 11

DEED REF.: DEED BK. 40575, PG. 23

DEED RECORDED DATE: 12/14/2021,

DOC.# 20211214005460

PLAN REF.: Plan BK. 363, PLAN 9 of 2002, Essex.So.D.R.D.

ZONING DISTRICT: Res A,

REQUEST: Finding for relief from Section 4.A.1 of the West Newbury Zoning Bylaw, specifically to allow for the existing single-family dwelling located at 13 Turkey Hill Road, West Newbury, MA to be razed and to reconstruct a new single-family dwelling. The proposed change is on a pre-existing non-conforming lot, which makes the structure non-conforming. The current lot frontage is 189' and the lot area is 21,642+/-SQR.FT. and is located in a Residence Zoning District which requires a minimum lot frontage of 200' and a minimum lot area of 80,000 SQR.FT.

It is duly noted that requirements for publication & posting, and notice of the public hearing on the application for Finding were sufficiently met.

Robert R. Scally, LLC, owner/applicant of the property located at 13 Turkey Hill Road, West Newbury, MA 01985, submitted an application to raze and reconstruct the pre-existing nonconforming single-family dwelling, the West Newbury Building Commissioner denied the application on March 8, 2022 pursuant to Section 4.A.1 of West Newbury Zoning Bylaw. On March 28, 2022, Robert R. Scally, LLC, owner/applicant for the property located at 13 Turkey Hill Road, West Newbury, MA 01985, filed an application for a Finding for a relief from Section 4.A.1 of West Newbury Zoning Bylaw.

Robert Grasso, PLS represented the applicant Robert R. Scally, LLC, owner/applicant, and introduced to the Board the layout of the current deteriorated 3-bedroom home and existing garage & driveway, and the 1998 3-bedroom septic system that was inspected on 12/14/2021, and the fact that the new 3-bedroom dwelling would be located on the lot to meet zoning offset requirements from front, side and rear yard offset. Robert Grasso, PLS described the reasons for the request for the relief, the current deteriorated 3-bedroom home condition. It would be a

substantial hardship **not** to allow the razing of the deteriorated dwelling and reconstruction of the single-family 3-bedroom dwelling and the that the new reconstructed home would have a positive impact on the neighborhood and be of benefit. It would be a substantial hardship if the requested findings for relief from Section 4.A.1 of West Newbury Zoning Bylaw requirements were not approved. The proposed single family 3-bedroom dwelling structure is in keeping with the nature & harmony of the neighborhood, and will be compliant with front, side and rear zoning offsets to the boundary lines.

Materials Supplied & Reviewed: A completed ZBA Application for a Finding, an Application to raze and reconstruct the single family dwelling, Elevations plans of the proposed new dwelling, Inspectional Services Denial Letter from the Building Commissioner, Assessor map, Patriot Properties Assessing card, Site Plan of Land for 13 Turkey Hill Road prepared by Engineering Land Services, LLC.

The Chairman then allowed questions and comments from the public. No one from the public spoke, and no one raised concerns or objections.

Robert Grasso, PLS and Robert R. Scally, LLC, owner/applicant, responded to the questions and comments from the board.

FINDINGS: A majority of the Board concluded that (1) The proposed single family 3-bedroom dwelling structure is in keeping with the nature & harmony of the neighborhood, (2) and will be compliant with front, side and rear zoning offsets to the boundary lines, (3) that the existing structure is in visible disrepair, (4) the new reconstructed home would have a positive impact on the neighborhood and be of benefit, (5) and that granting the proposed finding for relief from the Town of West Newbury Zoning By-Law Section 4.A.1 shall not be a substantially more detrimental to the neighborhood. The Board made this determination based upon the fact that the Finding for relief would not alter the essential character of the neighborhood and would be in keeping with the purpose and intent of the bylaw. As stipulated by the Board, the Applicants/Petitioners shall have the West Newbury Zoning Board Decision recorded at the Essex So. District Registry of Deeds, and proof of recording will be submitted to the Building Commissioner, Town Clerk and the West Newbury Zoning Board of Appeals.

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

DECISION: 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. Chairman Paul O. Kelly called for a motion. Kim Monahan Borgioli made a motion to approve the request for the Finding, Rick Davies seconded the motion, a Finding 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, as per MGL, Section 6 Finding.

The Board began deliberations, members discussed their support of the motion and reasoning, Chairman Kelly called for a vote to approve the motion, The Board Voted 5-0, Chairman Paul O. Kelly, Richard Davies, Kim Monahan Borgioli, Patrick Higgins and Dennis Lucey voted in

favor, and none voted against. Therefore, 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 a requirement, the board voted to grant the Finding for relief to the Petitioners with said required stipulations, therefore, the motion carried.

The Board therefore granted the requested Finding for Relief from the Town of West Newbury Zoning By-Law Section 4.A.1 requirements, as requested in the application and with listed stipulations. Decision dated May 10, 2022.

APPEALS: Appeals, if any, of the above Decision shall be filed pursuant to M.G.L. Ch. 40 § 17, and shall be filed within twenty (20) days after the date of filing of this notice in the Office of the Town Clerk.

RECORDING: After the appeal period, this Decision shall be stamped by the Town Clerk and recorded at the Essex South District Registry of Deeds and shall not be effective until such time as evidence of said recording of the Decision shall be submitted to the West Newbury Town Clerk, and the Buildings Commissioner and West Newbury Zoning Board of Appeals.