

2019 NOV -7 PM 2:48

**TOWN OF BELMONT
ZONING BOARD OF APPEALS
MEETING MINUTES**

October 7, 2019

Present: Nick Iannuzzi, Chair; Jim Zarkadas, Vice Chair; Andrew Kelley; Casey Williams;
Andrew Plunkett; Phil Ruggiero; Craig White

Absent: Teresa MacNutt

Staff: Kevin Pickering, Building Inspector

1. CALL TO ORDER 7:00 PM

Mr. Iannuzzi called the meeting to order and introduced the Zoning Board members. He noted the order of the meeting and asked the audience members to sign-in if they were planning to make a statement. He also noted that Case No. 19-35 would not be reviewed at this meeting.

2. CONTINUED PUBLIC HEARINGS:

- a. CASE NO. 19-21 – TWO (2) Variances**
307 Pleasant Street (SRB) – Iris Ponte and John Hugg

Mr. Iannuzzi read the public notice.

Mr. Michael Brangwynne, Attorney, came before the Board to present the plans for the detached garage at the Henry Frost School and residents. He passed out aerial photographs of the property and described the proposed location for the garage. He noted that the proposed detached garage was in line with the historical characteristics of the neighborhood and it would not be a detriment to the neighborhood. He also noted that the placement of the garage would allow for emergency access to the children. He stated that there were several letters of supports including one from the Massachusetts Department of Early Education and Care. He reviewed the proposed materials for the detached garage and noted they would maintain the historical integrity of the property.

Mr. Brangwynne reviewed a supplemental memo that was submitted to the Board. He stated that it was the Applicant's position that based on Massachusetts General Law Chapter 40A, section 6 the standard that the Board should be considering was

not that of two Variances but that of a Special Permit. He briefly discussed a legal analysis of the case, Gloucester vs. Gale, and explained that this case stands for the legal position of the Applicant where there was an extension of the preexisting nonconforming use being that the rear addition that predates the zoning code to the rear setback, where that preexisting nonconforming use was already there. He noted that it was inappropriate where they are seeing the existing nonconforming use for the By-Law to be applied. He continued by saying that the definition of the Belmont Zoning By-Law states that where there was an accessory structure which comes past the rear of the preexisting nonconforming use, it triggered a requirement in the Zoning By-Law that the By-Law applies and creates these Variances. He noted that he and his clients were taking the position that under the Gale vs. Gloucester case, this case suggested that the Variance shouldn't apply and what should apply was that the Board should just be looking at Chapter 40A, section 6 in finding no substantial detrimental result of the extension or alteration creates a nonconforming use and the Court specifically said that that finding stands alone as sufficient to proceed with the proposed project. That being the case he noted that the testimony will show no substantial detriment or under the findings that require the Board to grant the two variances and he believed that all of the conditions have been satisfied.

Mr. Brangwynne noted the conditions for hardship as the fact that the preexisting nonconforming use was there and created a safety concern for a detached dwelling. Also, the traffic conditions along Pleasant Street created a condition to this property that required a Variance. With respect to substantial hardship, there was no other feasible place to construct the dwelling that was safe and he believed that safety was recognized as a basis of substantial hardship. Under either standard (Variance or Special Permit), Mr. Brangwynne noted that he felt that all of the conditions had been met in order for the grant to the Special Permits or the Variances.

The Board noted that there were no hardships presented for soil issues, topography issues or lot shape, the three hardships that would allow for a Variance to be granted.

Mr. Iannuzzi asked that a copy of the memo should go to Town Council for a read through. He didn't feel that the Board could make the determination of the standard on their own. If Mr. Brangwynne was saying that the Applicant can do this through a special permit because it was the extension of a nonconforming use based on the Gale case that he would feel more comfortable having a memo from Town Council saying that this was correct or not. This was a relatively new argument and the Board would need to vote on one of the other, a Variance or a Special Permit. He noted that the Applicants would need to ask Ara Yogurtian to have Town Council review the memo and come back to the Board for review.

[At 7:20 pm, Mr. Brangwynne left the meeting to consult with the Applicants.]

The Board reviewed Case No. 19-32 while they were waiting for Mr. Brangwynne to consult with his clients.

Mr. Iannuzzi recalled case No. 19-21 at 7:25 pm.

Mr. Brangwynne stated that he would like to proceed as advertised with the Two Variances and to ignore the supplemental memo. The Board noted that there would be a two year wait to reapply if the Variances were denied and that the case would have to be re-noticed as a Special Permit if the Town Council found that as appropriate to review as Special Permit and not as a Variance.

Mr. Iannuzzi opened the meeting up to public comment.

No one spoke in opposition.

Claire Kamenski, Lead Teacher at the program, noted that she needed access to the garage and access to vehicles through the driveway was important as this was the safest location. She was in support of the garage. She noted that Dr. Ponte will continue to support the community with this garage.

Mike Schlabach, 301 Pleasant Street, adjacent neighbor, spoke in support of the garage and spoke very highly of the Frost School. This would benefit the neighborhood overall and the business was very low impact.

Karla Bays, 480 Pleasant Street, her children have attended the Frost program. The environment was idyllic and beautiful and the children feel safe. Dr. Ponte was wonderful and meticulous about the safety of the children. She fully supported the building of the garage.

Laura and Dave Dozer, 313 Pleasant Street, neighbors to the west. Noted that Dr. Ponte took great care of the property and they have never had any problems with the business.

Simone Andetto, 63 Simmons Avenue, lives behind the property and she doesn't have an issue with the placement of the garage. She noted that there was a fence and landscaping to mitigate noise and she was happy about the safety of the kids.

Yolanda Liu, 125-127 Lewis Road, her children have attended the Henry Frost School and she was in support of the garage. She noted that there was a lot of care for the space and it was a high-quality education.

Iris Ponte, Applicant, came before the Board to ask for their support. She noted that the garage will store cars and better stuff for the school and be a model for other programs. The existing house was covered under the Demolition By-Law that will protect the house so that it cannot be torn down in the future. She described the outdoor classroom and the aesthetic of the playground. She noted that there was no on street parking.

Mr. Iannuzzi stated that the case would be continued to the next hearing in November 2019.

3. PUBLIC HEARINGS:

a. CASE NO.19-32 – ONE (1) SPECIAL PERMIT
23 Harriet Ave. (GR) Valerie Duff and Jacob Srautmann

Mr. Iannuzzi read the public notice.

Jane Grover, Architect, came before the Board to present the project. She noted that her clients would like to ask for a special permit to construct a dormer. She reviewed the plans and the materials in the packet. The proposed addition was a third story addition.

Mr. Iannuzzi noted that this would not be more detrimental to the neighborhood.

No one spoke in favor or opposition of the petition.

Mr. Iannuzzi closed the public portion.

The Board deliberated and voted.

**MOTION to approve was made by Mr. White and seconded by Mr. Iannuzzi.
Motion approved, vote 5-0.**

b. CASE NO.19-33 – ONE (1) Special Permit
303 Marsh Street (SRA) – Jennifer and Bob Carter

Mr. Iannuzzi read the public notice.

Joe Hibbard, Landscape Architect, came before the Board requesting a special permit to create a functional front yard driveway. He introduced the Applicants, Jennifer and Bob Carter. Mr. Hibbard presented a large-scale plan of the proposed driveway

and the landscape plan. He reviewed how the plans had met all of the zoning requirements.

No one spoke in opposition or support

MOTION to approve was made by Mr. Iannuzzi and seconded by Mr. Zarkadas. Motion approved, vote 5-0.

[Mr White left the meeting at 8:03 pm.]

- c. CASE NO. 19-34 – ONE (1) Special Permit
11 Edward Street – (SRC) Richard and Jessica Hartley

Mr. Iannuzzi read the public notice.

Richard and Jessica Hartley, Applicants, came before the Board to state their case, seeking a special permit to construct a porch with a Roof Deck. He described his proposal and noted how they had met all of the zoning requirements for the project. He noted that they had received support from the surrounding neighbors. He noted that the new deck would not be detrimental to the neighborhood and the porch would match the others in the neighborhood.

The Board deliberated and voted.

MOTION to approve was made by Mr. Kelly and seconded by Mr. Zarkadas. Motion approved, vote 5-0.

4. Adjourn 8:15 PM.