



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

1099 Main Street
Tewksbury, MA 01876

Nancy Rego, Chair
Rob Dugan, Vice-Chair
Daniel Teixeira, Clerk
Associate Members:
Michael Farnum
Joseph Cary

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES October 27, 2022

The meeting was called to order by Nancy Rego, Chair, at 6:30 p.m. at the Tewksbury Town Hall. In attendance were Rob Dugan, Vice-Chairman, Daniel Teixeira, and Michael Farnum.

Joseph Cary was not in attendance.

Approval of Meeting Minutes

There were no meeting minutes presented for approval.

NEW HEARINGS

William Penny on behalf of Daniel Oerth for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw for a front yard setback and a Special Permit under Section 8.1.1.C to alter a previously existing non-conforming structure to rebuild a 20'X22' garage and add a second level as shown on plans filed with this Board. Said property is located at **9 Bemis Circle**, Assessor's Map 108, Lot 25, zoned Residential.

It was noted that this matter will be continued to the next meeting on November 17, 2022.

MOTION: Mr. Farnum made the motion to continue William Penny on behalf of Daniel Oerth for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw for a front yard setback and a Special Permit under Section 8.1.1.C to alter a previously existing non-conforming structure to rebuild a 20'X22' garage and add a second level as shown on plans filed with this Board. Said property is located at 9 Bemis Circle, Assessor's Map 108, Lot 25, zoned Residential to November 17, 2022 at 6:30 p.m.; seconded by Mr. Teixeira and the motion unanimously carried 3-0.

Ms. Rego explained that for full disclosure the Board does not have their physical documents for this matter but have been provided an electronic copy. Ms. Rego provided the option to continue

this matter to the next hearing or proceed and it was the consensus of the applicant and residents in attendance to proceed with this matter.

David Plunkett on behalf of Claudio Pereira for a variance under Sections 5.3.2 and 5.3.1E3 of the Tewksbury Zoning Bylaw for a front yard setback, to construct a 24'x18' detached garage, 20'X20' enclosed gazebo and install a 20'X18' inground pool as shown on plans filed with this Board. Said property is located at **20 South Rhoda Street**, Assessor's Map 70, Lot 174, zoned Residential.

Present was Attorney David Plunkett, 491 Dutton Street, Lowell, MA.

Attorney Plunkett noted that they are present to request a permit for the construction of a garage, swimming pool, and gazebo, and explained that the application was denied by the Building Commissioner stating that there would be a need for a 25-foot front yard setback, because the plan that created the applicants parcel shows it abutting an area known as Edith Drive. Attorney Plunkett explained that he had discussions with the Building Commissioner regarding changes having been made to this area, specifically through a subdivision approval, and it was the Building Commissioner's position that unless there was an Order of the Court changing the layout of Edith Drive on the 1954 plan, he would hold to that determination and left it to them to obtain a variance from the Zoning Board of Appeals if they were to move forward with the three proposed structures on the parcel.

Attorney Plunkett reviewed how Edith Drive is utilized and existing today as well as the plan. Attorney Plunkett noted that Mr. Pereira and his family reside at this location and their intent is to make use of the property consistent with uses in the residential zone, which would be inclusive of a garage, swimming pool, and gazebo. Attorney Plunkett reviewed the layout in 1954 as originally approved by the town and noted that in 1966 the town approved a new subdivision plan for the areas southerly of his client's property. This took the area shown as Edith Drive and created a couple of parcels that incorporated half of Edith Drive into one of the lots created in 1966 leaving the other half of Edith Drive remaining. Attorney Plunkett explained that going back to when this was first created, Mr. DeMaria, who is also present this evening, had purchased this parcel and then obtained a confirmatory deed by Cormier Construction which then gave him title to the original lot that was created, as well as the entire strip of what used to be Edith Drive. Attorney Plunkett noted that his client's property abuts the land that is owned by Mr. DeMaria and Mr. DeMaria has stated that he has no objection to the placement of the proposed structures as shown on the submittal to the Board. Attorney Plunkett noted that Mr. DeMaria's property is in excess of the one-acre zoning and explained that this has been the layout since 1966 and the area that was Edith Drive has not been used as such as it is a part of Mr. DeMaria's property.

Mr. Dugan asked if the same thing happened with Edith Drive with the parcel across the street. Attorney Plunkett explained that to create the 1.03 acre parcel it did incorporate one half of Edith Drive. On original plan in 1954, Edith Drive was 40 feet and in 1966 it was changed to 20 feet. Mr. Dugan asked if that means there is still 20 feet of Edith Drive remaining and Attorney Plunkett noted it is shown as a separate parcel and not designated as Edith Drive. Attorney Plunkett explained that the remaining 20 feet was conveyed by confirmatory deed and entire area is owned by same owner.

Ms. Rego asked if there would be 6 feet when this is done, and Attorney Plunkett confirmed this.

Mr. Dugan asked if Lot 70-218 is part of the one-acre parcel and Attorney Plunkett explained that it is in addition to the one-acre parcel. Mr. Dugan asked if it is the applicant's position that because it is no longer a paper street, 15 feet is required, and Attorney Plunkett confirmed this.

Attorney Plunkett explained that this also would not be more detrimental to the neighborhood as it is a garage, pool, and gazebo, which are consistent with the types of uses one would expect in a residential area. Attorney Plunkett noted that Mr. Pereira is in the construction field.

Mr. Teixeira asked if the denial was due to the 25-foot front yard setback because of Edith Road. Ms. Rego confirmed that and explained that it would require 15 feet otherwise and they are still short at 6 feet.

Ms. Rego opened the hearing to the public.

Joseph DeMaria of 30 South Rhoda Street came forward. Mr. DeMaria noted that two variances are being sought, one from the side and one from the front, and explained that he has no concerns with the side yard, his main concern is the front variance as they are seeking a 6-foot variance, which means he is 19 feet from the town line. Mr. DeMaria explained that he measured his car today and it is 16 feet, which means he will have only three feet to the town line and Mr. Pereira has a truck that he is pretty sure is longer than 16 feet and will be out into the street. Mr. Dugan asked if Mr. DeMaria owns the parcel next door and Mr. DeMaria confirmed this.

Liz Regan of 40 South Rhoda Street came forward. Ms. Regan explained that she has no issues as these are one acre lots and Mr. Pereira's lot is even larger; however, Mr. Pereira has two daughters who will be growing up and there will be four vehicles and possibly Mr. Pereira's truck. Ms. Regan asked where they are going to park as there cannot be parking in the street. Ms. Regan noted that one would think the swimming pool would be behind the house and explained that she has concerns with the garage and the cars.

Joseph DeMaria came forward again and noted that Attorney Plunkett mentioned that there is a grandfather clause on the property and asked what the clause entails. Attorney Plunkett noted that he is not aware of having stated that there was grandfather clause. Mr. DeMaria noted that it is stated in the first page. Attorney Plunkett explained that every parcel created on the 1954 plan is grandfathered as they can continue to be used as residential even if less than one acre. Mr. DeMaria noted that it was mentioned that there is a hardship and asked what that is. Attorney Plunkett explained that the statute states that a failure to be able to utilize a property consistent with the intended uses may be deemed a hardship relative to granting a variance.

Claudio Pereira of 20 South Rhoda Street came forward and explained that he is only asking for 6-foot variance from the street and explained that there will be 19 feet from the garage to the street. Mr. Dugan asked why 9 feet is needed between the gazebo and the pool, and Mr. Pereira explained that the yard starts at the back of the garage, and he would like to not interfere with his backyard where his children play and there is plenty of space to put it elsewhere. Mr. Pereira noted that all of the proposed locations are not currently being used and explained that the 9 feet is to allow for people to walk buy without falling into the pool.

Mr. Teixeira asked if there is a fence and Mr. Pereira explained that there is a 6-foot wood fence around the entire property.

Mr. Dugan asked what is located on Lot 27, the lot behind this home, and Mr. Pereira noted another home. Mr. Dugan asked if this will be 5 feet from that property line and Mr. Pereira confirmed this. Mr. Dugan referenced the hand drawn plot plan and noted that in the top right-hand corner of the lot there are two sheds and a chicken coop and now want to put a gazebo, pool and a garage and Mr. Pereira confirmed this. Mr. Dugan noted that he does not like the garage being 19 feet from the street and would like to find a way to push it back. Mr. Dugan asked who owns the shed that is located on the lot line and Mr. Pereira noted that he it is his. Mr. Dugan noted that he thought it was stated that this land is unusable, and Mr. Pereira explained that he meant the where the pool and gazebo will be and noted that there is a carport currently located where the garage is being proposed. Mr. Dugan asked how far the car port is from the street and Mr. Pereira noted approximately 19 feet. Mr. Dugan asked how far the home is from the street and Mr. Pereira noted he is not sure. Attorney Plunkett noted the home is 27 feet from the street. Mr. Pereira noted that the shed on the side will be removed. Attorney Plunkett explained that it would be acceptable for a condition this the shed would be removed from the site.

Mr. Dugan explained that he does not like the garage being so close to the street and asked how long Mr. Pereira's truck is and Mr. Pereira noted approximately 18 feet. Mr. Dugan explained that this would only leave one foot to the street. Mr. Pereira explained that there is additional driveway as from the deck to the street is also driveway and will remain. Mr. Teixeira asked if there is 30 feet in this portion and Mr. Pereira noted that it is approximately 35 feet and is a double wide. Mr. Teixeira asked if this is going to be over the allowed land usage percentage with all of these structures on the property.

Mr. Dugan noted that he would like to conduct a site visit. Mr. Dugan asked if the owner of Lot 27 is present, and it was noted that they are not present. Mr. Pereira noted that he did speak with her prior to this, and she stated she was fine with it.

Ms. Rego explained that the Board will conduct a site visit individually and will not discuss the matter again until the next meeting.

**MOTION: Mr. Dugan made the motion to continue David Plunkett on behalf of Claudio Pereira for a variance under Sections 5.3.2 and 5.3.1E3 of the Tewksbury Zoning Bylaw for a front yard setback, to construct a 24'x18' detached garage, 20'X20' enclosed gazebo and install a 20'X18' inground pool as shown on plans filed with this Board. Said property is located at 20 South Rhoda Street, Assessor's Map 70, Lot 174, zoned Residential to November 17, 2022 at 6:30 p.m., the Board will conduct a site visit; seconded by Mr. Teixeira and the motion unanimously carried 3-0.
DUGAN, TEIXEIRA, FARNUM**

New Business

Zoning Board of Appeals 2023 Meeting Schedule

Discussion took place on the November 23, 2023 meeting and Thanksgiving. It was the consensus to move the November 23, 2023 meeting to November 30, 2023.

MOTION: Mr. Teixeira made the motion to approve the Zoning Board of Appeals 2023 Meeting Schedule as amended; seconded by Mr. Farnum and the motion unanimously carried 4-0.

The next meeting will be held on November 17, 2022

Old Business

There was no old business discussed.

Adjourn.

MOTION: Mr. Dugan made the motion to adjourn; seconded by Mr. Teixeira and the motion unanimously carried 4-0.

Approved: November 17, 2022

List of documents for the 10.27.2022 meeting

Documents can be found in the Community Development Office

6:30 P.M. Call meeting to order

6:30 P.M. Approval of Minutes: **None**

NEW HEARINGS

6:30 **William Penny on behalf of Daniel Oerth** for a variance under Section 5.3.2 of the Tewksbury Zoning Bylaw, for a front yard setback and a Special Permit under Section 8.1.1. C to alter a previously existing non-conforming structure to rebuild a 20'x22' garage & add a second level as shown on plans filed with this Board. Said property is located at **9 Bemis Circle** Assessor's Map 108, Lot 25 zoned Residential.

Continued to November 17, 2022

6:30 **David Plunkett on behalf of Claudio Pereira** for a variance under Sections 5.3.2 & 5.3.1 E 3 of the Tewksbury Zoning Bylaw for a front yard setback, to construct a 24'x18' detached garage, 20'x20' enclosed gazebo & install a 20'x18' inground pool as shown on

plans filed with this Board. Said property is located at **20 So Rhoda Street**, Assessor's Map 70, Lot 174, zoned Residential.

- **Application package dated 10/6/22**

Old Business

New Business

- **2023 Meeting Calendar**

Correspondence

Adjournment