

## **Holliston Zoning Board of Appeals Meeting Minutes of January 13, 2020**

**Present:** Chairman John Love, Jay Peabody, and Associate Member Elizabeth Dembitzer. Mark Bush was absent.

**Call to Order:** The Chairman called the meeting to order at 7:05 p.m. in the Lower Level Conference Room (#014) of Town Hall.

### **Approval of Minutes:**

On a motion by Mr. Peabody, seconded by Ms. Dembitzer, the minutes of November 18, 2019 were approved as written.

### **FY21 Budget:**

On a motion by Mr. Peabody, seconded by Ms. Dembitzer, the FY21 budget request was approved at \$11,518 as prepared.

### **Special Permit Public Hearing**

#### **Jeffrey P. Gardella, Jr. – 26 Bayberry Lane**

The Chairman opened the public hearing at 7:15 p.m. and waived reading the notice into the record. The Applicants were present to discuss their petition to build a porch and stairs within the minimum front yard setback. The existing dwelling does not have a conforming front yard setback as a result of zoning changes enacted by the Town after construction of the subdivision. However, the proposed addition does not increase the non-conforming nature of the structure as the proposal does not encroach any further into the setback than the existing dwelling. It was noted that this side entry is utilized as the main entrance to the dwelling and presents an unsafe condition as currently configured.

The Chairman opened the hearing to the audience: Mike Williams of 39 Bayberry Lane spoke in favor of the safety and aesthetic improvements proposed.

On a motion by Mr. Peabody, seconded by Ms. Dembitzer, the public hearing was closed.

### **Dimensional Variance Public Hearing**

#### **Meaghan Hammer – 16 Pearl Street**

The Chairman opened the public hearing at 7:22 p.m. The Applicant was present to discuss the petition to allow a 3-foot encroachment into the rear yard setback. The building envelope on the non-conforming lot was previously determined by the ZBA by Special Permit in September 2018. The Petitioner was present and was represented by Atty. Thomas Waldstein.

Atty. Waldstein was asked to review the hardship argument. He stated that the house as designed, could not be built appropriately in the approved location, given the need for a code-compliant entrance. He concluded that the effect upon the neighborhood is negligible as it is wooded. Mr. Peabody asked who made the decision to move the dwelling and knowingly increase the non-conformity. The owners admit to mistake. Mr. Peabody asked how far along the construction was. Ms. Hammer stated roughly 80%. Mr. Peabody asked if she understood that a calculated decision was made to proceed without relief. She stated that she did.

It was requested that Mr. Canney be invited to attend the next session for clarification.

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The Chairman opened the hearing to the audience:

Howard Stone of 969 Washington Street took exception to the request, noting that the Petitioner created this hardship and the rear “woods” are his, where he intends to erect an accessory structure. He stated his intent to appeal any grant of variance based on the disregard of the previously approved limitations. He noted that construction has pushed the limits of the property, noting staging, management of sub-contractors and landscaping have been callous.

On a motion by Mr. Peabody seconded by Ms. Dembitzer, the public hearing was continued until January 27 at 7:00 p.m.

### **Dimensional Variance Public Hearing**

#### **Skip Kelleher, Minglewood Development, LLC – 45 Green Street**

The Chairman opened the public hearing at 8:05 p.m. and waived reading the hearing notice into the record. Joyce Hastings, P.E., GLM Engineering Consultants, Inc. was present along with Mr. Kelleher to discuss the petition to construct a one car garage and deck within the minimum side yard setback. Mr. Kelleher purchased the property in 2018. She represented that plans for improvements were impacted by the zoning change from Village Center Commercial to Village Residential in May 2017 and that the septic plan was developed without survey verification of the house’s location on the lot.

Requested relief within the side yard setback was clarified. An aerial photograph of existing conditions was provided as was a series of photos of each abutting lot. It was noted that 2,100 s.f. of space is proposed. The Greek Revival style will be continued to the garage and second-floor living space. The existing square footage is around 1,600 s.f. and the existing front yard setback is non-conforming. The basement is limited in height (6’). The opportunity for construction of a detached garage structure is limited by the septic location. The lot is non-conforming with regard to size and shape with 8,845 s.f. of area and 62’ of frontage. The proposed 15’ x 25’ one-car garage would be covering existing pavement and set back 38’ from the street

The Chairman opened the hearing to the public. The following individuals asked questions and expressed concerns about the proposal:

Alix Carey of 37 Green Street noted that her septic system abuts the lot line and she expressed concerns about the attached garage proposal, stating that the massing and attached garage are out of character with the street.

Peter McGovern of 49 Green Street asked about the stop work order and expressed a concern that lead paint and asbestos that may have been removed without necessary permits. Mr. Kelleher noted that a building permit was issued on Friday. No permit was obtained before “gutting” began.

Bob Hale of 31 Green Street asked about the survey discrepancy noted. Ms. Hastings clarified that a field survey was completed. She noted that the survey work on record is theirs. Faye Hale added that dumpsters and portable toilets have been in the yard for many months and work has been sporadic and disruptive.

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Wes Feldheim, owner of property at 769 Washington Street asked for a clarification of the septic location. Ms. Hastings provided the septic design (prepared by Civilized Solutions) and reviewed the locus.

On a motion by Mr. Peabody, seconded by Ms. Dembitzer, the public hearing was closed.

**Special Permit Public Hearing**

**William L. Harvey III, Esq. – 799 Washington Street**

The Chairman opened the public hearing at 8:35 p.m. and read a letter from the Applicant, William L. Harvey, III dated January 3, 2020, asking for a continuance.

On a motion by Mr. Peabody, seconded by Ms. Dembitzer, the public hearing was continued to February 24<sup>th</sup> at 7:05 p.m.

**Use Variance Public Hearing**

**John Snyder, Apex Real Estate – 599 Concord Street**

The Chairman opened the public hearing at 8:40 p.m. and waived reading the hearing notice into the record. John Snyder of Apex Real Estate was present along with Lazo Popovski of LZO Pika-Pup (Owner) to discuss the petition to convert an existing kennel and retail facility to a single-family dwelling. A letter from the Planning Board in opposition to the petition dated January 13, 2020 was entered into the record. It was represented that the facility closed in late 2019.

Mr. Snyder indicated that the 1,100 s.f. building has a limited market in the Industrial zoning district and the extensive wetlands limit expansion. Mr. Peabody asked if they had approached anyone in the park about purchase of the property. Mr. Snyder stated that he had not. He elaborated on the surrounding uses and characterized the property as an island.

On a motion by Mr. Peabody seconded by Ms. Dembitzer, the public hearing was closed.

**DELIBERATIONS**

**Special Permit – 26 Bayberry Lane**

**Findings of Fact**

The Board reviewed the application materials and testimony provided. In accordance with the provisions of Section I-C (3.3.1), Pre-Existing, Non-Conforming Uses, Structures and Lots of the Town of Holliston Zoning By-Laws and MGL c. 40A, the Board finds the following: The proposed landing and stairs are not substantially more detrimental than the existing nonconforming structure to the neighborhood and they have been designed to be compatible with the character and scale of neighboring properties.

**Zoning Board Vote**

The Board's vote to approve the Petitioner's Special Permit application for relief under Section I-C (3.3.1), for property described and located at 26 Bayberry Lane was as follows on a motion by Mr. Peabody, seconded by Ms. Dembitzer:

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Mr. Love	Aye
Mr. Peabody	Aye
Ms. Dembitzer	Aye

**Conditions of Approval**

1. This Special Permit is not valid until recorded and indexed at the Registry of Deeds in accordance with the provisions of MGL, c. 40A, s.11 and shall lapse in three (3) years unless exercised per MGL, c. 40A, s. 9 and Section VI-E(6) of the Holliston Zoning By-Laws. The copy of the decision to be filed must contain a certification the Town Clerk that twenty (20) days have elapsed since after the decision was filed and that no appeal has been filed or if such an appeal has been filed, that it has been dismissed or denied.
2. The proposed porch and stairs shall be located no closer to the street than the existing structure (street front).

**Dimensional Variance – 45 Green Street**

**Findings of Fact**

The Board reviewed the application materials and testimony provided by the Petitioner. In accordance with the provisions of Section I-C (3.2) Pre-Existing, Non-Conforming Uses, Structures and Lots of the Town of Holliston Zoning By-Laws and MGL c. 40A, the Board finds the following: Literal enforcement of the provisions of this by-law would involve substantial hardship to the Petitioner owing to circumstances related to the unique shape of the non-conforming lot, placement of the structure and the designed septic location to the north of the structure. The proposed attached one-car garage addition is in keeping with the style and scale of the neighborhood and does not significantly alter the character of the neighborhood. The proposed garage will occupy an already paved area of the parcel. Desired relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the by-law.

**Zoning Board Vote**

The Board's vote to approve the Petitioner's Dimensional Variance application for relief under Section I-C (3.2) for property described and located at 45 Green Street was as follows on a motion by Mr. Peabody, seconded by Mrs. Dembitzer:

Mr. Love	Aye
Mr. Peabody	Aye
Ms. Dembitzer	Aye

**Conditions of Approval**

1. This Dimensional Variance is not valid until recorded and indexed at the Registry of Deeds in accordance with the provisions of MGL, c. 40A, s.11 and shall lapse in one (1) year unless exercised per MGL, c. 40A, s. 10. The copy of the decision to be filed must contain a certification the Town Clerk that twenty (20) days have elapsed since after the decision was filed and that no appeal has been filed or if such an appeal has been filed, that it has been dismissed or denied.
2. Construction shall be substantially in compliance with sheets 1 and 2 of the elevations submitted at the public hearing prepared by design collective of Mendon, MA dated 9/17/19.

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3. The structure shall not be located any closer than seven feet (7') to the eastern side lot line in accordance with the plan of record prepared by GLM Engineering Consultants, Inc. dated 10/23/19.

**Use Variance – 599 Concord Street**

**Findings of Fact**

The Board reviewed the application materials and testimony provided by the Petitioner. In accordance with the provisions of Section VI-D(3) of the Town of Holliston Zoning By-Laws and MGL c. 40A, the Board finds the following: The proposed residential use would substantially derogate from the intent and purpose of the Zoning by-law and the Industrial zoning district. Conditions, safeguards and limitations of both time and use were not offered in the application materials. The speculative nature of the request was viewed as being detrimental to the public good.

**Zoning Board Vote**

The Board's vote to deny the Petitioner's Use Variance application for relief under Section VI-D(3) for property described and located at 599 Concord Street was as follows on a motion by Mr. Peabody, seconded by Mrs. Dembitzer:

Mr. Love	No
Mr. Peabody	Aye
Ms. Dembitzer	Aye

**Adjournment:** The meeting adjourned at 10:02 p.m. on a motion made and duly seconded with all in favor. The next meetings were scheduled for January 27 and February 24, 2020.

Respectfully submitted,

Karen Sherman  
Town Planner

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