

ZONING BOARD OF APPEALS

Michael Sheehan, Chair
Mary Kate Daly
Shannon Greenwell
Al Porro
Rachel Churchill



ACTING DIRECTOR OF
COMMUNITY DEVELOPMENT

Sarah Dixon Bouchard

**Zoning Board of Appeals Meeting
March 14, 2023
Remote Meeting Minutes**

PRESENT:

Michael Sheehan, Chair
Mary Kate Daly
Rachel Churchill
Shannon Greenwell
Al Porro

Sarah Bouchard, Acting Town Planner
Emily Manning, Recording Secretary

CALL TO ORDER:

The meeting was called to order at 7:05 P.M.

PUBLIC HEARINGS:

Case No: 23-04: Variance, 9 High Street

To be continued to the April 11, 2023 meeting per request of the applicants.

MOTION to continue the public hearing to the April 11, 2023 meeting made by Mary Kate Daly.
Seconded by Rachel Churchill.

Roll Call Vote:

Mary Kate Daly: **Yes**
Rachel Churchill: **Yes**
Shannon Greenwell: **Yes**
Al Porro: **Yes**
Michael Sheehan: **Yes**

Result: 5-0-0 (Approved)

Case No: 23-01: Appeal, 241 Pleasant Street (continued from January 31, 2023)

David Hern, attorney for the applicant, spoke. The applicant was appealing a decision by the Norwood Building Commissioner to reinstate the variance previously approved by the Board. The applicant was looking to turn a one family dwelling into a two family dwelling. The Building Commissioner decided that the variance lapsed, which the applicant disagreed with.

The building permit for this property was obtained in June 2020, which was valid until December 2021. Multiple 180 day extensions were granted by the Building Department. In December 2022, Building Commissioner Gary Pelletier deemed that the variance had lapsed, and ordered work on the premises to stop. Mr. Hern stated that Edward Musto, the applicant, had exercised all requirements of keeping the variance.

The previously approved variance allowed for an addition to be put on the home at 241 Pleasant Street. A sewer line on the property needed to be relocated in order to build the addition; Mr. Musto has trouble finding someone to do the work. Mr. Musto was in communication with DPW Director Mark Ryan in regards to the sewer work. In addition, a light pole needed to be protected in regards to the sewer line and future construction work, and Mr. Musto was in contact with the Norwood Light Department. Work could not continue on the site until sewer line movement was completed.

Gary Pelletier, Norwood Building Commission spoke. Mr. Pelletier and Mark Chubert both visited the site on Pleasant Street. He believed the variance had lapsed because no work authorized by the variance or by the building permit as of 3/14/23 and milestones prior had taken place on site. Only administrative actions had been taken. He also commented on the many extensions of the building permit, and the state of emergency that tolled the typical expiration of the variance and building permit. Mr. Pelletier said Mr. Musto's request for extension of a building permit was evidence that no work under the building permit had commenced because a building permit extension is not required if work under the building permit had already commenced pursuant to building code section R 105.5 expiration of a building permit. "Every permit *shall* become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance. The building official is *authorized* to grant in writing one or more extensions of time for periods of not more than 180 days." Mr. Pelletier identified that the building official is not required to issue an extension. There was discussion as to when the 180 day extension commences. As no work had been done on the building permit or variance years after their initial issuance, it was his opinion that the variance had lapsed and accordingly he did not authorize the requested extension of the building permit.

Mary Kate Daly clarified with both Mr. Hern and Mr. Pelletier the dates of the extended building permits for the property. Mr. Pelletier was not sure of the date, as the email in question was sent in writing to former Local Building Inspector, John Mellen. He also stated there was no sign of any excavation work taking place on the site at any time. Mr. Pelletier agreed that the sewer line would have had to move in order to commence building, that it could have been done at any time, and there was no evidence that it had been done. Mr. Pelletier stated he believes no work has been done since Jan 24, 2022. Mr. Pelletier indicated there was no evidence of beginning to prepare and clear the building site as noted in the Grady case Attorney Hern had cited.

Shannon Greenwell asked Mr. Hern for more information on what happened with the sewer line work in coordination with the Norwood Light Department. Mr. Hern indicated a condition of the variance was issuance of various other local permits. He also indicating that there was digging on a portion of the property to locate the sewer pipe.

Edward Musto, applicant, spoke on the proceedings at the property pertaining to the sewer line work. He commented on the light pole and his communication with the Norwood Light Department. The Light Department decided to manually hold up the utility pole to prevent any issues with the sewer line work. The Norwood Department of Public Works was also involved, assisting in manually locating the sewer line on the property. A permit was also pulled through the DPW to relocate the sewer line. Mr. Musto also described involvements with the abutting property at 251 Pleasant Street, including in relation to the water runoff condition in the variance.

Ms. Greenwell wondered if these proceedings took place before or after January 24, 2022. Mr. Musto stated there was ongoing activity on the site during February 2022, but no physical work was being done as they could not proceed until the sewer line was relocated. He confirmed that he was dealing with the Norwood DPW and Light Department in November 2022. She also asked Mr. Pelletier if he had seen contractors having problems getting help on other properties in the past, especially during the Covid-19 Pandemic. He stated that while he had only been in Norwood since October 2022, given prior experience, in his opinion he found this was uncommon. Construction, issuance of building permits, and inspections continued throughout the pandemic during his experience at Medfield.

Al Porro questioned two different sketches for the sewer line work. Mr. Hern responded that a size change plan was made in August 2019. Mr. Porro asked why this delayed the movement of the sewer line. Mr. Hern explained the hold up in moving the sewer line, including permits, getting contractors, getting light department and public works engaged. The permit was pulled within the one year of issuance of the variance.

Rachel Churchill distinguished the Cornell case presented by Mr. Hern that while the building permit was issued, no action was taken in furtherance of the building permit itself. While "at the very least" the applicant in the Cornell case had to obtain the building permit, Ms. Churchill wondered whether that necessary condition is alone sufficient if the building permit isn't used. She asked if Mr. Hern could distinguish the work that his client had done from what was done by the plaintiff in Cornell, citing to the specific work indicated in the lower court opinion, such as hiring a land surveyor, environmental engineer, soil testing, septic design and approval from BOH and ConComm order of condition in excess of \$15,000. Mr. Hern indicated that all state and local permits had to be pulled as a condition of the variance. Mr. Hern indicated all of those factors done by the Cornell plaintiff were undertaken by Mr. Musto and he had a building permit that was extended, all of which was ongoing until he was told to stop in November 2022. There were supply chain problems. Cornell didn't have a building permit, which Mr. Musto obtained. And he had extensions from officers authorized to grant the extensions and he disputes that the permit was expired. Mr. Hern asserted that even if the building permit did expire, the variance was exercised. He couldn't actually build the project until these other items were completed, which might go to the commissioner's concern as to whether the building permit was being used, but that doesn't mean the variance disappeared. Mr. Pelletier commented that the referenced plan was dated in August 2019, before the variance was issued, so other than

perhaps exploratory digging, only administrative work had been done which in his estimation is not work authorized by a building permit or part of the execution of a variance. That Mr. Musto continued to ask for extensions of the building permit is evidence he had not undertaken work in furtherance of the building permit.

Ms. Churchill asked for clarification whether commencing work under the building permit would keep the permit valid even if the work extended beyond the term of the permit. Mr. Pelletier confirmed that a building permit only lapses if work stops for 180 days, but will not expire if the work is ongoing. Here, no work authorized by either the building permit or the variance had begun. Ms. Churchill also asked that with respect to the November 2022 request to extend the building permit that was denied on November 28, whether Mr. Musto would have immediately commenced work on the building permit had he not been given a stop work order by the building commissioner. Mr. Hern indicated that it was their calculation that the building permit as previously extended expired on December 7, 2022 (180 days from the June expiration date rather than from the date the extension was granted) and that Mr. Musto would not have been able to commence work before the building permit's expiration on December 7.

Mary Companioni, abutter of the property, stated her concerns for the property. There is a dangerous curve near the property, and already have issues with traffic in the area. The 241 Pleasant Street fence came down on her condo property, they asked the property owner numerous times to replace the fence and had difficulty dealing with Mr. Musto.

Barb Seager, abutter of the property, believed there was a pattern of behavior with Mr. Musto. They have had multiple issues with him in the past at their condo complex. They have issues with multiple pieces of property that Mr. Musto has either repaired or replaced. She believed he had not been a good neighbor.

Michael Sheehan expressed his concerns with the situation. He stated that while the construction industry was allowed to work during the Covid-19 State of Emergency, Mr. Musto chose not to. Mr. Sheehan believed that Mr. Musto's statements that he had a hard time dealing with the Norwood Light Department and DPW were disingenuous, as they have been praised for their responses to permits in the past. He also stressed his agreement with the Building Commissioner that even though there was an active building permit, Mr. Musto was not completing any work. Mr. Sheehan was not in favor of appealing this decision.

Mr. Pelletier clarified that the only extension he believed was issued in error was the extension granted by John Mellen via email in May 2022.

Mr. Musto stressed his issues on the property, notably regarding the sewer line.

MOTION to end the public hearing made by Shannon Greenwell. Seconded by Mary Kate Daly.

Roll Call Vote:

Al Porro: **Yes**

Shannon Greenwell: Yes
Mary Kate Daly: Yes
Rachel Churchill: Yes
Michael Sheehan: Yes

Result: 5-0-0 (Approved)

The Board discussed their assessments of the matter and review of the conditions set forth in the previously issued variance.

MOTION to uphold the decision of the Building Commissioner made by Shannon Greenwell. Seconded by Mary Kate Daly.

Roll Call Vote:

Al Porro: Yes
Shannon Greenwell: Yes
Mary Kate Daly: Yes
Rachel Churchill: Yes
Michael Sheehan: Yes

Result: 5-0-0 (Approved)

Case No: 23-03: Special Permit, 41 Railroad Ave

David Hern, attorney for 41 Railroad Ave., spoke. The applicant and homeowner were looking to add an addition to the home on the property on the Monroe St. side. They currently have a narrow driveway, and the proposed addition would come up to the corner of the driveway. The existing fence on the property did not actually follow the property line, and the homeowners are looking to replace that as well. The proposed addition would create a family room in the existing home, the potential for a first floor bedroom in the future, a bathroom and laundry room, and a small porch on the exterior. The existing home is close to the road on both sides, making it a non-conforming lot and structure.

The proposed addition conformed to the zoning bylaws, but for those frontage issues, in that it would be less than 15 feet in height, and less than 10 feet from the sideline, and conforms to zoning setbacks along the southeasterly side of the house. Mr. Hern stated the proposed addition would be attractive on the older existing structure, and would not be a distraction for neighbors, or cause any issues for the neighborhood.

Mr. Porro wondered if there were any future plans to add a driveway on the Monroe St. side. Applicant Kathleen Yazbak, stated that although it was something they looked into, they would not be moving forward with that. Mr. Porro also asked if the fencing would be moved to the property line, to which Mr. Hern responded yes.

Mr. Sheehan questioned the percentage of the proposed addition compared to the current amount of floor space. Mr. Hern stated that the habitable floor space would be increased by 31%, which is part of the reason for requesting the special permit. Mr. Sheehan also pointed out there is a letter of support from a neighbor.

Jean Taylor, member of the public and neighbor, explained her point of view of the existing structure. She believed that granting the special permit would decrease the value of the neighbors home. She also stated that because of the current lack of land in the area, there is a current drainage issue, and the proposed addition would negatively affect that.

Maria Henry, member of the public and neighbor, expressed her concern for the neighbor Mrs. Daniels. The proposed addition would be extremely close to Mrs. Daniels' property. She believed the addition could be moved to the rear of the property and not negatively affect the neighborhood.

Nancy Daniels, member of the public and direct abutter, was concerned about the proposed addition due to the potential lack of privacy and water buildup. She was also concerned about the potential construction work being done, and trucks going in and out of the neighborhood. Her daughter, Susan Petrie, also expressed concern for her mother and the proposed addition. Jack Taylor, member of the public and neighbor, spoke on behalf of Mrs. Daniels, and expressed concerns for her and the proposed project. He detailed personal experience with changes made to a property next to his home that have negatively affected him.

Mr. Hern had Sarah Bouchard share an overhead view of the property to the group. The existing home was built in the 1880's, a time when zoning bylaws did not exist. He explained where the proposed addition would go in relation to the overhead view. Mr. Hern also pointed out that there is no evidence that the proposed addition would further increase the drainage issue in the area.

Mary Cantarow, member of the public and neighbor, noted the water issue on Mrs. Daniels' property. She believed the proposed addition would encroach on Mrs. Daniels' home.

Ms. Greenwell wondered if the Board is voting on the proposed 31% square footage increase. Mr. Hern responded that they are in front of the Board because the lot is already non-conforming to zoning bylaws. The proposed addition does not violate allowable lot coverage.

Mr. Sheehan suggested a change to the proposed plan to move the addition toward the back of the existing home. He wondered if it would be possible for Mr. Hern and the applicant to continue discussions with the neighbors, and continue the public hearing at a future meeting.

Ms. Yazbak detailed current problems with her existing home, and the reasons behind the proposed addition. She also pointed out her discussions with neighbors in regards to the proposed project, particularly Mrs. Daniels.

A recess was called at 9:45 P.M. The public hearing resumed at 9:52 P.M.

During the recess, Mr. Hern was able to speak with his client. He asked if the public hearing could be resumed in two weeks on March 28, 2023, which would give Mr. Hern and his client time to speak with the neighbors.

MOTION to continue the public hearing for 41 Railroad Ave. as a virtual meeting on March 28, 2023 at 7:00 P.M., made by Shannon Greenwell. Seconded by Rachel Churchill.

Roll Call Vote:

Al Porro: **Yes**

Shannon Greenwell: **Yes**

Mary Kate Daly: **Yes**

Rachel Churchill: **Yes**

Michael Sheehan: **Yes**

Result: 5-0-0 (Approved)

Case No: 23-05: Variance, 30 Pleasant Place

David Hern, attorney for the applicant at 31 Pleasant Place spoke. The property in question is what can be described as a "pork chop lot". The applicant purchased the property with her late husband from her father in 2009. The lot currently holds a single family home, as well as a two story dwelling on the upper left side of the property, which is described as a garage with rooms upstairs. The lot was non-conforming to current zoning bylaws. The applicant was looking to make the second building a legal dwelling house, as it has been categorized by the Norwood Assessors Office, as well as split the current lot into two separate non-conforming lots.

The frontage and lot width coming back from the street is 15 feet, which is what they were requesting the variance for. The applicant was looking to use the property as a legal dwelling, and when looking to sell the property in the future, wants the future owner of Lot A to have neighbors. Mr. Hern stated there would be no problem with EMS getting in and out of the property, as it has been done in the past. The applicant was not looking to build more dwellings on the property. Splitting the property into two separate single-family lots would not create any stressors on the neighborhood.

Ms. Churchill wondered when the structure on Lot A was built, and how it has been used. Mr. Hern stated that the dwelling was built in 1992 when the applicant's father in law owned the property. The applicant has had her son living in the dwelling, but they have since found out that was not legal. They were looking to make that use legal.

Ms. Daly asked Mr. Hern how this would derogate from the bylaw for frontage. Mr. Hern stated that this would be an appropriate use of a large piece of land. Ms. Daly also wondered about the

outcome and upkeep of the two properties splitting a driveway. Mr. Hern stated that it would be shared 50-50 by both parties, and it would be something that could be written into the deed.

Ms. Greenwell wondered if future owners of the potential two properties would have to come before a board in order to build a new structure on their property. Mr. Hern stated that in that case he believed they would just need a building permit, as long as they were conforming to setbacks.

Mr. Porro stated he was not in agreement with the proposed plan given the small shared driveway.

Michael Sheehan pointed out a decision made by the Norwood Zoning Board in 1978 that this lot was to forever remain a single residence lot. Mr. Hern stated that the applicant was not proposing to do anything other than turn the lot into two separate single family residences, and does not feel the Board should be bound by that decision. He believed splitting the property would still conform to the neighborhood.

Ellen Bellany, member of the public and neighbor, pointed out the difference between Assessors' use and legal use.

Gail Sullivan, member of the public and neighbor, pointed out a situation where the previous owner was denied access to the apartment above the garage.

Mr. Sheehan read a letter from John and Patricia Lambruno, pointing out the zoning restriction on the property. Mr. Lambruno was not in favor of splitting the property.

Mr. Hern pointed out that his client was not aware of the illegal use of the apartment, and was not privy to the letter from the Norwood Building Inspector to her father in law, the previous owner, sent in 1992.

Loretta Braverman, applicant, spoke. She explained her situation, and how she found out the second dwelling on her property was not a legal living dwelling. She stated she feels safer knowing she has her older son living on the property with her, which was a large reason for her desire to split the property into two separate residences. She stressed she was not looking to create any multi-family dwellings.

MOTION to close the public hearing made by Shannon Greenwell. Seconded by Mary Kate Daly.

Roll Call Vote:

Al Porro: Yes

Mary Kate Daly: Yes

Rachel Churchill: Yes

Shannon Greenwell: Yes

Michael Sheehan: Yes

Result: 5-0-0 (Approved)

The group discussed their thoughts on the proposed variance.

MOTION to approve the variance, with respect to frontage, lot width, and setback made by Rachel Churchill. Seconded by Mary Kate Daly.

Roll Call Vote:

Mary Kate Daly: Yes

Al Porro: No

Shannon Greenwell: Yes

Rachel Churchill: Yes

Michael Sheehan: No

Result: 3-2-0 (Not Approved)

UPCOMING MEETINGS: March 28, 2023 & April 11, 2023

ADJOURNMENT:

MOTION to adjourn the meeting made by Mary Kate Daly. Seconded by Shannon Greenwell.

Roll Call Vote:

Shannon Greenwell: Yes

Rachel Churchill: Yes

Mary Kate Daly: Yes

Al Porro: Yes

Michael Sheehan: Yes

Result: 5-0-0 (Approved)

The meeting was adjourned at 11:07 P.M.

Minutes respectfully submitted by Emily Manning