

# **SHARON ZONING BOARD OF APPEALS**

## **MINUTES OF WEDNESDAY, September 28, 2022**

**LOCATION OF MEETING:** In compliance with the Governor's emergency declaration relative to the conduct of public meetings, the Town arranged to conduct board and committee meetings using Zoom video/audio conferencing in an effort to minimize the spread of COVID-19. Interested citizens received directions on how to attend the meeting remotely in the agenda as posted on the ZBA website and the Town. This meeting was presented with the video and/or audio available for later broadcast. The Zoning Board of Appeals is focused on observing the spirit of the Open Meeting Law during this temporary emergency situation to assure accountability for the deliberations and actions of elected and appointed officials conducting the public's business.

A virtual meeting of the Sharon Zoning Board of Appeals was held on Wednesday, September 28, 2022, at 7:00 P.M. The following members were present as established by roll call: Joe Garber, Chair, Abe Brahmachari, David Young, and Arnold Wallenstein.

Mr. Garber, Chair called the meeting to order at 7:01 PM. Mr. Garber, Chair, read Covid19 protocols per the Governor of MA and procedural ground rules.

### **Case 1909 - 80 Mountain Street**

Present for the applicant: Residents Lewis and Donna Whiffen, Jose Da Silva owner of Transblue Norfolk, Ken Ta, Project Manager

Mr. Garber read the legal ad into the record.

Mr. Da Silva explained the project and why they are appearing before the board. The applicant wants to add a screened porch and the location options are limited. Mr. Da Silva started the presentation with the plot plan. He explained that there is a septic tank with a leaching field in the backyard and behind the house there is ledge and boulders. The location of the porch on the plot plan is the only location that they can build it. The porch has a breezeway that attaches to the existing property and the proposed size is 12' x 22' and sits at the edge of the driveway. There will be 4 footings on each side plus 5 footings for the breezeway. He also stated that it doesn't block any view from the neighbors. There are tall shrubs that about 15 feet high which blocks the view. The porch won't affect the view and the property on the other side doesn't have a window facing the proposed porch. Mr. Da Silva also stated that the property next door has been abandoned and it is a mess.

Mr. Da Silva showed a rendering of what the porch will look like. Basically, a deck with a roof. He also stated that there won't be any machinery being used so that they don't upset anything. They will only use something to demo the asphalt only where the footings will be placed. Mr. Garber stated that the side setback for this zone is 30' from the property line and that this porch would be into the setback approximately 20 feet. Mr. Da Silva noted that they wouldn't be disturbing anybody by building this. Mr. Garber stated that it wasn't a matter of disturbing anybody but it's a matter of what the zoning requirements are. Mr. Garber also stated that this would fall into a variance stage, and we wouldn't give a variance for 19'. You have to be 30' from the property sideline. Mr. Garber explained that the property is a non-conforming structure on a non-conforming lot and by adding this structure you are increasing the non-conformity. Mr. Da Silva stressed that this is the only place that they could build this. Mr. Garber mentioned that they would have to prove a hardship. He asked Mr. Brahmachari to explain the hardship requirements, although he doesn't think that this qualifies at that scale.

Mr. Brahmachari stated that the relief being asked is a lot but it's interesting is because of the ledge in the back, that would be considered a hardship. He asked if the design could be something different. Mr. Da Silva stated that they have tried and stated that the area between the house and entryway there is a gas line that would have to be moved but that would only give them another 4 feet and that would involve the city. Mr. Brahmachari stated that the application is filed incorrectly, it shouldn't be for a special permit. Mr. Da Silva stated that is how he was told to file it. Mr. Garber asked if the Building Inspector told him about the setbacks and he said that he did, but they still wanted to go forward.

Mr. Ta the Project Manager for Transblue asked what is the setback from the street to the proposed porch? Mr. Garber answered that the front setback is 50 feet. Ken asked if that was the requirement or can it be smaller. He was

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thinking that if they made the porch shorter but extended the length to the street would that work. Mr. Garber stated that the 50' is the requirement and explained that getting a variance is a big hoop to jump through. He stated that we can't see where the ledge is on the plot plan, and we are taking your word for it. If you want to come back with a revised plot plan to mark the ledge on the property.

Mr. Young agreed that he wanted to see the topography showing the ledge. He asked why you couldn't go towards the back of the house? That could be a way to get it done and not cut into the setback as much. Mr. Da Silva stated that the septic system is there, and we want to avoid the septic system as much as possible. If we went to the right, they would be right above the septic tank. Mr. Garber asked what was in the area between the tank and the distribution box. Mr. Da Silva said it was a close call because he needs to stay 10' to the tank.

Mr. Brahmachari stated that one hardship doesn't automatically provide the requested relief of the variance and it's very difficult to obtain. Mr. Mehta stated that this requires some more design input. Reconfigure it, bring it closer to the building and resubmit it.

Mr. Garber restated that we need to see a topographical plan showing the ledge and that the basic scope is that it's too far into the setback.

Mr. Whiffen stated that he understands the setback requirements and they would be willing to move the gas line and move it closer but that only gets about 4-5 feet. He also mentioned that if they decide to go back they have the septic tank to consider and if they put it in the back, it would block the kitchen windows and it would be awkward. And he stated that for the money that they are spending they want it to look nice. Mr. Whiffen also mentioned that the property next door has been abandoned for 3.5 years and if somebody were to move in, there is a shrub barrier blocking the views to each house. He also stated that they have always taken pride in the appearance of their house.

Mr. Brahmachari restated that a variance is very hard to get, and you really need to prove your hardship. Mr. Young agreed.

Mr. Wallenstein referred to the state law and echoed that it is very hard to get a variance. He also stated that they have room in the back if they move some things around. If you are trying to prove hardship related to the land, you would have to show the ledge.

Mr. Mehta concurred with the other board members and encouraged the designer to come up with an alternate width showing all of the ledge and other things. He stated that if the setback issue is somewhat relieved maybe we can address this as a special case but repeated that a variance is hard to get.

Mr. Whiffen wanted to know if the porch wasn't attached to the house would that make a difference. Mr. Garber explained that yes, a free-standing detached structure can be 10' off of the property line. He stated that if they decide to eliminate the breezeway and put an open walkway instead that would become a condition of the special permit which would be filed with the registry of deeds. If at some point you try to attach it to the house, you would be in violation of the special permit which would prohibit you in the sale of your house in the future.

Mr. Whiffen asked if they could build a deck that goes from the house to the porch? Mr. Garber stated no, because now you are attached. Mr. Wallenstein referred to the bylaws that stated very specifically that it cannot be attached to the principal building and can't have a roof. Mrs. Whiffen asked how close to the house it could be without being attached, could it be 2" away? Mr. Garber stated that he couldn't answer to that but if you were going to do a detached you would have to redraw it and go back to the Building Inspector and if he feels it's a build by-right he would issue you a permit. If not, you would have to come back to ZBA.

Mr. Whiffen asked if they were to slide the porch as close as they can to the house and make it square as opposed to a rectangle so that it's only 20" from the setback. Mr. Garber stated that he doesn't think that they have ever given a variance for 10 feet.

Mr. Da Silva stated that the Building Inspector told him that the detach has to be 10 feet from the house and asked if the ZBA could clarify it. Mr. Garber noted that if the Building Inspector gave you that information, then it's correct. He also stated that they have tried several different designs and the only option right now is the variance. Mr.

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Da Silva asked if the septic system would be considered a hardship. Mr. Garber said that the septic could be moved but Mr. Da Silva said it could for 15,000 and would that qualify as a financial hardship? Mr. Garber suggested that he refer to the zoning bylaws that are online.

Mr. Garber asked if they wanted to continue the case. Mr. Whiffen stated that he is undecided as to what to do at this point. Mr. Garber stated that if you provide the topographical, we can look at the hardship. The applicant stated that they would like to continue.

#### **Motion:**

Chair made a motion to continue Case 1909 – 80 Mountain Street. Mr. Brahmachari seconded the motion. Approved by unanimous roll call vote 5-0-0 (Garber, Brahmachari, Young, Wallenstein, Mehta).

#### **Case 1908- 52 Mountain Street**

Present for the applicant: Residents Liard and Amanda Borchers.

Mr. Garber read the legal ad into the record.

The Borchers presented the plot plan and explained that they are proposing a 660 sq foot addition to their 1950's Cape style home. The certified plot plan shows the existing structure as well as the proposed 22 x 30' addition located on the southeastern side of the property. On the right side of the house looking from the street. This addition will be used as a family room and a home office as well as additional storage in the form of a mudroom. They are proposing to encroach on the right setback of the property. They also presented renderings of the home from the street. The addition will conform with the character of the house and the neighborhood.

Mr. Garber noted that this is the same situation as the previous case. Mr. Borchers is hoping that the encroachment is a little less severe and they have provided in their application a few examples of cases that have been approved under similar circumstances, in case it matters or helps.

Mr. Borchers stated that the septic tank contributes to why it's designed this way. They want to avoid moving the septic system. They are proposing approximately 19' from the sideline. The house is non-conforming, and they are trying to do the best they can without making it worse.

Mr. Garber expressed that the board very rarely grants a variance for that much relief into a setback. They are asking for a little over 10 feet and they are in the variance territory not a special permit. He stated that it is very hard to get a variance. Mr. Borchers asked for more information as to why that is and stated that some of his neighbors are within 10' of the setback requirements and they are trying to do their best. He also stated that they could shrink it more.

Mr. Garber opened to the board members.

Mr. Brahmachari stated that we understand what they are trying to do but you can see that close to half of the addition is into the setback. But the fact that it's a rectangular lot and there is buildable space on the lot it will be hard to prove the hardship. He also explained that the hardships are the same as what was discussed in the prior case. Mr. Brahmachari agreed that this is a difficult case to approve.

Mr. Garber asked if when they filed the application did, they not tell you how hard it would be to get the variance. Mr. Borchers said that they weren't told seek a variance and he was told that they would need to apply for a special permit.

Mr. Young agreed that this was similar to the last case, and he didn't have any comments.

Mr. Borchers stated that the other places behind his home where he could add on doesn't make sense in a practical manner and they would love to be able to move to a bigger home. They would also love to stay in the town to make this a long-term home.

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Mr. Borchers noted that hit wouldn't be anymore detrimental to the neighbors. Mr. Garber said if it was an existing structure that became non-conforming it would be different. Mr. Garber stated that if they reduce it by 11 feet it would fit. Mr. Borchers stated that it wouldn't make sense at that point.

Mr. Wallenstein stated that he didn't be duplicative but wanted to reiterate the hardships that are required. And stated that they haven't shown any of the hardships so he doesn't see how they can get a variance, but they do have other options, go smaller, go higher or in the back.

Mr. Mehta has two observations and concurs with what the others have stated. He mentioned that the lot is 100' x 400' and it is extremely narrow and offers lesser options to add such an addition and we should look at it from a positive perspective to allow the owner to complete the addition. The other observation is that many of the neighbors have similar setback violations, and he understands that what's done is done but there is a practical thinking and consideration and maybe there is a way that the owner can redesign it a little bit.

Mr. Garber noted that considering what Mr. Mehta just stated maybe some photographs of the neighbors that have violations would be helpful. Mrs. Borchers stated that they have included plot plans which show all of these properties. Mr. Garber asked what the dates were for these because the last zoning change was 2009 and these plot plans were before that change and the setbacks were a lot less back then in 1995. Mr. Borchers expressed that he understands that. Mr. Garber stated that maybe 1-2' might be ok but definitely not the 10'

Mr. Young stated that we need to be very cognizant of the precedence we set. This is the 3<sup>rd</sup> case in a month and a half. Mr. Borchers stated that the only other plea he can make is that they love the neighborhood, the schools, etc. and would love to stay in this house.

Mr. Borchers stated that they did look at some other options, but they involved a lot more and would increase the cost. Perhaps if they could encroach 2-3' and only be encroaching 15 or 16'.

Mr. Brahmachari explained that in the variance territory it doesn't matter whether you are 1 foot or 20 feet into the setback. The variance requires the same hardships.

Mr. Garber asked them if they wanted to continue the case and the applicants stated yes and they asked to continue to October 12<sup>th</sup>.

#### **Motion:**

Chair made a motion to continue Case 1908 – 52 Mountain Street. Mr. Mehta seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Young, Brahmachari, Wallenstein, Mehta).

#### **Case 1907 - 17 Chestnut Street**

Present for the applicant: Resident Deepak Wadhwa and Azul Etoniru, Project Engineer.

Mr. Garber read the legal notice into the record.

Mr. Wadhwa introduced himself and stated that he has been a resident for 17 years and that the family has been part of the schools and the community for several years. They are proposing to build a house on 17 Chestnut Street which is a neighborhood of 4 -bedroom homes.

Mr. Etoniru introduced himself and presented the plot plans. He explained that they applied for a special permit application allow the demo an existing dwelling and build a new single family. The lot contains 20,397 sq ft. It is part of a plant that was created in 1871 and recorded in 1873. The existing house was built in 1955 and was conforming with the zoning at the time. In 1988 it was established as a nonconforming lot. Mr. Wadhwa does not own any property adjoining the lot, but the shape is unique in itself and there's nothing that they can do to cure the deficient square footage. We aren't proposing any changes. He stated that it's a corner lot and Mr. Garber stated that if it's a corner lot you have two frontages and have to meet requirements for both.

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Mr. Etoniru indicated that the proposed setbacks are all in conformance and the single-family dwelling is consistent to the zoning. Mr. Etoniru also stated that the septic system has been approved.

Mr. Garber read the letter from the Board of Health dated September 12, 2022.

Mr. Wadhwa presented the design plans. He explained that the main level will have a foyer, a dining room, living room/study, kitchen, and a great room and on the left-side a bedroom which is connected to the garage and an open porch. The second level has a master suite, master bath, walk in closet, 2 additional bedrooms and in between there is space for an office.

Mr. Garber opened questions to the board members.

Mr. Brahmachari inquired about the maximum height of the structure, he wanted to make sure that it wasn't more than 35'. He stated that it's pretty straightforward and doesn't have any concerns. He noted that he didn't hear any information from the conservation commission and that is needed but it looks like a good project.

Mr. Young asked to revisit the bedroom in the garage. He asked if there is an exterior door off the bedroom and Mr. Wadhwa stated that there is a door to the garage. Mr. Young didn't have any other questions.

Ms. Katapodis found the letter from the Conservation Commission in the file folder dated August 25, 2022. She read the letter into record.

Mr. Wallenstein asked to go back to the other drawings which show the setback. He questioned the setbacks and wanted to be sure that they met the requirements of the setbacks and that he didn't require a variance. Mr. Mehta explained how they designed the house in order to meet the setbacks on all four sides.

Mr. Mehta stated that he thinks it's a complete application and he stopped by the location earlier in the day to see what kind of impact it would have on the neighborhood. He noted that all of the setbacks are met and no detrimental impact on the neighborhood and the use is the same and it is consistent with the neighborhood. He stated that he doesn't have an issue, and the proposed residence would enhance the neighborhood.

Mr. Garber opened the meeting to the public.

Mr. Danial Silverburg from 21 Chestnut Street. Mr. Silverburg stated that he had three questions; 1. What is the timing of the construction, 2. How can you determine if the structure is detrimental to the neighborhood without a textual-renderings, and 3. With regards to the precedence set regarding the rotation of the building, is this common practice of the zoning laws?

Mr. Garber answered his second question and referenced other projects with corner lots and that rotating the house doesn't change the primary address because you have 2 frontages. Regarding the timing of the construction, a special permit expires in 2 years and if they haven't started any work, they would have to file an extension. And regarding the renderings, we can propose it to the board.

Mr. Garber asked the board how they feel about seeing the existing versus the proposed.

Mr. Brahmachari stated that he thinks it's a fair request.

Mr. Wallenstein agreed that it would give better perspective.

Mr. Mehta stated that he doesn't need to see it in order to approve the project because they meet all of the requirements.

Mr. Philip Carmody 27 Chestnut Street asked if the house had not been rotated it wouldn't meet the rear setback? He is concerned that the house is too close to Mr. Silverburg's property. Would the situation be different if the

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house had not been rotated? Mr. Brahmachari stated that the short answer is no. Mr. Garber stated that it's getting 7 feet closer to Mr. Silverberg's property but still meets the setback requirements on a corner lot.

Christine Pasto, 21 Chestnut Street. Ms. Pasto expressed concerned about her view being impeded and the property value being impacted. She indicated that the lot lines are extremely tight. Is there anything that can be done? She expressed that when they look out their kitchen window, they will see the garage but now they see grass and trees. Ms. Pasto wanted to know that the landscaping plan is, and she is concerned about the view.

Mr. Garber pulled up the rear elevation so that they can see what the proposed view would look like. Mr. Etoniru stated that the existing trees will remain.

Ms. Pasto asked about the timing of the construction, when will it start and how long will it take. Mr. Etoniru stated that they would like to start in a month or two and it should only take 8 months to build.

Mr. Garber asked if there were anymore questions and asked the applicants if they would be willing to provide the renderings per Mr. Silverburg's request. Mr. Silverburg withdrew that request.

Mr. Garber asked if they wanted to close the case.

#### **Motion:**

Chair made a motion to close Case 1907 - 17 Chestnut Street, Mr. Brahmachari seconded the motion. Approved by unanimous roll call vote 5-0-0 (Garber, Young, Brahmachari, Wallenstein, Mehta).

#### **Motion:**

Chair made a motion to Vote to Approve Case 1907 - 17 Chestnut Street (Standard Conditions, 4 -Bedroom), Mr. Brahmachari seconded the motion. Approved by unanimous roll call vote 3-0-0 (Garber, Young, Brahmachari).

### **MINUTES**

#### **Motion:**

Chair made a motion to approve minutes from July 27, 2022, Mr. Brahmachari seconded the motion. Approved by unanimous roll call vote 5-0-0 (Garber, Young, Brahmachari, Wallenstein, Mehta).

The meeting adjourned

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Respectfully submitted