

## Zoning Board of Appeals Minutes, 05022018

### Zoning Board of Appeals Minutes May 2, 2018 Land Use Meeting Room

**Members in Attendance:** Acting Chair Shawn Leary Considine, (SLC); Robert Fuster, (RF); (Al Harper, (AH); Robert Fuster Jr., (RFjr); Ned Douglas, (ND)

Absent with notification: Ethan Berg, (EB); Clifford Snyder, (CS)

**Staff present:** Peggy Ammendola, Land Use Clerk, (PA); Gwen Miller, Land Use Director, (GM)

The meeting was recorded.

The meeting was called to order at 7:00 PM.

Prior to tonight's meeting, GM provided, via email, hearing notes on all of the applications.

Members of the public who were presented were: Scott Shortt of the Kemble Inn, Drew Davis, Attorney Jeff Lynch, David and Joanne Lane, Christine Regnier, Robert Hebb, Eiran Gazit of Gateways Inn, Angela Lomanto Of Brook Farm Inn, Pam Kueber, Kate McNulty Vaughan, Jaimy Messana and Thomas Wickham.

**Christine Regnier, 124 Cliffwood Street, (Map 17, Parcel 19), Special Permit/Variance under Section 5.3 "Nonconforming Uses"** to allow for the continued use of a pre-existing accessory apartment on site.

Presenting the application was Ms. Regnier. Also present was Robert Hebb of Bay Area Designs.

Ms. Regnier said that when she bought this property it had the existing apartment which she believes goes back to the 1950s. Her son currently lives there and from time to time other family members have occupied the space. She is proposing to dismantle the 1897 building and rebuilding with as much of the exterior material as is possible as well as the posts and beams. She stated that the new structure will look the same as the existing. The back corner of the existing structure is on the property line, and Ms. Regnier would like to move the structure 3 feet further from the property line.

Mr. Hebb said that he had spoken to Jeff Clemons, Building Inspector, who suggested that if the building was going to be taken down they might consider rebuilding 3 feet from the property line. Mr. Clemons told Mr. Hebb that an Accessory Dwelling Unit was permitted in this zone. This is what the applicant is proposing.

SLC pointed out that this structure may be a pre-existing non-conforming use, but it is possible that it is illegal as it is not listed in town records as a separate dwelling and therefore is not being taxed. She said that variances are difficult to receive. She questioned how this application meets the requirement of the zoning bylaw and in particular Section 9.2. It was pointed out that once the building is taken down one is not continuing the use.

With the proposal the project would have 880 square feet of living area, but Mr. Hebb said that the size could be reduced to 800 sf, the maximum allowed for an ADU. The existing building has 750-760 square feet and Mr. Hebb said that there is the option to simply restore it as opposed to rebuilding. SLC said that if they did the restoration, she felt that the Board could be a little more flexible, as this is classified as pre-existing non-conforming.

AH stated that the notice is defective, as it does not adequately describe the proposal. He is concerned that there is the potential of this becoming an Airbnb in a densely populated area. As an ADU, a requirement is that an affidavit is to be filed stating that the home is owner occupied. Ms. Regnier said that it is her intent that this unit will be occupied by family members or herself at some future point in time.

It was agreed that a variance could not be justified. Discussion ensued as to whether this hearing could be continued and that it would be re-noticed at the Petitioner's expense. It was decided that it would be best to allow the Petitioner the opportunity to withdraw and start with a new application. Ms. Regnier asked to be able to withdraw her petition.

RF made a motion to permit the Petitioner to withdraw without prejudice. AH seconded the motion and the Board voted to agree 5-0.

The public hearing was closed.

**26 Church Street, LLC, 26 Church Street, (Map 43 Parcel 161), Special Permit for exception under the provisions of Section 5.2.F.9 “Schedule of Uses” and Section 8.1 “Motels, Inns, Hotels”** to rent residential units on the second floor of the existing building to transient guests on a short-term basis.

Attorney Jeff Lynch presented the application. Drew Davis, principal of 26 Church Street, LLC, was also present.

The plot plan of the property and floor plan of the unit was presented to the Board. Mr. Davis recently purchased the two story building. The first story has been used as retail and the second story contains two apartments. The units would be designated under Section 8.1 as “guest house” and would serve people who are staying for less than 30 days.

The units are being renovated and will be undergo life safety upgrades which includes sprinkler system, marked exits, etc. The Town will have the benefit of room tax and this use will bring new faces into the District. It is not anticipated that this use will create any increase in traffic or on water or sewer use.

Mr. Davis said that he has a local full time property manager for all of his properties in the District. He believes that having this use will put more people on the streets in the District during the winter which will be a positive for the restaurants and retailers.

The Building Inspector, sent an email (May 2, 2018) to advise the ZBA that should this Special Permit be approved, the applicant would be required to apply for a change of use permit with the Building Inspections Department.

**Public Comment:**

*Eiran Gazit*- He said that this would be making more competition for him he but this use would require the owner to do everything he, as an owner of an inn, has to do. This process makes sure that guests are safe and the Town is getting the benefit of the room tax. He is favored the granting the Petitioner’s request.

*Scott Shortt*-He said that he feels that this sets an appropriate and proper precedence for people who want to provide accommodations for transients for money. This process provides safety to guests and taxation. He is in favor of the issuance of the special permit as requested.

*Angela Lomanto*-She said that she agrees with everything Mr. Shortt said.

*Kate McNulty Vaughan*-She disclosed that she is on the Planning Board and Affordable Housing Committee, and that she was speaking on her own behalf. Her concern is that this use will reduce the number of apartments in the District for people who are elderly and don’t have access to a car.

The Board did not feel that there was a need for a site visit or special conditions.

RFjr made a motion to grant the Petition as requested. ND seconded the motion and the Board voted to agree 5-0.

**67 Church Street, LLC, 67 Church Street, (Map 43 Parcel 181) Special Permit for exception under the provisions of Section 5.2.F.9, “Schedule of Use”, Section 8.1, “Motels, Inns, Hotels” and Section 5.3.2 “Nonconforming Uses”** to open a one-unit tourist home/guest house.

Attorney Jeff Lynch presented this application. Drew Davis was also present.

The plot plan of the property and the layout of the existing building was presented. The first floor is retail use. The apartment on the second floor has already been renovated. It had been an office and through the special permit process, was approved for a change of use to the residential space. There is adequate parking and is on town water and sewer. With the renovation it has been fully upgraded with life safety protection elements which include the sprinkler system, alarms, etc. There is a local property manager.

The Building Inspector, sent an email (May 2, 2018) to advise the ZBA that should this Special Permit be approved, the applicant would be required to apply for a change of use permit with the Building Inspections Department.

**Other correspondence received:**

*Robert Murray*, a direct abutter, stated that he is in favor of the project.

*Serge Paccaud*, an abutter also wrote a note in support of the application.

**Public Comment:**

*Eiran Gazit*-He repeated his comment from the 26 Church Street, LLC application- He said that this would be making more competition for him he but this use would require the owner to do everything he, as an owner of an inn, has to do. Making sure guests are safe and town is getting the benefit of the room tax he is in favor of granting the Petitioner’s request.

RF made a motion to close the public hearing. AH seconded the motion and the Board voted to agree 5-0.

RFjr made a motion to grant the Special Permit as applied for. RF seconded the motion and the Board voted to approve 5-0.

**Jaimy Messana, 15 Brunell Ave., (Map 42, Parcel 42), Variance from Table 6.1.1, “Table of Dimensional Requirements”,** to allow for the placement of a garage into the yard setback.

Presenting the application was Ms. Messana and Tom Wickham

Ms. Messana presented her application. She asked for permission to add a 24’x 24’ double car garage and 10 foot breezeway which would attach to the side of the house. There are issues, e.g. gas line, storm drain and gas vents, and location of the driveway that prevent the garage from being attached to the house in any other way. Ms. Messana said that the neighborhood was built in the 1950’s before the 20 foot setback requirement was established in the zoning bylaw and that most properties are non-conforming. Her proposed addition would be consistent with the neighborhood.

Mr. Wickham said that the roof line of the garage would be a salt box design to match the house. The breezeway roof would not be but he said that it would be aesthetically appealing whereas without the breezeway it would not. The slope of the topography also prevents attaching the garage to the house. A photo of the subject house from the Assessor's field card was reviewed by the Board. This demonstrated further the topography and the need for the variance

Four letters of support from the following neighbors were read into the record:

*Monique Grosjean*

*Richard and Kate Letterman*

*Grace Gwara*

*Steven Olmelenchuk*

All stated that the proposed project would improve the neighborhood.

The public hearing was closed and RF made a motion to approve the request for the variance to allow for the construction of the garage and breezeway. The consensus of the Board was that the applicant more met the stringent requirements of the variance based on the topography and physical characteristics of the property. These conditions would prevent the construction without incurring substantial economic hardship. AH seconded the motion and the Board voted to approve by a vote of 5-0.

**Approve Minutes-**

***February 21, 2018***-The minutes were approved by consensus.

***March 21, 2018***-The minutes were approved by consensus.

Respectfully submitted,  
Peggy Ammendola