

**Lenox Zoning Board of Appeals
Minutes
November 5, 2018
Land Use Meeting Room**

Members present: Acting Chair Shawn Leary Considine, (SLC); Robert Fuster (RF); Al Harper, (AH); Robert Fuster Jr. (RFjr); Clifford Snyder, (CS); Ned Douglas, (ND)

Staff present: Land Use Clerk Peggy Ammendola, (PA)

Also present were abutters, David and Joanne Lane, who are direct abutters to the north.

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

The hearing was recorded.

Christine Regnier, 124 Cliffwood Street (Map 17, Parcel 19, Special Permit under Sections 9.2 and 5.3.3.to allow demolition and reconstruction of a pre-existing, non-conforming barn/apartment behind the existing house, for use as an Accessory Dwelling Unit (ADU) with 800 square feet of interior living space. *Continued from September 5, 2018 for a site visit on September 10, 2018 and continued hearing to September 12th. Continued to October 2, 2018 at 6:45 PM. The hearing was continued again to November 5, 2018.*

Note: There were only 4 members available at the first meeting on Sept. 5th. Attorney Robbins, representing Ms. Regnier, asked that a fifth member listen to the audio and sit for subsequent meetings. SLC agreed to be that fifth member and listened to the audio and attended the site visit and has participated in the other meetings.

Present was Attorney Lori Robbins and Ms. Regnier.

The ZBA had asked for a memo to address their concern about whether the pre-existing non-conforming structure could be demolished and rebuilt within the same or similar footprint in violation of the northerly side yard setback. On November 2nd Attorney Robbins provided to the Board both her memo and a case to support the Petitioner's request. The case was: RICHARD J. GLIDDEN, trustee, & others vs. ZONING BOARD OF APPEALS OF NANTUCKET & others. 77 Mass. App. Ct. 403 April 13, 2010 - August 18, 2010.

Attorney Robbins reviewed both documents with the Board and quoted from sections of our Zoning Bylaw to argue her case.

Included in Attorney Robbins's memo, was Exhibit A in which she provided information on property located across the street at 117 Cliffwood and owned by Judy and Mark Usow. In 2004 the Usows were granted a special permit to demolish and remove an existing garage and rebuild a new garage in the same general location but rotated to make it perpendicular to the lot line. Exhibit B contained the application and decision for the Usows to reconstruct an existing garage that was 2.26 feet from the side yard setback into an ADU. This was in 2009. Exhibit C was a letter of support from the Usows for Ms. Regnier's request.

Attorney Robbins said that neighbors have written to say that Ms. Regnier's son has lived in the structure.

In closing, Attorney Robbins said that she feels that the Board has the jurisdiction to grant the Special Permit.

Five letters from residents attested that Kyle Regnier has lived in the structure.

A letter from the Usows was read into the record.

David Lane said that he and his wife do not have any problems with the project, but do want a surveyor/engineer to demark the property line. At present, the structure is on the property line, and they do not want it rebuilt to be on the same footprint. The representation at the previous meeting was that a survey would be done and the northerly line will be 5.6 feet from the property line.

RFjr made a motion to close the public portion of the hearing. AH seconded the motion and the Board agreed.

Discussion ensued. AH focused on Section 3.4.2 of the bylaw which lists the requirement criteria for a special permit and stated that the creation of an ADU does very little to further community needs by granting this special permit and would not support the petition.

RFjr made a motion to grant the special permit. ND seconded the motion and the Board voted to approve by a vote of 4-1 with AH casting the dissenting vote.

ND made a motion to apply a condition that the northern boundary be set prior to any construction/demolition by an engineer or surveyor and the northerly outer wall of the building location be set prior to construction. RFjr seconded the motion and the Board voted to agree 5-0. It was confirmed that the exterior, any portion of it, would be no less than 5.6 feet from the property line.

ND made a motion to condition that the northerly door to the ADU will be removed as part of the proposal. RF seconded the motion and the Board approved 5-0.

SLC made a motion to include a condition that there will be no exterior lighting on the building except at the entrances. ND seconded the motion. The Board voted 4-1 with RFjr casting the dissenting vote.

RFjr made a motion to close the decision phase of the hearing and adjourn. AH seconded the motion. The Board voted to agree 5-0. The meeting was adjourned at 7:50 PM.

Respectfully submitted,
Peggy Ammendola