

Maynard Zoning Board of Appeals - Minutes: October 21, 2013

Attending: Paul Scheiner (PS), Chair; Christopher Etchechury (CE); Carlos Perez (CP); and, Leslie Bryant (LB), Alternate. Absent: Marilyn Messenger (MM). Also attending on behalf of the Town of Maynard: Eric R. Smith, AICP, Town Planner, Recording Secretary.

PS called the meeting to order at 7:05p.m. Noted the Board has two petitions before us tonight. The first is a continuation from last month.

Petition of Seawitch, Inc., 175-177 Main Street for a Variance from the Dimensional Regulations within Section 4.1.1. of the Maynard Zoning Bylaw

PS opened up the continuation of the public hearing regarding 175-77 Main Street and noted typically it is a four-person Board to vote on any action. PS noted that Member Christopher Etchechury did not attend the Hearing last month. Mr. Etchechury then noted he has read all the application materials and the meeting minutes. PS: I would like to propose that we have 4 people here who could render a decision. It would have to be unanimous. PS asked the Petitioner if that is accessible. The Petitioner indicated yes.

The Town Planner indicated that is the Mullin Rule. Vic Tomyl asked Mr. Etchechury if he has read the minutes of the previous meeting. Mr. Etchechury answered yes and as well as the application information and this information is stated on the form he has filed out in accordance with the Mullin Rule.

PS noted the issue the Board was trying to understand last time was the idea of merging lots. PS noted both that he and the Town Planner contacted Town Counsel and have received a Legal Opinion for 175-77 Main Street. PS then read a couple of key paragraphs from the Legal Opinion to put into the minutes:

"As a threshold matter, the two lots have merged as a matter of law. As is set forth...lots held in common ownership will merge if one (or both of them) are vacant; AND (if) a dimensional non-conforming exists for one (or both) of them. The purpose of the merger doctrine is to mitigate zoning nonconformities..."

"Notwithstanding the foregoing, if the owner obtains a frontage variance (and any other necessary variances) the lots maybe divided – or unmerged. With a variance in hand, the lots would regain their independent status and the other would then be free to convey either or both of them."

PS noted that is what the Board is up to tonight. LB indicated there is more and continued to read additional language from the Town Council opinion:

"...While the burden to meet the criteria for issuance of a variance is very difficult, and while the criteria would be very difficult to establish in this case, the decision on whether to issue such relief is within the discretion of the Board of Appeals...In addition to the requirements of variance, the location of the building on Lot B poses other concerns. Particularly, even with the issuance of the variance, the building will partially protrude or trespass onto Lot 69. There may be various private or public remedies to this situation, as we have discussed."

LB: Do we have to consider that in our decision? PS: I think that is beyond what we have been asked to render a decision on. He is looking for a Variance so he can have two lots. If we decree that the one with the building on it is a separate lot rather than a merged lot, then it his challenge I think. CE: My primary concern over this is the fact the one lot protrudes onto the other and what are the remedies for this, such as surveying and re-dividing the property to eliminate that. PS: From our perspective or theirs? CE: Either, as I want to make sure there is a remedy. PS: What we were talking about last time is just drawing enough of a line to separate to give him the clearance. Footnote here (pointing to the plan) says it is .3 feet over the line.

Mr. Chris Basile (CB): I think what I would do in that case is since the lot goes off at a slight angle, and where the lot lines are it opens up so there is a crevice in between the two buildings. So I could do a land swap.

PS asked the Petitioner to describe the situation again, based on what the Board discussed last time.

CB: What I like to do is I want to sell of this lot (pointing to site plan) from Lot B. I bought the Quarterdeck Building in 1979. Then bought the (other) lot in 1999 (*Correct purchase year is 1991*). I didn't know that the merger theory came in place. I am trying to sell the lot and I have a buyer for the lot. Mr. Basile then read his letter provided to the ZBA for this meeting into the record.

PS: That was a good refresher. Your comment about it being vacant for a long time, I was just wondering was it ever built up? CB: I think years ago it was a rooming house. That whole strip was rooming houses with storefront. Vic Tomyl: Many years ago you had two buildings there. You had a building called the East End House and another the West End House. There was further discussion of the old rooming house buildings.

PS asked for Board questions. LB had none. CP: I would like to see something there. CE: I have no questions. All have been answered.

PS: The challenge for us is to come up with Findings.

CB: The lot is in the Downtown Overlay District so there isn't setbacks.

ES: It is like the case ZBA heard recently, the 170 Main Street Special Permit. The ZBA granted relief because of the Business District setbacks, but the Board noted as part of a Finding you noted it was in the Downtown Overlay, which it would be compliant. I provided a series of pictures to the ZBA showing that most of this block including 175-77 Main Street would be compliant with the Downtown Overlay. But I realize the Business District is the underlying district, which the Building Commissioner would look at for conformity. The Downtown Overlay is a zoning tool that someone can use for new development. Does that help? ZBA members said no.

ES: The point I am trying to make, realizing it was for a Special Permit not a Variance as the Criteria are different, but for the Special Permit relief for the 170 Main Street Garage proposal to allow Petitioner to build the canopy closer to the Main Street front setback, the Board made a Finding that it happened to be a conforming lot under the Downtown Overlay District requirements.

ES: The Building Commissioner and I met with Chris to discuss this case and I had remembered the last ZBA meeting. We were looking at the Variance Criteria, which is soils, shape and topography of lot. We were thinking that making the case based on shape, because of the shape of the large lot is a conforming lot, but the shape of the other lots are nonconforming, however they would be conforming under the Downtown Overlay.

PS: But there is a however. The Special Permit Granting Authority for the Overlay is the Planning Board. ES: Yes, for new projects that come in that is correct.

PS: We are looking at a Petition for a Variance from the dimensional regulations for lot area, yard size and maximum coverage in a business district. That is what the Petition is for. The lot size is 6,500 square feet. It is a little small. The Coverage (pointing to Chris), you don't have a percentage in there. ES: Frontage is short as he has 49 feet, 75 feet is the requirement.

PS: So what I see here do we want to say it is a pre-existing nonconforming structure and go with a Variance that way. PS asked LB if that makes sense. LB: I am still trying to get my head around what it exactly we are being asked. Whether a Variance may allow the properties to be divided and sold. Is that our business? PS: Lot 69 is a useful lot by itself. It meets the criteria. Lot B is a little small, but it was pre-existing. But since it was small when he bought the next door lot the merger theory came in and made it one giant lot. So if we can unmerge them, he now has a pre-existing nonconforming lot, and we are allowed to do that if we have findings.

The Board members then discussed developing a set of five findings required to render a decision.

CE made a Motion to grant the Variance request for Seawitch, Inc. with the following findings: Does not derogate from the spirit of the law, that the structure is pre-existing and was a pre-existing nonconformity, if we were unable to grant the Variance there would be substantial hardship on the owner and limiting the development of the property, it is not detrimental to the public good and this action does not derogate from the intent or purpose of the Zoning Bylaw, because it is in a business district. Seconded by LB. PS asked for any further discussion and there was none. Vote 4 to 0 in favor to approval.

Vic Tomyl commended the Zoning Board for their decision.

Petition of Nilosh Chohan, 57 Butler Avenue, for a Special Permit, Section 5.1.5., for a proposed addition of a new five-foot wide covered and enclosed porch to the side of the existing residential dwelling.

PS read the information from the posted meeting agenda for the requested relief:

"Petition of Nilosh Chohan, 57 Butler Avenue, Maynard, Map 15-Parcel 102, for a Special Permit pursuant to Maynard Zoning Bylaw, Section 5.1.5, for a proposed addition of a new five-foot wide covered and enclosed porch to the side of the existing residential dwelling. Said relief is required as a portion of the proposed porch addition is located within the required front-yard setback of a lot located in the Town's General Residence (GR) District."

The Petitioner, Nilosh Chohan (NC) of 57 Butler Avenue, approached the Zoning Board of Appeals. NC provided a set of pictures of the existing property on the side where the proposed porch would be located.

PS: What is in front of the wood curbing, more of the property? NC: Yes. PS: So this driveway is also part of the property? NC: Yes.

NC: I meet the requirements of the 15-foot side setback. I do not meet the requirements of the 25-foot front-yard setback requirement. The existing is 9.7 feet.

PS: So you just want to square off the porch. NC: Yes and it is not going to protrude any further than the existing house.

The Board reviewed the status of the 15-foot side setback and the 25-foot front yard setback compared to both existing and proposed conditions.

NC: There is one correction. On the Public Notice it says it's an enclosed porch. It is an open porch. Covered but open porch.

The Board reviewed the proposed construction with the Petitioner. Reviewing the submitted photos, NC indicated he would continue the roofline – to have one continuous roofline wrapped around the side of the house. NC noted he is extending the porch towards his driveway and not Butler Avenue. Board reviewed location of construction in relation to the Petitioner's Driveway and Butler Avenue.

LB: It looks like it will be architecturally more attractive. PS: Looks like it may have one (porch) before cause of the naked wall here. It may have had one wrapped before.

PS asked if anyone wanted to speak in favor of this petition.

Daniel Dintino, 61 Butler Avenue: I am in favor. I have lived in that neighborhood for 60 years. I have known this couple for the last 2-3 years. Everything they have done has been a plus a real asset.

Mary Dintino, 61 Butler Avenue: Same thing with me.

Vic Tomyl: No comment.

PS closed the Public Hearing by consensus of the Board.

PS noted they are asking for 25 feet down to 9.7 feet.

PS asked the Petitioner how old is the building. NC: 1930 it was built.

PS asked for Board comments.

LB: I have no problem with it. CE: It sounds good to me. CP: Fine. It is there already.

PS: The Petitioner is asking for a Special Permit, from Section 5.1.5. PS reviewed Section 5.1 and asked if we should be reviewing under Section 5.1.3, Nonconforming Structures.

ES: I talked with the Building Commissioner and if you look at Section 5.1.5 (Nonconforming Single and Two Family Residential Structure), which is a long section, there are three things that have to apply. Then it states if those don't apply, and I am just going to read the bottom part:

"The extension of an exterior wall at or along the same nonconforming distance within a required yard shall require the issuance of a Special Permit from the Board of Appeals."

ES: That is basically what they are doing right? They are not going out front but out to the side.

LB: It is almost de minimis.

LB made a Motion for the Zoning Board of Appeals to grant a Petition of Nilosh Chohan, 57 Butler Avenue, for a Special Permit, pursuant to Maynard Zoning Bylaws, Section 5.1.5 for a proposed addition of a new five-foot wide covered porch to the side of the existing residential dwelling within a General Residential Zoning District. Seconded by CE. Vote 4 to 0 in favor to approve the Special Permit.

Approval of Minutes

CE made a Motion to Approve the July 15, 2013 and September 16, 2013 meeting minutes. Seconded by PS. Vote 4 to 0 to Approve.

LB made a Motion to Adjourn. Seconded by CP. Vote 4 to 0

List of Documents Entered into the Records

On file at the Office of Municipal Services

- Town Counsel Opinion – 175 – 177 Main Street
- Mr. Chris Basile Letter to the Zoning Board of Appeals received October 17, 2013
- Photos of 57 Butler Avenue existing conditions submitted by Nilosh Chohan