



TOWN OF WATERTOWN
Zoning Board of Appeals
Administration Building
149 Main Street
WATERTOWN, MASSACHUSETTS 02472

Melissa M. Santucci Rozzi, Chairperson
David Ferris, Clerk
Christopher H. Heep, Member
John G. Gannon, Member
Kelly Donato, Member
Neeraj Chander, Member

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Louise Civetti, Clerk to the ZBA

MINUTES

On Wednesday evening, **September 17, 2014** at 7:00 p.m. in the Richard E. Mastrangelo Council Chamber on the second floor of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: David Ferris, *Acting Chair*; Christopher Heep, *Acting Clerk*; John G. Gannon, *Member*; Neeraj Chander, *Alternate Member*. Also Present: Andrea Adams, Senior Planner, Mike Mena, Zoning Enforcement Officer. Absent: Melissa Santucci Rozzi, *Chair*; Kelly Donato, *Member*; Louise Civetti, *Clerk to the ZBA*.

Acting Chair Ferris opened the meeting, introduced the board and staff and reviewed the agenda stating that two cases will be continued and two cases will be heard. Mr. Mena stated that at 6 p.m. this evening a notice was received to withdraw the application at 12 Dana Terrace; however, it will be withdrawn at the next meeting. Mr. Ferris stated that the monitors are not working tonight and added that there are photos and drawings of the petition should anyone wish to see them.

Member Heep read the legal notice for the first case:

"Sarah Stewart, 207 Appleton Street, Cambridge, MA 02138, herein requests the Zoning Board of Appeals grant a Special Permit in accordance with Watertown Zoning Ordinance §5.02(d) Home Occupation, so as to allow a psychotherapy practice within an existing single family structure. S-10 (Single Family) Zoning District. ZBA-2014-23"

Chair Ferris explained to the audience the requirement of 'swearing in' and swore in the audience.

Sarah Stewart introduced herself and her mom and gave a brief description of what is happening. They are planning for the transition of her mom to a retirement community and she and her siblings are planning to have her live in the house. She said if this special permit is not granted, they will then go on to plan B. She said Mr. Tarvezian is the neighbor on the driveway where the clients would park and he has written a letter in support. There is no internal construction required as her father, now deceased had a study in this spot. Her neighbors have been very welcoming and have signed a letter stating they are in support of her and her business coming into the neighborhood.

Chair Ferris asked for speakers from the audience. No one spoke from the audience.

Member Gannon asked why type of clients does she serve. Ms. Stewart stated they are the "worried well". She does not see extreme mental health issues –she sees depressed, stressed, couple issues, etc. Their ages are between 18 and 87 years old. She sees clients that she feels comfortable in her home.

Member Heep said the Special Permit requires that she live in the house. Should this be approved, how does she plan to move in and what would be the timing of this.

Ms. Stewart stated that this would all happen within the next two years as her mom is on a waiting list and they do not know exactly.

Mr. Mena stated that the requirement is that if approved, it would have to be acted upon within two years.

Member Heep wanted to clarify that the business would not be started in Watertown without her living in the house. Ms. Stewart said that she would want to update a couple of things in the house before she were to transition the business there. She would live there first. She then stated that neighbors wanted to be certain that this permit/occupation did not go with the house – that when she vacates the property, the Special Permit is no longer valid. She wants a condition to be written with that.

Mr. Mena explained that typically, the Special Permit runs with the land. However, a condition can be written that the Special Permit for Home Occupation expires when Ms. Stewart no longer requires it at this property.

Chair Ferris asked if this Special Permit is going with Ms. Stewart then she can use it with another property? Mr. Mena explained that this is tied to this applicant at this address only. He then quoted from the Watertown Zoning Ordinance, Section 9.13 that a special permit granted expires ONE year from date of granting if substantial use has not commenced if not with good cause. Ms. Stewart would have to ask for an extension for one year from this board.

Chair Ferris asked how the applicant would remember to come back to the board in one year and is there an automated reminder? Mr. Mena stated that it is the responsibility of the applicant. He would help with sorting the timeline out.

Chair Ferris stated that at 10 months a reminder in her calendar would start the process to request an extension to the board for another year. If she did not come back to the board for an extension, the process would have to be started over. The approved extension would be good for another year.

Member Heep stated that she would not have to defend the use as a Home Occupation again, she would only have to state that she could not start the home occupation because of whatever the reason would be.

Core Malkonian (sp?) asked how many patients she will see in a week and if there will be a sign on the property. Ms. Stewart said no signage and a maximum of 35 clients stretched out during the day. Mr. Ferris said there are conditions stating no more than 35 clients in a week; single or couples only from 7:30 a.m. to 9 p.m. Monday thru Friday.

Ms. Stewart thanked Member Heep for explaining the extension.

Member Heep asked if a condition should be added that the Special Permit should be limited to only this Petitioner. Ms. Adams stated that there is condition #8 states if this petitioner abandons the use or vacates the property the home occupation disappears.

Chair Ferris restated that residency would have to take place before the home occupation could begin. Ms. Adams asked if he meant coterminous or does he want her to live in the house before the occupation begins. Chair Ferris said that either way, she must live in the house before the home occupation begins.

Member Gannon asked if a condition is necessary or does the ordinance specify this clearly. Mr. Mena said it does not require a condition.

Member Heep motioned to approve the requested Special Permit with conditions listed in the planning Board report and the specific condition requiring living in the home prior to the home occupation commencing. Mr. Gannon seconded and praised the applicant for her neighborhood outreach.

All in favor? Voted 4-0. Unanimous.

Documents Reviewed: Sketch Addendum, Greater Boston Valuation, showing main house, first and second floor; Stewart Residence, Lower Level Floor Plan/Driveway Plan, drawn by STEM, dated 7/14/14; Letter in Support by next door neighbor, George Tarvezian; signed petition by several neighbors; Planning Board report.



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Chair Ferris announced the second case at 68 Piermont Street.

Member Heep read the legal notice:

"John Shields, 68 Piermont Street, Watertown, MA 02472, herein requests the Zoning Board of Appeals grant a Variance from Watertown Zoning Ordinance §4.03(d) & (g), Accessory Structures so as to allow a constructed 18'x21' garage with 0' side setback along Tappan Street, where 25' is required and approximately one foot setback to the rear, where 5' is required. S-6 (Single Family) Zoning District. ZBA-2014-24"

John Shields introduced himself with his addresses as 68 Piermont Street. He said the garage is actually a carport made with 2x2 galvanized steel with an "A-Frame" on it for the snow load. It is heavy-duty steel embraced and supported. He put it up in March and took down the fence in the back and on the side and started putting up the garage, had to redo the cement on the Tappen Street side as it was breaking up and he poured 6" of cement and took out the brick and started to enclose the carport – that's when he got a 'Stop Work' order. He started to put plywood siding on it to match the house so it wouldn't look run down like the carports with fabric and trying to make it look like a garage without buying a garage at about \$50,000 and he is in to this garage for about \$5,000.

Chair Ferris opened it to the board:

Member Heep asked when he purchased the property; if there were a fence around the rear yard and a shed when purchased. Mr. Shields said he bought it in October 2012 and there was a 6' high PVC fence all around the property and an 8'x12' shed.

Staff stated there was not a permit issued for the carport and that is why a Stop-Work Order was issued.

Member Gannon asked why he didn't apply for a building permit. Mr. Shields said he didn't think he needed it; however, has applied for one since.

Member Gannon asked if there is a fencing contractor truck regularly stored at the site. Mr. Shields said it is a 350 pick-up. Member Gannon asked Staff to explain if this is allowed in residential areas.

Mr. Mena stated the Watertown Zoning Ordinance allows for a commercial vehicle to be parked at the residents home as long as it does not exceed a ¾ ton towing capacity. He is not familiar with the vehicle's size.

Member Chander asked why he then filed for a permit. Mr. Shields said he filed because someone called and didn't like it. However, he brought all of his neighbors with him so it must have been someone that doesn't live on this street. He said there was a concrete pad there surrounded by a fence with an 8'x12' shed on it that was at least 10 years old (a neighbor spoke from the audience and said it was 25 years old). Mr. Shields said it was used to store tools.

Chair Ferris asked Staff if the addition to the rear has not yet been approved. Mr. Mena said when there was an investigation done on the property, it was discovered that the addition was built without the benefit of a building permit. The Petitioner has applied for a permit for the addition and it appears that may be allowed by right as far as building coverage, setbacks, etc. That addition is being corrected and permitted.

Member Chander asked if there are plans for gutters along the roofline on both the addition and the carport. Mr. Mena explained that the rear property around the pool is paved so it would not be increasing any runoff to the existing conditions. As far as any stormwater provisions for the addition, he is unaware of any. His understanding is that a project of this size would not require drywells, etc.

Member Chander asked if there is a slip hazard for frozen water. Mr. Mena explained that the garage is a concern as it is allowing water runoff directly to the public right-of-way (sidewalk) which is not permitted in the ordinance. Should the Board approve the petition tonight, there would have to be modifications to the garage – gutters off the eave with proper drainage.

Chair Ferris stated that Mr. Shields has owned the property for a couple of years and someone applied for several permits – duct work, boiler, gas range. He asked if someone knew they had to apply for permits for those things why they would think they didn't need a permit for an addition to the house and then a carport. Mr. Shields said he traded a camper for the carpentry work and was told by the contractor that he had pulled the permits. He found out later that the permits were not pulled. He said he gave him the camper and he never came back so it was only finished recently. The work started 3-4 months ago.

Chair Ferris asked what is under the carport. Mr. Shields said it is a 6" slab. Chair Ferris stated that he is an architect and structures need a foundation. In Massachusetts the minimum is 42" below grade so that frost doesn't affect your structure and it stays intact. Mr. Shields asked if that was necessary for a carport. Chair Ferris emphasized that he is making this a garage by adding walls; a roof; and making it as enclosed as they can. He said the setback violations are pretty gross from what is allowed. Mr. Shields asked if the setback is from the garage door because the garage is sideways. Chair Ferris said that staff would clarify that; however, what he has is a structure that is very close to the property lines; doesn't have an appropriate foundation for building code; safety of anyone adjacent to it as it is so close to the line.

Chair Ferris opened the meeting for the public to speak.

Olof Duma, lives next door to John Shields at 64 Piermont and said the viewpoint of the structure when you are on the street did not change the appearance of this property as there was a 6' high PVC fence with a shed behind it which had a roof sticking about this. Now there is a white wall with a PVC side and it doesn't appear to be different. It does not make a difference to the neighborhood. As a layman, it is a professional piece of work made out of steel. He doesn't see any danger to the public.

Tim Hogan, 18 Tappan Avenue said he lives directly across from the port (sic) that he put up. Aesthetically, it made the property look better. He thinks it is great that he has a place to park the trucks in the winter. He is not a carpenter so he doesn't know building code but he is a mailman and all he has to do it put a gutter up for drainage. He walks the neighborhood and there isn't an issue walking on this sidewalk. There are other sidewalks that are torn up with trees hanging over them. He said Mr. Shields did a nice job and visually this looks great.

Angelo Cianno, 22 Tappan Avenue said the garage that John built he sees every day. He has no objections. He is a great neighbor, his property is always maintained. He doesn't see anything wrong with it and is excited to see the garage door hung on it to see what the rest of it will look like. He gives John his approval. He lives across the street – everything that John does is quality work. He has been an asset to the neighborhood.

Paul Casella said he lives behind him. I have a small shed that backs up to this property and there used to be a big one there. There was a fence in-between. As far as a set-back if the fence were put back in, he doesn't think there should be a setback. The pad has been there for 25 years. He has always looked at a shed there and he has a shed himself.

Corey Malkonian lives across the street and said the car-port that is becoming a garage, he has no problem with. There isn't any problem with the sidewalk. He isn't an engineer but he doesn't see any water on the sidewalk. The town may me pay for mine and it is in my home equity work and he improved the property. It looks good.

Paul Piantedosi, Sparkhill Street next to Paul Casella, diagonally across the carport. He said the carport isn't in his view but he walks around the neighborhood with carriages and before John fixed it, there'd be chunks of sand and cement and they'd have to either go in the street to go around it or trudge through it. The fact that he fixed that pad was great for them and anyone else that walks by there with kids, dogs, etc. by making the sidewalk better. He has helped friends put together those tent garages in the past and they seem durable – John's is the same thing, bolted to the ground and making the outside look better instead of a tarp. This would be the way to keep it looking good for a long time.

Chair Ferris asked Staff if lot coverage would be affected with any garage on the property. Mr. Mena said the addition and the garage would conform at 18% so the only thing not conforming is the setbacks.

Chair Ferris said the drawing they have is not a plot plan and he is asking if the required setback is setback. Mr. Mena said that the Ordinance requires a corner lot with an accessory structure to meet the same setbacks as what would be required for the main structure as a front setback – that would be 25'. Per the ordinance, they would have to set the structure back from Tappan Avenue 25' and 5' from the rear property line, which would put the garage in the center of the pool.

Chair Ferris asked if there are other options – to the left of the house. Mr. Mena said the applicant discussed with Staff all options. On that side, the garage would have to be attached to the house and would need to have a 10' side setback. A detached would require 10' between buildings.

Member Heep asked what the meaningful distinction between the carport and the fence is regarding the relationship to the lot line and the setback. He asked if the fence is allowed that close to the street but the carport, being a structure, is not. Mr. Mena stated that fences are not held to the same setbacks as buildings or other structures. The maximum height for a fence in a residential district is 6'; however, the maximum height along a driveway is 30" for visibility.

Chair Ferris asked if they had put a temporary canvas structure there what would be the scenario. Mr. Mena stated that it would be held to the same setback requirements.

Chair Ferris said that it is unfortunate that the person building the addition didn't apply for a permit. Since he is doing the construction himself for the carport, he should have applied for a permit. He stated that there are many properties in Watertown that are challenged in regards to the amount of yard they have to work with and a very strong sense is if many people were able to build structure right to the property lines, it would affect all of your neighbors. There needs to be a setback requirement. This particular structure may be a great solution in his personal needs but in terms of the reason the board is here – this is haphazard. If everyone did something against their property lines it would be a visibility issues – this is a safety thing. It creates a high wall when backing out of your own driveway and for your neighbor backing out of his driveway. He has concerns regarding that and voting in favor of this. It is not a good scenario in regards to safety.

Paul Casella stated that the garage door doesn't face the street so, when they pull out of the garage/carport, it is along side...it faces another two-car parking space.

Chair Ferris said at some point, the neighbor with the baby carriage is going to be coming down that sidewalk and you have the same situation with a shed (that blocks the view).

Mr. Casella said there used to be a fence there so what is the difference. Chair Ferris said that fence should have been lower. The reason the Board is here is for the benefit of the community and that neighborhood is not the busiest in terms of people walking on the sidewalk (someone from the audience said there are only sidewalks on one side of the street). Chair Ferris continued to say that something really high along the side of a sidewalk is a hard situation whether the door faces the street or not.

Oluf Doma said there was a 6' high white fence and there was a parking space there now there is more space for parking and the carport is where the fence is. Now there is a lot more visibility. There is 6' free without fence.

Angelo Cianno said this used to be a narrow driveway now it is wider and it works out great. He said, "We are the neighborhood and we don't have a problem."

Chair Ferris said that all it would take is a toddler learning to ride a two-wheeler riding along the sidewalk and someone pulling out at the wrong time. Mr. Cianno said there isn't any way that would happen. Chair Ferris said there isn't anything preventing someone from backing straight out of that carport to the street. Mr. Cianno argued that you'd have to come down the slope. Chair Ferris said you are more likely to back out when you are in a rush rather than back across the property and pull forward to the street. Mr. Cianno argued that it could happen to any one of them. Whether it a shed or a fence.

Chair Ferris said it is not a safe situation. This structure was built without permits. If it were to be approved, a new foundation would have to be installed to make it a safe structure. The fact that there is a wall height that is 7 or 8' tall that someone is pulling or backing out of, is not a safe situation. (The Board) is here to make this determination. Mr. Casella interrupted him by asking someone else in the audience a question. Chair Ferris stated that he has been an architect for many years and when you build a structure, it has to be on a foundation that is below the frost line – that is the reality of having a building that will stand. Mr. Casella asked if he just left the carport without sides, what would happen. Chair Ferris said he would still be supporting a roof with a post that needs to be 3.5' below grade. There was further discussion on the code and the reality of what is required.

Mr. Shields said the previous owner built the sidewalks as there aren't any sidewalks on Tappen Street. He said his friend looked up in the building code and there isn't anything about carports in there.

Further discussion ensued regarding what a shed is, what a lateral load is, etc.

Chair Ferris again raised the issue that it is still deficient. The discussion is the setbacks and the construction has not been permitted. Mr. Shields said he applied for a permit for the carport. Chair Ferris said that this is regarding the setback issue and opened the public to speak again, if they wish.

Chair Ferris closed the public hearing and declared a business mode.

Member Heep said he appreciates the neighbors coming in to support this petition. He does a lot of zoning work and when something like this comes forth, it is nice to see the support that Mr. Shields is given. In terms of the legal standpoint, it doesn't seem that the carport ought to be granted as the variance that he is seeking is for a constructed building without a building permit, there is nothing unique about the lot- it is similar to the other lots in the area. The degree to which this carport is significant – from a required 25' setback to 0'. He does not see how that this carport should be granted a variance.

Member Chandler stated that aesthetically he doesn't have a problem with it. The neighbors are in support of it and that is great. His concern is the precedent this sets. If he can do it, well then, I can do it to. It goes back to the chairman's comments on what will the street look like. Although he built it on slab with rebar, there are not footings and maybe not this winter but maybe next, the concrete will crack and break. The structural aspect is a concern.

Member Gannon said an accessory structure is required to meet the setbacks. He gave an example of his neighbor who built a tree-house that was denied by this board. There is strict adherence to this ordinance. If everyone built structure close to each other it could be a fire hazard.

Chair Ferris said that for this to be approved, all four members would have to vote to approve this. He must be a very good neighbor as all of his neighbors are here to support him. The issue is the closeness to the property line. We are not trying to prevent a covered parking space, it is the setback and there is another location to put a garage on this lot. Chair Ferris stated that the board is going to vote and if he wanted alternative parking on the site to work with Mike Mena.

Member Heep motioned to deny the application. Member Chander seconded. Voted 4-0 (Unanimous to Deny).

Mr. Mena asked the board if there is a timeline to remove the garage – Zoning Enforcement usually requires 60 days; however, the petitioner may need further time. Member Heep clarified that the 60 days would be from the date the decision is final. Mr. Mena said yes, unless there is an appeal – then it would be 60 days from the time the appeal is finalized.

Documents Reviewed:

“Site Plan” unsigned/unstamped with new addition and carport shown; Plot Plan, 6-24-82 Signed and Stamped by Robert Drake, Drake Associates not showing carport or addition; Photos; “Proposed Garage/Carport Site Plan” unsigned/unstamped with addition shown existing and carport ‘clouded’; Staff Report dated 9-4-14; Planning Board Report dated 9-12-14

Member Heep motioned to adjourn. Member Gannon seconded. Voted 4-0. Meeting adjourned at 8:30 p.m.