

MINUTES
Zoning Board of Appeals
THURSDAY, April 15, 2021 – 7:30 PM

Zoom Meeting ID: 869-6475-7241

As a result of the COVID19 pandemic, on March 12, 2020 Governor Baker issued an emergency “*Order Suspending Certain Provisions of the Open Meeting Law G.L. c. 30A, S20*”, allowing meeting of public bodies to be conducted virtually provided that adequate access is provided to the public.

Pursuant to notice published at least 48 hours prior to this date, a meeting of the Needham Board of Appeals was held remotely on Zoom on Thursday April 15, 2021 at 7:30pm. Jon D. Schneider, Chair, presided and the following members were present: Jonathan D. Tamkin, Howard S. Goldman, and Kathy Lind Berardi. Mr. Schneider opened the meeting at 7:30 p.m.

Mr. Goldman motioned to approve the minutes of March 18, 2021. Mr. Tamkin seconded the motion. The Board unanimously approved the minutes.

Case #1	5 TV Place	Approved
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Case #2	40 Morton Street	Withdrawn
Mr. Tamkin moved to accept the withdrawal request without prejudice. Mr. Goldman seconded the motion. The motion was unanimously approved.		

Case #3	20 Coolidge Avenue	Withdrawn
Mr. Tamkin moved to accept the withdrawal request without prejudice. Mr. Goldman seconded the motion. The motion was unanimously approved.		

Discussion

Mr. Schneider was concerned that neither applicant for the withdrawn cases consulted with the Building Commissioner prior to submitting their application. He would like to update the ZBA application to mandate a consultation with the Commissioner rather than “strongly recommending” a consultation as it is currently.

As an interim measure until the application is amended, Mr. Schneider instructed staff that if an applicant fails to meet with the Building Commissioner, a hearing on the application should be delayed for a month so the applicant has an opportunity to meet with the Building Commissioner. He will propose an amendment to the application at the next meeting requiring a meeting with the Building Commissioner before the application will be consider complete.

Mr. Schneider said that the withdrawn applications appeared to be based on a misconception that the Board could authorize a new violation of the By-Law by special permit. He wanted to inform

the public that the Board does not have the authority to allow a new violation by special permit. The Section of the By-Law that addresses changes to lawful pre-existing non-conforming properties is Section 1.4.6 and the By-Law is clear that a special permit cannot authorize a new violation. If an applicant wants relief from a provision of the By-Law, the applicant must seek a variance which the Board rarely grants.

Prior to 1980, Boards frequently granted variances. In 1980, the State legislature determined that Boards should give more respect to zoning adopted in their Town. They made it much more difficult to issue variances. They can be issued only where there is an unusual soil condition, shape or topography of the land that results in a substantial hardship. Inability to add a room to an existing house is not the kind of hardship that justifies a variance.

For some time, the Board's position has been that it would not grant an increase in a non-conformity in connection with a special permit under Section 1.4.6. In part, this was because it was unclear whether an increase required a variance. It also did not seem like a good policy to allow increases in non-conformities. There was recent case law that clarified that the Board may allow minor increase in non-conformities by special permit.

The Board recently granted an extension of a non-conformity by special permit. During deliberations, Mr. Goldman expressed concerned about setting a precedent. However, the Board granted the increase because they felt the property was unique. The property was isolated, it was along an abandoned highway, the non-conformity arose from a change in the By-Law after the house was constructed, the proposed increase was small and there was an existing variance issued before the change in the law that allowed an addition in the setback. This was a very rare decision by the Board.

Mr. Tamkin said that every case is different, and applicants should be able to file for relief. However, they should talk to the Building Commissioner and decide whether to submit after discussing the matter with him and getting his insight. Mr. Goldman concurred.

The meeting adjourned at 7:54p.m.

A summary of the discussions on each matter , a list of the documents and other exhibits used at the meeting, the decisions made, and the actions taken at each meeting, including a record of all votes, are set forth in a detailed decision signed by the members voting on the subject and filed with the Town Clerk. The hearings can be viewed at <http://www.needhamchannel.org/watch-programs/> or at <https://www.youtube.com/user/TownofNeedhamMA/playlists>

Daphne M. Collins
Administrative Specialist
Adopted May 20, 2021