



Haverhill

Board of Appeals
4 Summer Street – Room #201
Haverhill, MA 01830
Phone: 978-374-2330 Fax: 978-374-2315
jdewey@cityofhaverhill.com

The regular meeting of the Haverhill Board of Appeals was held on Wednesday evening, October 19, 2022 at 7:00 P.M.

Those Present:

Chairman George Moriarty
Member Theodore Vathally
Member Louise Bevilacqua
Member Lynda Brown
Assoc member Magdiel Matias
Assoc Member Gary Ortiz

Also, Present: Jill Dewey, Board Secretary
Tom Bridgewater, Building Commissioner

Robert W. Lavallee III for 119 Hyatt Avenue (Map 736, Block 1, Lot 9)

Applicant seeks following dimensional variances to create a new building lot for the construction of a new single-family dwelling in a RL zone. Proposed new Lot B shall include the new single-family dwelling. Requested relief for new Lot B include variances for lot frontage (50 ft where 150 ft is required) and lot width (50 ft where 112.5 ft is required). Proposed new Lot 1-9 shall be a conforming lot that includes the existing the single-family dwelling that is proposed to be razed and replaced with a new single-family dwelling. (BOA-22-39)

WITHDRAWN

Chairman: SI seek a motion to withdraw the application.

Member Vathally: Mr. Chairman I make a motion to allow the withdrawal for 119 Hyatt Avenue
2nd by Member Brown.

Member Vathally: Yes
Member Brown: Yes
Member Bevilacqua: Yes
Member Matias: Yes
Chairman: Yes

Withdrawal Granted 5-0

Linda & Michael Jr. Cutroni for 2 – 4 John Street (Map 305, Block 72, Lot 11A)

Applicant seeks the following dimensional variances for the renewal of two-family dwelling use that was originally granted April 19, 2006. Variances sought for lot frontage (58.55 ft where 80 ft is required), lot width (58.55 ft where 60 ft is required), lot depth (61.4 ft where 100 ft is required), maximum building coverage (36% where 25% is maximum) and minimum open space (9% where 45% is minimum) in a RU zone. (BOA-22-38)

Attorney Robert Harb (40 Kenoza Avenue Haverhill): I am here with all my clients the Cutroni Family. I believe you have all read my brief, this is a unique situation, extremely unique and I think that that the chairman may have been here back in 2006, your name is



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on the 2006 decision, this is not an accessory apartment, this was an approval meeting all requirements by the zoning code for a 2-family, however at the time the board decided to put a restriction on for family members and to me that is different than an accessory apartment, it was allowed as a 2-family. The applicant and all the people who lived there thought that after 5 years you could just rent it out. The city accessor has since then been taxing it as a 2-family, it is not an accessory apartment. The building was built and everything was done as a 2-family, if they had continued with the 2-family with an in-law upstairs, which they did start with. I would be here to ask you to wave the condition, however they thought that after 5 years they could rent it, there is a provision in that 2006 decision that says the variance becomes void, uniquely I haven't seen that ever. So we are really back here to ask to re-establish the 2-family without any conditions, I fulfilled and I believe showed you that we really do meet all the conditions of our zoning code and chapter 40A for a variance for the 2-family, especially because the building has already been built and been there since around 2007. We submitted tonight 3 neighbors, one directly behind us and one across the street and one of those further down the street, who have no opposition to this, I don't see anybody here in opposition to it either. Everybody in the neighborhood thought it was a 2-family and has a 2-family. I submitted with you numerous city accessors records of all the streets and all the lots around us, that also lack area, the building itself was pre-existing and got variances for any setbacks, I think that they have a hardship because to keep, now that they have built that whole addition, to keep it as a single-family the building itself would be an extreme hardship, they apologize for their reading of the decision, but you know they are not lawyers and they did what they thought was correct. It has been brought to my attention by the building inspector, that some interior work needs to be done, I think in the rear entrance in order for some safety, some fire codes need to be done to create a wall, they have already reached out to a contractor who would be willing to start and do that job properly so that it is coded properly as a 2-family, to get that fire separation, I think the building inspector told me fire separation, and that is the only thing they need to do. When they built the building, just so you know, their stairs encroached on the neighbor behind them and that is being rectified, the new plan shows you that we are going to fix the stairs and that has been communicated and discussed with the building inspector, I again point out that the neighbor who his stairs are on his land, says why are you doing that, and he is one of the neighbors who signed the petition saying he has no problem with the variance. They are a wonderful family, they get along with the neighborhood, it's a 2-family neighborhood all around them on small lots, that is just the way the whole neighborhood was developed. As I mentioned in my brief, this is unique because the building is already there and it is already being taxed as a 2-family, all the setbacks were already approved, it was built according to their setbacks, other lots in the neighborhood don't meet current zoning, without this variance it is kind of crazy to leave that giant house as a single-family, when they were given permission to build it, it is not the results of them to make it strange, they just didn't understand the original decision, otherwise we may have been back before you to waive some conditions, it is not a special privilege as I have shown you all the lots in the neighborhood, none of them meet the area and it is allowed 2-family, it is taxed as a 2-family, there is no harm to the public to keep it a 2-family. So in reality all we are asking is not to have people upstairs that are not related and the building is there, so we ask your approval, we feel they meet all the conditions of the ordinance.

Chairman: I did see some of the pictures of the interior where that wall needs to go, because of the stairways

Attorney Harb: we have no problem, the building commissioner said that if you approve this that it is subject to Developmental Review and creating the correct fireproof wall.

Chairman: Any questions from the board?

Member Vathally: Just want to ask Attorney Harb, back in 2006 when this original variance was granted with he 5 year stipulation, and commissioner correct me if I'm wrong but that was what they did back then?

Tom Bridgewater (Building Commissioner): This is a very unique situation, it wasn't back then And it is not now, I have never seen a 5 year restriction on a 2-family

Member Vathally: Back in 2006?



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Tom Bridgewater: No. Somehow this restriction was put on there, I have no idea how or any idea why.

Attorney Harb: Mr. Vathally as I had mentioned earlier, it was usual for this board to put a 5 year restriction if it was an accessory apartment, this is the first time I have ever seen it on a 2-family. Accessory apartments are not 2-families

Tom Bridgewater: Correct!

Member Vathally: But the point is Attorney, that is what was discussed and that is what was passed back then in 2006, so we have to go by that particular approval back then, subject to the 5 years.

Harb: Back then, that is why we are asking you to reconsider

Member Vathally: But back, but then 5 years later it is a brand new application

Harb: Yes

Tom: Yes

Member Vathally: So my question is, does the applicant still own the property.

Harb: Yes they do

Member Vathally: From back to 2006

Harb: They owned it in 2006 yes, and they added their son who is here with us tonight to the deed because of their age, but mother and father still own the property.

Member Vathally: Are both units occupied right now?

Harb: No the upstairs is empty.

Member Vathally: I noticed the for sale sign on the property, so bottom line is this just to legitimize the house as a 2-family for the sale?

Harb: They intend to try to sell it as a 2-family

Member Vathally: Next question I have is back from 2006 to 2011, a family member lived in that unit?

Harb: For the first 5 years I am old they did.

Member Vathally: Ok, after 5 years did a family member live there? Has it ever been rented out to a non-family member?

Harb: After the son moved out, they had a friend of the family that moved upstairs and I asked if it was a friend of the family one of their children's friends, how did they get in, without this wall being put up, and their answer was because it was a friend of the family, it wasn't blood relative but it was a close friend of one of their children, so they let them.



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Member Vathally: Ok, I am trying to get the history. Back in 2011 if you knew the stipulation expired why didn't they legitimize it back then?

Harb/: Because they didn't realize it expired, they really didn't, I believed them when I asked them, well gee why didn't you come to me in 2011.

Member Vathally: When did they realize they had to come back?

Harb: When they talked to their relator Frank Novak, who is with us today. He started exploring at the accessors office, was it a 2-family, they were told it was a 2-family by the accessor, that led him to ask some questions, he came to me and said Attorney Harb is this a 2-family or what, I said I don't know let me look and then I found the original variance which made it a 2-family.

Member Vathally: So the city is taxing it as a 2-family but it is not a legitimized 2-family, it is still a single-family.

Harb: According to the zoning code, I would have to say it's still a single-family, but they have been paying taxes on a 2-family.

Member Vathally: Ok, thank you.

Chairman: Any other comments or questions from the board? I'll entertain a motion

Member Vathally: I make a motion to approve the variance for 2-4 John Street, 2nd y Member Brown.

Member Vathally: Yes, I am going to say that this is a hardship and it is unfortunate that this happened, I am going to vote yes on it, and because of the criteria with hardship, it meets 255-10.2.2(2)

Member Brown: Yes I too believe it's a legitimate hardship and it does satisfy the zoning ordinance for a variance 255-10.2.2(2)

Member Bevilacqua: Yes I believe it is a hardship, it satisfies 255-10.2.2(2). It has been a 2-family all these years and they have been taxing it as a 2-family.

Member Ortiz: Yes I approve it to be a 2-family because they have been paying the taxes, if you pay for something you want the city to give you what you pay for.

Chairman: Yes, so it does pass, again referencing 255-10.2.2(2)

Granted 5-0

Kayla Rosario-Munoz for 67 Russett Hill Road (Map 459, Block 5, Lot 28)

Applicant seeks a special permit for construction an accessory apartment in a RR zone. (BOA-22-40)

Kayla Rosario-Munoz: My husband Rafael and I are here tonight seeking a special permit for the construction of an accessory apartment to be attached to our home. We are looking to build an accessory apartment for my mother who has several medical conditions, our hope is to build a space which allows my mother and her medical needs, a space where she will be safe and comfortable and most importantly a space close to us, in order for us to attend to her everyday needs. We have taken the necessary steps to ensure the floor plans meet all requirements for the city, we have worked with Tom



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Bridgewater who has advised us that our proposed accessory apartment meets all 6 requirements for an accessory dwelling unit, and we are also aware there is no opposition. Please consider our matter.

Chairman: Thank you. I know you have been notified by conservation committee that the project is in a watershed area and Mr. Moore has suggested demonstrate in compliance with the Haverhill city code be conducted, are you planning on conducting those?

Kayla: Yes, we have a surveyor who is doing the work for us.

Chairman: Great thank you. Any questions from the board? Entertain a motion.

Member Vathally: I make a motion to approve the special permit for 67 Russett Hill Road, 2nd by Member Brown:

Chairman: Tom I just want to confirm that this meets the 6 points for an accessory apartment.

Tom: Yes it does, it wouldn't get to this point if it didn't.

Member Vathally: Yes it satisfies criteria for 255-8.1 and 255-10.4.2

Member Brown: Yes it satisfies criteria for 255-8.1 and 255-10.4.2

Member Bevilacqua: Yes it satisfies criteria for 255-8.1 and 255-10.4.2

Member Matias: Yes it satisfies criteria for 255-8.1 and 255-10.4.2

Chairman: Yes it satisfies criteria for 255-8.1 and 255-10.4.2

Granted 5-0