



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, MA 02747
(508) 910-1868

REVISED MINUTES

DATE OF HEARING: November 18, 2014
CASE: VARIANCE
CASE NO: 2014-37
Petitioner/Applicant: Michael Rhodes
Property Owner: Michael & Kathleen Rhodes
Subject Property: 151 Longwood Avenue
MAP: LOT(s): District MAP: 160 LOT: 103-1; Single Residence A
Registry of Deeds Book: BOOK: 8629 PAGE: 180

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DARTMOUTH TOWN CLERK

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Robert Gardner and Associate Board Member David Dore.

Associate Board Members, Attorney Michael Medeiros, Dr. Rahim Aghai, and Clerk Halim Choubah
Director of Development Deborah Melino-Wender and Principal Clerk, Michelle Vieira

ALSO PRESENT: Michael Rhodes

7:21 P.M. Chairman Figueiredo opened the hearing.

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, November 18, 2014 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of Michael & Kathleen Rhodes who is seeking a VARIANCE requesting relief from the side setback requirements to 6' where 10' is required and from the front setback requirements to 21' where 30' is required (Section 4A.404 Setbacks). The property is located at 151 Longwood Ave in the Single Residence A District and identified on Assessor's Map 160 as Lot 103-1. Information is on file in the office of the Board of Appeals and may be seen upon request.

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, October 29, 2014 and Wednesday, November 5, 2014.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Variance/Change of Use Variance application time-stamped with the Town Clerk on October 15, 2014
- Schedule of Departmental Payment of Fees To Collector's Office
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Card
- Letter from Planning Director, Donald Perry, dated November 13, 2014
- Site Plan entitled Proposed Garage, 151 Longwood Avenue Dartmouth, MA prepared by Ian Everett Souza and dated 8/17/2014, as amended by Mr. Rhodes on 10/14/2014

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated November 13, 2014.

Chairman Figueiredo invited the Petitioner or representative to present the case.

Mr. Rhodes explained when he started construction on the garage he discovered the foundation was on 18 inches in ground and 2 walls were rotted. He didn't want to spend money on a poor structure so he decided to tear it down not realizing the problems with the set-backs. He stated that he is seeking a variance in order to build the garage 6' from the side setback and 21' from the front setback. He noted that the original variance approved the side setback at 2.3'.

Chairman Figueiredo invited any board members to ask questions.

Mr. Dore asked Mr. Rhodes to repeat the set-backs that were approved the last time. Mr. Rhodes replied 2.3' from the property line.

Mr. Medeiros asked if construction had begun, Mr. Rhodes replied not on the garage.

No further questions by board members.

Chairman Figueiredo invited public comments regarding this project.

No public comments.

The Board proposed the following findings:

1. Locus property located at 151 Longwood Avenue is identified on Map 160 lot 103-1, and is located in the Single Residence A District.
2. Michael & Kathleen Rhodes have owned property since September 2007.
3. In 2009, the petitioners were granted a Variance, Case # 2009-21, for setback relief to build an addition to the existing garage, to add an open porch to the existing garage, and to allow an in-ground pool.
4. The rights granted by the 2009 Variance were not exercised. The Petitioner found the garage to have poor foundation and to be in need of extensive repairs, so they demolished it.
5. Presently, the Petitioners are remodeling the existing home and are seeking front and side setback relief for the construction of a new detached garage.
6. The existing lot is non-conforming pursuant to 3B.300 and the existing dwelling is a protected non-conforming structure pursuant to 3B.201.
7. Pursuant to the exemption section of 4A.404, a minimum of 30' from a street line and 10' from all other perimeter lot lines is required.
8. Variances are needed since the proposed garage would be 21' from the street line and the side setback on the northeast side of the proposed garage would be 6'.
9. The new detached garage that will have a side setback of 6' will be less non-conforming than the original detached garage that had a side setback of 2.3'.
10. Opposition to the proposal has not been received from any abutters.
11. The plan dated 8/17/14 by Ian Everett Souza, and amended by Mr. Rhodes on 10/15/14, shows a proposed pool which will meet setback requirements. The roof of a proposed covered patio will be an extension of the garage following the garage lines.
12. The petition meets the statutory requirement for approving a Variance

The Board made statutory Variance requirements:

1. *There are circumstances related to soils, shape and topography that especially affect the subject property that do not generally affect the zoning district in which the structure or land is located.*
Due to the existing non-conforming dwelling and the anticipated installation of a pool, the shape of the remaining lot area presents a hardship to build a detached garage that is large enough to accommodate two vehicles and storage space.
2. *A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise to the petitioner.*
Strict applications of the provisions of this by-law would deprive reasonable use of the lot and structure in a manner equivalent to the use permitted by other owners in the neighborhood in this zoning district.
3. *Desirable relief may be granted without detriment to the public good.*
Placement of the proposed garage that will have a side setback of 6' is less detrimental to the abutting property than the former non-conforming garage that had a side setback of 2.3'.
4. *The Variance will not nullify or substantially derogate from the intent or purpose of the by-law.*
The remodeled home and new garage will be an enhancement to the neighborhood and align with the purpose stated for SRA in bylaw 4A.400.

The Board made proposed conditions to the Variance

1. The petitioner and or subsequent owner secure all of the necessary permits and approvals from all applicable Boards and Agencies prior to the issuance of a building permit for the garage.
2. If changes from the approved site plan are made for the placement of the pool and or covered patio wherein any setbacks pursuant to Section 4A.404 would not be met, then variances would be needed before construction could begin.
3. Site plan on record by Ian Souza modified and signed by Mr. Rhodes on October 15, 2014.

Robert Gardner motioned to close the public hearing which motion was seconded by David Dore. Motion passed unanimously.

Robert Gardner made the motion to approve the request by the applicant based upon the findings as stated and conditions as proposed. Motion was seconded by David Dore and motion passed unanimously.

8:15 P.M. Hearing adjourned

Michelle Vieira

Michelle Vieira, Principal Clerk
For the Zoning Board of Appeals

Date of Approval: _____