



ESSEX ZONING BOARD OF APPEALS

Minutes for the Meeting of October 20, 2022

Board Members:

*Absent

Staff:

Edwin Perkins, Chairman
Keith Carter
Michael Davis

Deborah Cunningham
Administrative Clerk

In accordance with Massachusetts General Laws, Chapter 40A, Section 11, the Essex Zoning Board of Appeals held a public meeting at the Essex Town Hall, 30 Martin Street, on Thursday, October 20, 2022 at 6:00 PM to conduct Board business.

The Essex Zoning Board of Appeals opened a public hearing to review a petition filed by Gordon L. Thompson, Jr. for reversal of a decision of the Building Inspector by letter dated July 29, 2022 declining a request for enforcement of Zoning By-laws relative to 117 Western Ave, Map 142, Lot 38. Chairman Perkins opened the hearing with a statement that the application materials had been reviewed by the Board members. Attorney Jennifer DiCarlo of Heney & Associates presented on behalf of Mr. Thompson. Attorney DiCarlo reviewed the applicant's arguments for requesting the appeal which included but were not limited to: 1) the "structure" was erected under a building permit on a non-conforming lot; 2) unsightly materials were being stored/concealed on the property; 3) the property was not being maintained; and 4) the issuance of an invalid building permit. Building Inspector William Sanborn addressed the Board and advised the original building permit had been issued based on Town resources available and information received from the property owner that 117 Western Avenue was grandfathered under MGL c. 40A Section 6. He had requested that the property owner provide documentation to verify that the lots were not "merged". He ultimately determined that the lots had merged for zoning purposes and issued a cease and desist to stop further construction as the use, an additional dwelling unit, was prohibited under the Zoning Bylaw. Mr. Sanborn determined that since the existing foundation is not supporting a dwelling, there is no use violation. Further, on July 18, 2022, Mr. Sanborn observed the Property from the public way and did not see any construction vehicles, construction materials, nor any unregistered vehicles.

Mr. Sanborn stated that a new building permit application had been submitted for an accessory building to be built on top of the existing foundation which was allowed under the Zoning Bylaws. Ms. Joy Ross, owner of 117 Western Avenue, stated that the condominium owners of 115 Western Avenue had no objections to the accessory building. She also stated that she was not aware that the ownership of the lot was an issue. Attorney DiCarlo stated that Ms. Ross had represented that the ownership was not commonly owned which, in her opinion, was a misrepresentation.

The Chairman asked for a motion to uphold the decision of the Building Inspector. On a motion made and duly seconded, the Board voted unanimously to uphold the decision of the Building Inspector. The Chairman opened the hearing for public comment. Mr. James Tudor of 116 Western Avenue asked for further clarification. Mr. Sanborn again reviewed the history of the project and reiterated that the foundation was a “structure” with no use so was not in violation of Zoning Bylaws. Mr. Edward Neal of 15 Western Avenue expressed the opinion that Ms. Ross had been treated unfairly and asked the Board to uphold the original building permit for the construction of a residence. The Chairman asked for a motion to close the public hearing. On a motion made and duly seconded, the Board voted unanimously to close the public hearing. Attorney DiCarlo objected to the vote on the Building Inspector’s decision prior to the closing of the public hearing. The Board agreed to repeat the vote on the decision. On a motion made and duly seconded, the Board voted unanimously to uphold the decision of the Building Inspector.

The Board reviewed the Minutes for the meeting of October 4, 2022. On a motion made and duly seconded, the Commission voted unanimously to accept the Minutes as presented.

There being no further business, on a motion made and duly seconded, the meeting was adjourned.

Approved: Essex Zoning Board of Appeals

Prepared by: Deborah Cunningham, Administrative Clerk