



Office of the
LITTLETON BOARD OF APPEALS

received
3/31/2018
Nash
Diane Procy

Petitioner: BRADFORD SMITH
Case No: 891A
Date Filed: January 30, 2018

The Littleton Board of Appeals conducted a public hearing on March 8, 2018 at 7:30 P.M. at the Shattuck Street Municipal Building, 37 Shattuck Street, Littleton, for a Variance pursuant to Section 173-10, to allow a reduced rear setback and for a Special Permit pursuant to Section 173-60 to allow an accessory apartment exceeding the maximum floor area at 11 Elm Road, Littleton, Ma. Notice of the hearing was given by publication in the Lowell Sun, a newspaper circulated in Littleton, on February 22, 2018 and March 1, 2018, and by mail to all abutters and parties in interest. The original hearing was scheduled for February 15, 2018 but it was continued by the Board (and republished) for March 8, 2018. Present and voting: Acting Chairman, Jeff Yates, Alan Bell, Cheryl Hollinger and Rod Stewart, Members, and Jillian Shaw, Alternate. Present and not voting was John Sewell, Alternates.

The Petitioner and his wife, owners of the property, presented an application for an addition to their home and an Accessory Dwelling unit to be incorporated in the addition at 11 Elm Road, Littleton, Ma. The application was the first under the newly enacted Accessory Dwelling Bylaw. The Petitioners had presented alternate proposals to the building department, but with input from the building inspector, and limitations imposed by site constraints, were able to settle on the proposal being acted upon. The Petitioners explained that they wanted to create a 962 square foot two story addition to their home, keeping the rear dimensional line. The rear of the existing dwelling structure is 14' from the lot line; the deck across the rear makes the dimensional setback 9'5" from the rear lot line. The home sits on a lot 14,000 square foot in size and at a significant elevation and grade change from any other properties to the rear. The rear of the house overlooks Long Lake and a deck constitutes the only back yard enjoyment space.

The proposed two story addition would contain an expanded kitchen and living area for petitioner's home and the lower level of the addition would be converted to a two bedroom accessory dwelling space for petitioner's father. There is adequate septic capacity and parking for the accessory dwelling. The Zoning Bylaw contains language that "construction of an accessory apartment shall not create more than a 15 percent increase in the gross floor area of the single-family dwelling." S. 173-58C1. The building inspector calculated existing gross floor area as 2,652, which would prevent construction of an accessory dwelling of this size. Petitioner presented an argument, however, that the addition should be counted in the gross floor area calculations, and, furthermore, that a 1,924 two story addition (962 s.f. on each floor) could be built with the rear setback variance, or even without a variance, and then an accessory dwelling unit as of right could be created afterward under the section of the bylaw which states that "The accessory apartment shall not exceed the greater of 40 percent of the gross floor area of the single family-dwelling or 1,200 square feet..." S. 173-58D. In other words, there is a conflict in the language of the new bylaw with the restricted size being applied only on new construction of an accessory dwelling. Petitioner argued, the restricted size should not be applied on the

simultaneous creation of an addition, having a primary purpose of expanding petitioner's living area with the incidental purpose of creating an accessory dwelling.

The building inspector's comments noted this discrepancy but his full letter was not read into the record as it pertained to an earlier rendition of the plans. Members of the Planning Board were in attendance for discussion on another matter and spoke in favor of allowing a less restrictive approach to the new bylaw in order to encourage housing options to be built in town. No abutters appeared in opposition.

FINDINGS: The Board found that the lot was unique in size and shape and that the addition could be built with a rear dimensional variance provided it aligned with the existing non-conformity and did not extend further into the setback. The Board also found, after much deliberation, that the limiting language of S 173-58C1 was to prevent newly constructed accessory dwellings from overpowering the dimensions of the existing structure, but was not intended to force an applicant such as this one into a two step process to have to first build an addition and then come back for the accessory dwelling approval. The petition as presented would not substantially derogate from the intent and purpose of the zoning Bylaw.

DECISION: The Board voted unanimously 4 to 1 to GRANT a Variance for a rear lot line setback, to allow an addition with a deck, substantially as shown in the plans, provided it is aligned with the existing dwelling and deck, so the structure as built is not less than 9' 5" from the rear property line.

The Board voted unanimously to approve a Special Permit for Accessory Dwelling to be created within the first floor of an addition, approximately 962 s.f. in size, as presented at the hearing, with the Board finding that Section 173-58C1 does not apply since the primary purpose of the addition is not solely for the creation of an accessory dwelling.

Appeals, if any, shall be made pursuant to G.L. 40A, Section 17 and shall be filed within twenty days after the date of filing of this Notice in the office of the Town Clerk.

Signed: _____



Date: March 21, 2018

Book: 65609, Page 267.

I hereby signify that twenty (20) days have elapsed since the filing of the above Decision by the Board of Appeals and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

True Copy Attest: _____ Town Clerk, Littleton, Massachusetts

need by Jan 18th

ZBA Case No.: 891A

**TOWN OF LITTLETON
BOARD OF APPEALS**

37 Shattuck Street
P.O. Box 1305
Littleton, MA 01460
Tel: 978-540-2420



APPLICATION FOR PUBLIC HEARING

Pursuant to MGL Chapter 40A, 40B and 41 and the Littleton Zoning Bylaws

TOWN USE ONLY

Received by the Town Clerk Office

received
1/30/2018 9:30 AM (DP)

The filing is not official until stamped by the Town Clerk

Filing Fee paid: \$ 300 Check # 840

Pursuant to the provisions of Chapter 40, §57 of the Massachusetts General Laws as adopted by Town Meeting 2003, this document must be signed by the Tax Collector verifying payment of taxes.

Deborah A. Richards
Signature of Tax Collector

The undersigned hereby submits this petition for the following action (check all that apply):

- ☐ Appeal of Decision of Building Inspector or other administrative official (see page 2)
- ☐ Special Permit (40A) (see page 2)
- ☐ Variance (see page 3)
- ☐ Comprehensive Permit (40B) **Complete additional application** (see page 2)

PETITIONER: Signature

BRADFORD SMITH

Print Name

11 ELM ROAD

Address

LITTLETON, MA 01460

Town, State, Zip

Date:

1/17/18

(978) 808-2647

Phone #

bpslincoln@gmail.com

Email Address

Deed Reference: Bk 65609 Page 266

PROPERTY OWNER: include authorization of Owner for Petitioner to represent Owner, if unsigned

[Signature]

Signature

1/17/18

Date

(978) 808-2647

Phone #

bpslincoln@gmail.com

Email

Print Name (if different from petitioner)

Address (if different from petitioner)

ASSESSOR MAP & PARCEL NUMBER U17-175-0, 176-0

ZONING DISTRICT: (R) VC B IA IB (Circle all that apply)

Check box if applicable

☐ AQUIFER DISTRICT

☐ WATER RESOURCE DISTRICT

FEES
Residential Property \$200 filing fee + \$75 recording fee + \$25 abutter list = \$300 to Town of Littleton
Commercial Property \$350 filing fee + \$75 recording fee + \$25 abutter list = \$450.00 to Town of Littleton
Comprehensive Permit \$1000 + \$100/unit over 10 units
ADDITIONAL FEES: ALL APPLICATIONS:
Legal Notice publication fee to be paid prior to opening the hearing

11 Elm Road
ZBA Case 891A

Appeal

Under MGL c. 40A §. 8

The undersigned hereby appeals a written order or decision of the Building Commissioner / Zoning Officer or other administrative official alleged to be in violation of the provisions of MGL c. 40A or the Zoning By-laws to the Board of Appeals for the Town of Littleton.

1. From what Town Official or Board is the appeal being sought?

Mandatory: Attach copies of written order or decision under appeal

Administrative Official _____ Date of order / decision _____

2. Which statute or Zoning Bylaw do you rely for your appeal?

MGL c.40A § _____ Zoning Bylaw § _____ Code of Littleton § _____

You may also consider whether you qualify for relief under any other authority of the Board to grant a Special Permit or Variance.

3. I hereby certify that I have read the Board of Appeals Instructions for Appellants and that the statements within my appeal and attachments are true and accurate to the best of my knowledge and belief.

Signature _____

Print name _____

Special Permit 40A

Under MGL c. 40A §. 9

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to grant a Special Permit for the reasons hereinafter set forth and in accordance with the applicable provisions of the Zoning By-law.

1. Special Permits are expressly permitted in the Zoning Bylaws. Which Zoning Bylaw section do you rely for your appeal?

Zoning Bylaw § 173-60

2. Why are you applying for a Special Permit? Attach a written statement that specifically describes existing conditions and your objectives, along with necessary exhibits as listed in the filing instructions. *You may also consider whether you qualify for relief under any other authority of the Board to grant a variance.*

3. I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.


Signature


Print Name

Special Permit 40B

Under MGL c. 40B

See supplemental instructions: Littleton Zoning Board of Appeals Rules for the Issuance of a Comprehensive Permit under M.G.L.c.40B

Variance

Under MGL c. 40A §. 10

The undersigned hereby petitions the Board of Appeals for the Town of Littleton to vary, in the manner and for the reasons hereinafter set forth, the applicable provisions of the Zoning By-law.

Added 2/20/18

1. Specifically, from what Zoning bylaw section are you seeking relief? 173-53

173-10

2. Why are you seeking relief from a literal enforcement of this Zoning Bylaw?

Attach a written statement that specifically describes existing conditions and your objectives, along with plans, specifications, certified plot plan and any documentation necessary to support your request.

3. Show evidence that you meet the minimum requirements of a variance under section 173-6 B (2) of the Littleton Zoning Bylaws.

Attach a written statement which specifically includes why, owing to conditions (soil, shape, or topography) especially affecting the premises, but not affecting generally the zoning district in which it is located, a literal enforcement of the Zoning By-law would result in a substantial hardship to you. Applicant must clearly demonstrate the lack of alternative remedies.

4. I hereby certify that I have read the Board of Appeals Instructions for petitioners and that the statements within my petition and attachments are true and accurate to the best of my knowledge and belief.


Signature

Bradford Smith
Print name

Filing Instructions

1. **IMPORTANT: SEE THE BUILDING COMMISSIONER/ZONING ENFORCEMENT OFFICER BEFORE YOU FILL OUT THIS APPLICATION.** He will assist you with the proper zoning sections and application request(s). His review may save time by preventing delays in the hearing process.

2. Apply for a certified abutters list with the Assessors office (request for certified list of abutters form enclosed)

3. Bring the completed application packet to the Administrative Assistant to the Building Commissioner who will assist you in filing with the Town Clerk.

Necessary Exhibits— provide 14 copies of the following with the completed application:

1. A copy of the most recently recorded plan of land or where no such plan exists, a copy of a plot plan endorsed by a registered engineer or land surveyor. The plan should show;

A) metes and bounds of the subject land

B) adjacent streets and other names and readily identifiable landmarks and fixed objects

C) dimensional layout of all buildings

D) distances and setbacks from the various boundaries

E) exact dimensions, setbacks and specifications of any new construction, alterations, additions or installations

F) direction of North

G) the name of each abutting property owner

2. Copy of the latest recorded deed

3. A written statement which details the basis for your petition

4. Pictures, plans, maps, drawings and models are always helpful in explaining the problem

5. In cases pertaining to signs, a scale print of the sign lettering and colors

6. In cases pertaining to subdivisions of land, prints should show the proposed subdivision endorsed by a registered engineer or land surveyor

7. In cases pertaining to Accessory dwellings evidence that the Board of Health has approved the septic system

8. The date of the building construction and the history of ownership are useful in finding facts about the case

Completed applications filed with the Town Clerk by the third Thursday of the month will be considered at the next regularly scheduled Zoning Board of Appeals meeting, held on the third Thursday of the following month.

The Board in its discretion may dismiss an application or petition for failure to comply with any of the foregoing rules

**LEGAL NOTICE
NOTICE OF HEARING**

The Littleton Board of Appeals will conduct a public hearing on Thursday March 8, 2018 at the Littleton Town Offices, 37 Shattuck Street, Room 103 to consider the following petition:

7:20 p.m. Case # 891A – Bradford Smith request for a Special Permit pursuant to Section 173-60 Accessory Apartments, a Variance pursuant to 173-53 Accessory Uses for a proposed 42 x 24 detached garage with in-law apartment above in excess of 30% of the floor area; a Special Permit/Variance pursuant to 173-10 non-conforming uses and structures for a reduced side/rear setback at 11 Elm Road.

LITTLETON BOARDS OF APPEALS
Alan Bell, Clerk

Lowell Sun February 22 and March 1, 2018

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LITTLETON BOARDS OF APPEALS
Alan Bell, Clerk

Lowell Sun February 22 and March 1, 2018

Brad & Kellie Smith
11 Elm Road
Littleton, MA 01460

Town of Littleton, Zoning Board of Appeals
Littleton Town Offices, Room 302
37 Shattuck Street
PO Box 1305
Littleton, MA 01460

Dear Zoning Board of Appeals,

Please accept this letter as a formal request for a special permit, 173.60 for an attached accessory apartment that is greater than a 15% increase in the gross floor area (173-58 C1), yet less than 40% of the gross floor area of the single-family dwelling (173-58 D). We also seek a variance for a non-conforming attached structure to continue the rear wall line of the current house at 14' from the rear property line.

This would be a 26' x 37', two level addition on the south side of the house, adding approximately 592 sq. ft. to the existing kitchen/dining open concept layout as well as 962 sq. ft. apartment on the ground level. The 26' width of the addition would continue the rear house wall to the south, leaving 21' to the southern property line. The 37' wall addition would run from 14' of the rear of the lot, East/West. The front of the addition would project out approximately 12' in front of the existing front of the house wall and become the main house entrance and mudroom.

The reason for our request is to find sustainable housing for our father in order to provide for his long-term care needs for years to come, while increasing the size of our living space for our growing family. While exploring our options after my father was diagnosed with cognitive problems, it became apparent that we need to move him out of his home and closer to us to manage this long-term care. We feel that the separate accessory apartment would be a great way to do this. He can maintain his independence, for as long as he is able.

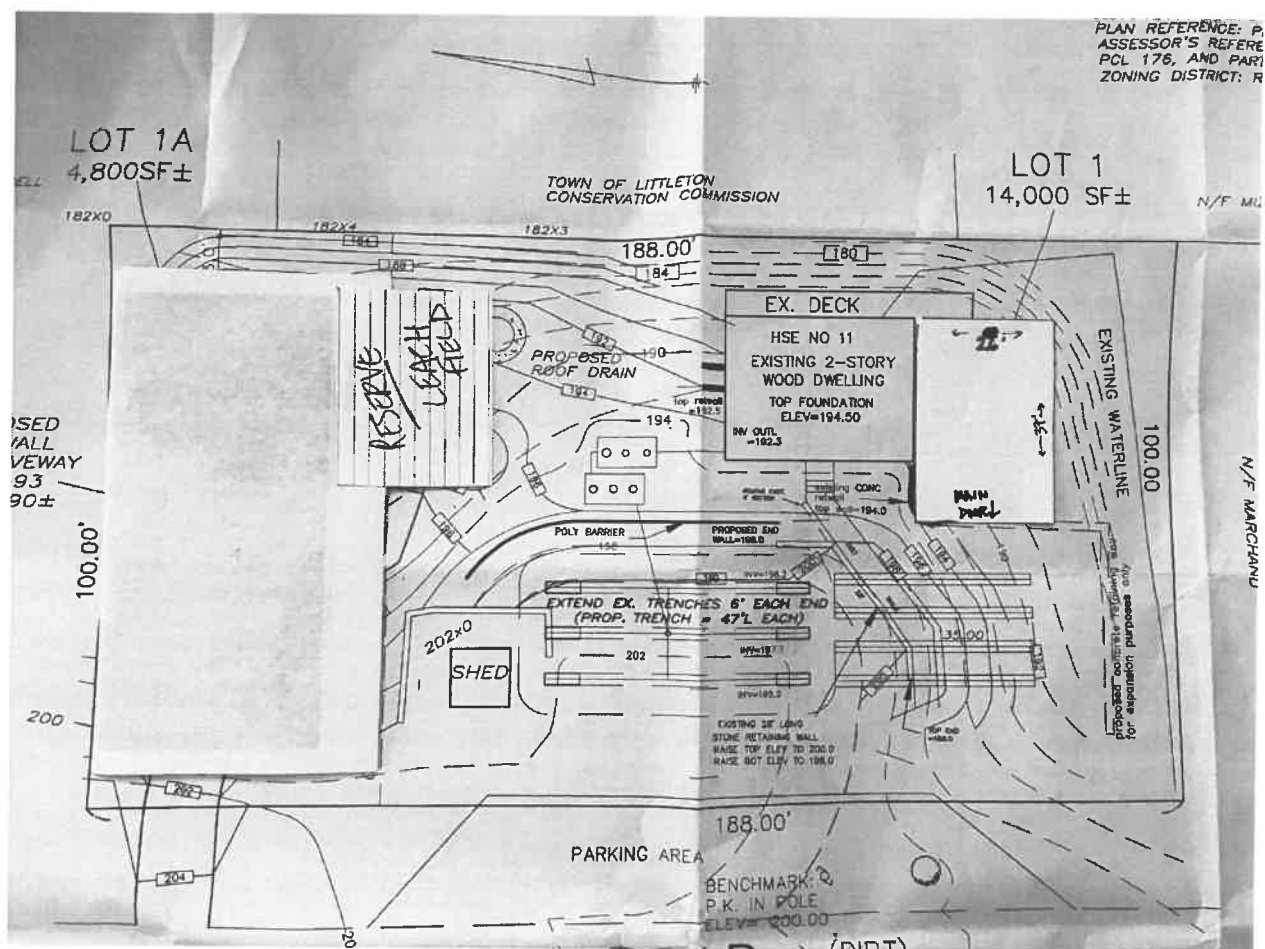
Our plan is to build a ground level 2-bedroom, 1 bath, open concept kitchen/dining area apartment that is as handicap accessible as possible. A 2-bedroom structure will allow for a health aide to stay as necessary.

We envision this attached addition to be primarily located in a quiet space of the house for the majority of the day, leaving a 10' wide porch, running approximately the length of addition on the outer perimeter roof of the ground level. Leaving space for plenty of light entry and multiple windows to observe the beautiful view of Long Lake.

We are in the final phase of purchasing a subdivided portion of the abutting lot next to us at U17-175, from the town of Littleton. Initially we were hopeful to locate a detached structure large enough to accommodate the accessory apartment needed for our father. After hearing the lot is not able to hold a habitable structure, we came up with another option. We would be able to move the planned septic reserve to either the new property that we are purchasing if need be or to a space adjacent to the septic system.

We sincerely appreciate your consideration of this new plan, as this will allow us a sustainable solution to care for our family for many years to come at 11 Elm Road, Littleton.

Brad & Kellie Smith







BUILDING COMMISSIONER
ZONING OFFICER
P.O. BOX 1305
LITTLETON, MA 01460
VOICE (978) 540-2420

February 27, 2018

TO: Board of Appeals

FROM: Zoning Officer, Roland Bernier *RB*

RE: 11 Elm Road
46 Hartwell Ave

Pursuant to MGL Chapter 40A, §15, please accept the attached documents, papers and comments constituting the record of the case in which the above noted appeal is being taken.

11 Elm Road

The applicant seeks a Special Permit pursuant to Article XIII which regulates Accessory Apartments. Specifically, the applicant wishes to construct a detached one story accessory structure with full garage under the 2 bedroom dwelling unit. The affected bylaw section is §173-60B as the accessory structure is detached.

- After review of the Town of Littleton-Abutter Lots Sales Program it appears construction of a detached accessory dwelling on the acquired land is not permitted pursuant to the sale agreement, page three attached. As such the applicant has moved the location of the proposed structure onto the original plot of land. I remind all that the "old lot line" is to remain open to sky.
- The sale of the town property to the applicant has not taken place...action on this appeal should not take place without the Town of Littleton authorization
- Finally, be aware that LZB §173-26B Use Regulation Schedule identifies Accessory Apartment as a permitted customary accessory use in this zoning district. As such §173-53 does apply as the proposal exceeds the 30% rule of this section requiring a variance otherwise it is no longer an accessory use. The required setback would need to be 10 feet from the side and rear property lines.

No further comment

2652