

NEWINGTON ZONING BOARD OF APPEALS

Regular Meeting

June 2, 2022

I. **ROLL CALL**

Commissioners Present

Commissioner Bechter  
Chairman Nicole Pane  
Commissioner John Bachand-A  
Commissioner Michael Connelly-A

Commissioners Absent

Commissioner Karanian-excused  
Commissioner Sharon Denning-A excused  
Commissioner Ekstrom

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Town Clerk

Chairman Pane: Before we get to the public hearing since there are four members seated the applicant does have the option to wait until there are five. Since there are only four, you would have to get a complete four votes of YES to be able to have that approved, if by chance it is three to one, it will not be approved. So you do have that option, if you want a few minutes to talk it over with yourselves before we go ahead, I'm going to say how this is run and then you can let me know after that.

Before we begin, let me explain a little about how the ZBA usually runs. There are two parts to the meeting. The first is the public session in which the petitioner will begin by stating their name and address and explain their petition, and what their hardship is. After the petition has been heard, any one from the public may speak and express whether they are for or against the petition. After all of the public participation is heard, the public session of the meeting will be closed. During the work session, the public may stay, but cannot comment. If the petitioner does stay for the work session, that is no problem. If not, they can call the building department in the morning and they will let you know what the decision is. What would you prefer to do?

Jefferey Bogoian: I prefer to go ahead.

Chairman Pane: That's no problem. I'd like to seat Michael Connelly in place of Audra Ekstrom. If you would like to come up, state your name and address and go ahead.

I. **PUBLIC HEARING**

A. Petition 00-22-01: Jeffrey and Ellen Bogoian requesting a variance from Section 4.5 (Table A) to reduce the required 10 foot side yard setback to 5.6 feet.

Jefferey Bogoian: I live at 75 Hawley Street, I've lived there for 41 years, with my wife Ellen. The reason I'm here is to get a variance, how close our property line is, and the reason is that our house was built in 1933 and now the zone requires 80 feet of width and there is only 50 because it was built so long ago. The distance from the property line, right now to the existing house is anywhere between five feet six inches and five feet seven. It has an addition foot and a half overhand, gutter. What we would like to do because we don't have a bathroom and a bedroom on the first floor, and we don't want to move, we would like to live there for the remainder of our lives, and we're not getting younger, everything is fine now, but we just want to have that just in case, God forbid, there are issues. The addition will be sixteen feet three and a half inches from the back of the house straight back from where it is now, so we will maintain the same distance from the property line. This is only one story, we are not building a second one, it will just be the one story and we can't shift to the other side because that runs into the driveway, so we have a letter from our neighbor that he signed who lives on the other side of the property line, and he fully supports this. That should be in your package hopefully.

Erik Hinckley: I'll read it into the record.

Jeffrey Bogoian: He asked me why I would even care about this, it's not gong to change anything as far as how close our house is to the property line, and I told him just because it is a variance and that you do support it, hopefully it will help us get approval for this. So that is kind of where we are. We have the full plans for the addition, but we need to get a variance. Again, we are just going straight back from where we are now, we're not infringing any closer than what we currently are. You will see the gray area is the proposed addition. On the left hand side, around five and a half feet from the property line, and Stephen, who signed the letter is on the opposite side of that property line. Again, we are just going straight back, sixteen and three quarters feet, and then beyond that is a deck that we want to put in, another ten feet. So that's it, if we have to move it in another five feet, it's not going to serve its purpose, adding a bathroom and bedroom, making it really tight. We're hoping that you will agree to the variance so we can move forward.

Chairman Pane: Thank you. Any questions for the petitioner? My question is, I think it is the site plan, what is between the garage and the driveway and the home, you said something Wabout a possible location for stairs? Is that something.....

Jeffrey Bogoian: That is for the basement stairs because the addition is going over the top of the present stairs, so that consumes the little bit of space between the house and the driveway.

Commissioner Bachand: I really don't have any questions right now, no.

Chairman Pane: I don't know if there is anything else you would like to explain?

Jeffrey Bogoian: We did revise the documents to show.....

Erik Hinckley: He did have the deck, so we had him put the deck and the addition on the plot plan so that you could see that they are holding the building line along that property line.

Commissioner Bechter: Are you able to do that access to the basement from the outside?

Jeffrey Bogoian: That really is the only location, technically by code we don't have to have it, but it does have a convenience to the basement now that we would like to potentially keep. Right now the door that enters, the house right into the kitchen and that is built down to the basement, so this wouldn't necessarily be a requirement, but we did discuss it as an option, and it doesn't affect any of the other setbacks.

Chairman Pane: My question to you is, how many feet between the house and the driveway? If you were to have to jog it over, that's my question, is it.....

Jeffrey Bogoian: It's not very much, only about five feet.

Chairman Pane: So that five feet would be enough if you had to jog that out to meet the variance.

There's five seven left so you would have to have four three on the other side?

Erik Hinckley: There is a ten foot line and as you guys are aware, I mean if he just put the 4.3 foot knots there, but that would be.....

Chairman Pane: It has to be enough for the stairs, the stairs have to be a certain width too to the basement.

If nobody else has any questions, we can close the public hearing and.....

Erik Hinckley: I do have the letter to read in. This is to "the Town of Newington Zoning Board, my name is Ivan J. Dione and my wife Cheryl and I live at 71 Hawley Street. I am the neighbor of Jeff and Ellen, on the other side of the property line, referencing their request for a variance. I fully support the building of an addition, especially since it will be straight back from the existing structure and will maintain the current distance from the property line. This will have no impact on myself or my property."

Chairman Pane: Thank you.

## II. PUBLIC PARTICIPATION

Chairman Pane: Is there anyone from the public or anyone else who would like to speak in favor or against this? Thank you.

Commissioner Bechter moved to close the public hearing, and the vote was unanimously in favor of the motion with four voting YEA.

**III. WORK SESSION**

Commissioner Bachand: I looked at the plans and I think I could go along with the applicant's request on the basis of a hardship for the addition of the house, but not so much for the deck. The deck seems to be more of a luxury. I don't think jogging the house, it looks like there is enough room to jog it over towards the driveway, but that would be a very awkward situation to try to configure it, and not only how it would look, but on how you would have to floor plan inside and everything, so I think, the letter that you read into the record, and the neighbor's sentiment, but is important, but we also do have to think about the future too and there might be a different neighbor there someday who wasn't so appreciative of it, but I do think it is important now that at least the neighbor isn't opposing it, so again I can go along with the application, but without the deck, or the deck should be jogged over, kept out, so we are not extending this non-conforming situation any further. That's all.

Commissioner Bechter: The proposal here doesn't extend any closer to the property line than the whole rest of the house built in 1937 or 38, whatever it was. The neighbor is happy, and it is going to look the same as it has right along. I don't really see why there is a problem with the deck. I'm hearing what John said though.

Chairman Pane: I understand where John is coming from and I completely agree on that. The only thing that I worry about is that other than the non-conformity with the house already being there, it looks like the garage is pretty non-conforming as well, being only three foot eleven away from the property line on the other side, and then we are adding an additional non-conformity to the residence, I'm not sure where to go. Maybe we consider the addition, but not the deck, because that is, like John said, a luxury. It may be making it more of a non-conformed house, and as John said, we don't know what the next neighbor is going to be. That's tough.

Erik Hinckley: As a reminder, you should discuss whatever the hardship would be.

Chairman Pane: That's also my question too, is the deck part of the hardship? What is the really valid hardship, and the meaning of hardship is the reasoning behind making it more non-conforming.

Commissioner Bachand: I think on the house, I think there is a hardship because I think jogging it that five feet would be very awkward and very disruptive to the floor plan, but I don't think you can make much of an argument for, I mean, if it were me, I would love to have the deck in the exact spot that he has it, but I don't think we can make, it seems like it is going against the spirit of the variance process to have a deck and claim that as a hardship, so.....

Chairman Pane: I get it, but technically John, that is not a valid hardship, of jogging it because of the architectural look.

Commissioner Bachand: Not just the look, I think it would be, can you imagine the floor plan inside and how difficult that would be to do, but I know, this is a tough one, but that is my initial

theory, and I don't even know if we could split it, Erik could maybe answer that, but how would we even do that, could we approve only part of it, or take out part of it? How would that work?

Erik Hinckley: Yes you could. You could technically approve the addition and not the deck.

Chairman Pane: Could you approve maybe a slight jog instead of a whole 4.3 foot jog?

Erik Hinckley: You are the ZBA. I'm the administrator.

Commissioner Connelly: When I was reading it, I felt the same way, I can understand the hardship of not wanting to leave a long term home, but the deck I think would be considered a luxury wrapped onto that. I think that would be the biggest issue that I could see. It's already non-conforming to begin with, so I think the deck would be the only issue that I can see.

Commissioner Bachand: If I can add more, part of that hardship is also the non-conforming lot itself, so not just because it has been there for so many years, but even if you just started today with it, it's so narrow it doesn't meet, the lot itself is non-conforming, so not saying that should force our hand on it, but that is just another argument on hardship I think.

Chairman Pane: Question for Erik, that's not really a, we can't.....

Erik Hinckley: It doesn't meet the requirements of today's regulations, just like it doesn't meet the setback requirements of today, when it was built and approved, it did. This is what happens in times, in older neighborhoods, with older houses that were built close to the property line, etc., and people want to expand going forward. They still have to meet today's regulations so this is what the ZBA is for.

Commissioner Bachand: So at that time Erik, it wasn't a variance that allowed it, it was just that there was no setback at all period. There was no frontage.....

Erik Hinckley: There was probably five yard, side foot side yard setback would be my guess. I don't know what it was because the lots were prior to subdivision regulations and prior to zoning. The house was technically built after zoning I believe. But the lot sat there empty for eight or nine years before it was built, and it was built after zoning and I don't know what the zoning was, I have old copies but I would have to look through them.

Commissioner Bachand: Do these decisions have to be made in a single meeting or is it like Conservation or TPZ, can they be extended for another meeting?

Chairman Pane: I think they can be for one meeting.

Erik Hinckley: You closed the public hearing so there is no new information taken in from the public. You have to base it on what you heard here tonight.

Commissioner Bachand: So maybe if someone wasn't sure, maybe they would suggest that we extend it. I'm still in the same position that I stated at the beginning, but maybe someone else wasn't quite sure and needed a little more time, they could suggest that.

Commissioner Bechter: I think they pretty much explained everything, and I have to agree with what you had to say too. So it would be no problem for me to approve the house as requested but not for the deck, maybe wait for another date for that one.

Commissioner Bachand: The applicant needs all four votes, that is the problem. They need a unanimous decision by us.

Chairman Pane: Do we need to table this? I don't feel there is a need to unless one of the four wants to table it.

Commissioner Connelly: I just want to be clear that we are able to approve the addition without the deck.

Erik Hinckley: You can, you can make the motion to approve a part of the plan.

Jeff Bogoian: I have one comment, not necessarily, just to make a point. I don't know if it is relevant, but I believe decks fall under accessory structures.

Erik Hinckley: If it is attached to the primary structure it still has to meet the ten foot side yard setbacks.

Jeff Bogoian: What if we didn't attach it?

Erik Hinckley: Potentially then that is going to be up to building as to what is considered attached.

Commissioner Bachand: To his point, he could have a shed five feet away, right?

Erik Hinckley: That's correct. Detached structures, accessory structures are five feet from any property line. People do have floating decks that are five feet.

Commissioner Bachand: That could be an option for him.

Jeff Bogoian: We could build a deck, it would have to conform to the ten foot property line distance, we would have to come back for that.

Chairman Pane: If it's attached to the house.

Erik Hinckley: If it's attached to the home, yes, but if it's a floating deck and not attached to the primary structure then it's an accessory structure and would be five feet from the property line.

Jeff Bogoian: Otherwise we could attach it.

Erik Hinckley: Right, you would just have to slide it over, make it not as wide. But if it was not attached and it met the building requirements then we could talk about the floating deck situation. From a zoning perspective, I have no problem with that.

Chairman Pane: If there is nothing else, does anyone want to make a motion to close the work session or if you want to keep it open and talk more about it, or.....

Commissioner Bechter moved to close the work session. The motion was unanimously approved with four voting YEA.

#### **IV. MINUTES OF PREVIOUS MEETING**

The minutes of the December 2, 2021 meeting were unanimously approved.

#### **V. COMMUNICATIONS AND REPORTS**

Erik Hinckley: I left, we're doing a text amendment for mechanicals in the side yard because we have a lot of people putting them in, the mini-splits, air conditioners and like this gentleman here, if they were to come before me, it's going to be, you are going to have to get a variance, you are going to have to move it elsewhere. So, they are trying to, we all know that these units are much quieter than they were fifty years ago, so we're trying to make an accommodation to allow that. I believe the amendment is tied to the house and the property line so it couldn't be any more than ten feet from the principal structure or closer than five feet to a property line, so there is going to be a public hearing on that through TPZ. If you guys would support that, I can just draft a memo that I can read into the public hearing at that time. If you have any comments or questions, I think this is the language that we came up with and I think it is going to help out a lot for some of these contractors and home owners, because I think last year you did three or four of these for just mechanicals in the side yards, so.....

Chairman Pane: I support it completely, but I would like to see if they could propose something about the generators, they do click on I think it is weekly to do that check that they do, is there anyway they can guarantee a time, like during the day instead of a night. If a neighbor is pretty close to the side, you aren't hearing that generator running and.....

Erik Hinckley: We can make that comment. We discussed the generators and a couple of people were like, yeah, put that on the side, or maybe not because they can be loud for the very thing that you are talking about, so we can certainly, I will have that discussion and see what we can do going forward.

Chairman Pane: I don't see why, if it is an emergency and the power is out no matter what, I think someone is going to have some sort of a generator itself which is going to be loud, but more for the clicking on and doing that check, no one wants to hear that at two in the morning.

Commissioner Bachand: So the generators and air conditioners are being lumped into the same mechanical unit?

Erik Hinckley: Yes, they have propane tanks, mechanical equipment, and generator, yes.

Commissioner Bachand: So a generator and a air conditioning unit are a big difference. Like you mentioned, those things can be, they are cranking out a lot of power because it takes two horsepower for each kilowatt so these things are usually ten kilowatts so you have a twenty horse power motor running there. But, to Nicole's point, it's almost like the deck being attached or not, if they had a free standing generator, you know, the portable generator there is no ordinance as to where it can be on the property. I agree, they definitely shouldn't be test running after hours, or at the wrong time, that is for sure. Generally with the AC units, I agree and support it too. They shouldn't have to come for a variance for every one.

## **VI. NEW BUSINESS**

- A. Petition 00-22-01: Jeffrey and Ellen Bogioian requesting a variance from Section 4.5 (Table A) to reduce the required 10 foot side yard setback to 5.6 feet.

Commissioner Bechter moved to approve the request for the house proper, with the exception of the deck. The motion was seconded by Commissioner Bachand. After a roll call vote the motion passed unanimously.

## **VII. OLD BUSINESS**

Commissioner Bachand: You know it's been a while since we lost one of our members and we really never addressed that. We should probably on the record we should address it, but I think we should some how write a letter to the family, just to acknowledge her service and our sadness of the loss. I didn't know her very well, but I know she was a member for a while.

Chairman Pane: Yes she was and she was hoping to be able to come back and be present during the Covid too, and I think that actually that is a great idea.

Commissioner Bachand: Her name was Judy Igelski, wasn't it?

Chairman Pane: Yes it was, and she served many, this board and other boards for a very long time and we appreciated everything that she did. She was a great person. I'm happy to come up with something and if someone wants to help me so we can write it from the Commission.



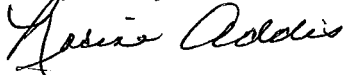
Commissioner Bachand: Even just a brief acknowledgement or something. When John left the Conservation Commission, he got nothing, I mean, he didn't ask for anything, but I thought we should recognize it at the time but the Town Manager at the time, Ms Lane, thought it would set a bad precedent or something. Like the guy dedicated decades of his time and, not that people that do that are looking for recognition, but I think that it wouldn't hurt to give them some.

Chairman Pane: That is no problem at all. I think it's a good idea and I think that at our next meeting we should have something ready for that. I don't think we can do that right this second. If anyone has anything, I would like to get all the members involved if they want to say anything and make sure everyone is okay with it before the next meeting?

**VIII. ADOURNMENT**

Chairman Pane moved to adjourn the meeting. The motion was seconded by Commissioner Bechter. The meeting was adjourned at 7:55 p.m.

Respectfully submitted,



Norine Addis,  
Recording Secretary