

Minutes of Zoning Board Meeting
Town of Whately, MA
Remote – via Zoom
August 6, 2020

Members Present: Roger Lipton, Bob Smith, Debra Carney, Kristin Vevon
Members Absent: Fred Orloski

PUBLIC HEARING

Application for a special permit to operate an owner-occupied short term rental, and host small weddings and gatherings, at 96 Westbrook Road.

At 6:40 Roger opened the hearing and read the legal notice. Applicant Joe Nickerson V stated that he had no objection to the wording. Mr. Nickerson explained that the short-term rental business would help pay the mortgage on the house where he currently lives, a home previously owned by his father, Joseph H. Nickerson IV, who has passed away. (He later explained that the house is still titled to his father but that the bank amended the mortgage to include him and his brother and sisters.) Roger asked how the family planned to advertise the rental and was told they would probably use Airbnb.

The board reviewed Whately Zoning Bylaws

~ 171-22. Short-term rental in Accessory Apartments, and Single-Family, Two-Family & Multifamily dwellings [Amended ATM 4-30-2019 Art. 35]

Roger noted that the short-term rentals allowed by special permit must comply with all of the conditions listed for the rental type, including the requirement that rentals be limited to a period of less than 30 days. Mr. Nickerson said that was fine, adding that the family anticipates a lot of weekend rentals.

Roger then reviewed requirements of Whately Zoning Bylaws

~ 171-22 A. Short-term rentals in Dwellings that are owner-occupied

When Roger asked for the number of bedrooms, Joe Nickerson answered that there are five bedrooms and they would probably rent out the whole house. Roger explained that the bylaw stipulates that no more than three bedrooms may be rented for transient occupancy. Asked about the number of kitchens, Mr. Nickerson said the house has only one, which satisfied that aspect of the bylaw.

Roger asked about the number of people who would be sleeping there at one time. At this point no number had been settled on, and the ensuing discussion covered numbers of beds that would fit, whether some would be bunk beds, and what would happen if several unrelated groups of people wanted to rent rooms on the same dates (Joe Nickerson is assuming all renters for a set of dates will know each other). Comments were contributed by Joe Nickerson's relatives Marcie Nickerson and

Toccara Mularski, and abutter Jeff Derosé. Roger explained that the bylaw's intent is to avoid disruptions to the neighborhood, and that there must be a cap on the number of people. One of the discussion participants proposed a cap of 12.S

Joe Nickerson mentioned that the septic system is "incredibly hefty" and has had no problems. He stated that no parties would be allowed, adding that if things became noisy they would be notified by a noise meter. He stated that he would not use his own bedroom while renters occupied the house, in order to give the renters privacy.

Neighbor Martha Swift said she had no objection to the proposal. Immediate neighbor Jeff Derosé said that he had no objection to an Airbnb rental, but that the number of people should be looked at and correlated with the septic system.

Mr. Derosé then returned to the matter of owner-occupation, saying that bylaw ~ 171-22 A. requires that Joe Nickerson occupy the house, and he will feel better if a family member stays there. Mr. Nickerson said he couldn't guarantee he would be there every weekend. Abutter Allison Bourbeau offered the opinion that "owner-occupied" means the owner will be there whenever the house is rented, and asked whether Joe Nickerson could commit to that. Mr. Nickerson replied that if the bylaw requires that he be there then, he will be.

At this point, Roger stated that he had found no bylaw provision for the other part of Mr. Nickerson's application – allowing for small weddings in the Residential zone. Joe Nickerson replied that he didn't think a permit was required for that – he had just wanted to present everything that might be included. Roger repeated that it is not allowed by a bylaw and returned to the matter of a cap on renters, saying that 12 people seems very high. Debra mentioned Quonquont Farm, which was granted a special permit for hosting events such as weddings, saying it was a much larger space and probably had fit a category like Hotels.

Joe Nickerson's sister, Toccara Mularski, explained that Quonquont gatherings might include people who would want to stay at the Nickerson place, since it is so close by. Other area attractions might also supply rental customers, she said. Glyndie Nickerson added that their house would be great for rental by families with more than three children. Marcie Nickerson asked whether a small wedding could be a short-term rental, and Debra replied that it depends on how many people are there – there still needs to be a cap on people.

Joe Nickerson stated that at the Nickerson house they would only host small wedding *ceremonies*, not wedding *receptions*. Roger noted that the board is not going to state what people can and can't do once they have rented, but advised Mr. Nickerson not to advertise their activities.

Debra noted that if the board were to grant a special permit, the business would still need, for commercial rentals, approval from the Board of Health (like the campground) and from the building inspector.

Roger then closed the public comment portion of the hearing and the board continued the discussion in view and hearing of the other remote attendees. Six adults was decided to be an appropriate cap for the number of people.

Roger moved to grant the special permit under bylaw ~ 171-22 A., with the following conditions:

- 1) The special permit is for short-term rentals only.
- 2) Joe Nickerson V is to be present during all rentals.
- 3) No more than 6 adults (other than Joe) may occupy the premises during the rentals.
- 4) Must comply with all Board of Health regulations.
- 5) Must comply with # 1 – 9 of part A of 171-22.

Roger, Bob, and Debra all voted yes, and the special permit was approved unanimously. At this point, Jeff Derosé said that he was unclear about the resolution of the weddings issue. Roger replied that the board was not ruling on what people *do* there, adding that the Nickerson hearing was finished.

PUBLIC HEARING

Application for a special permit to build a 527 sq ft detached accessory apartment for the homeowner's disabled brother to live in, at 148 Westbrook Rd. An accessory apartment was approved on June 7, 2018 by the Zoning Board of Appeals, but expired.

At 7:31 pm Roger opened the hearing and read the legal notice. Christopher Lee, who had applied on behalf of homeowner Enace (E.J.) Lococo, stated that he had no objection to the legal notice wording. Mr. Lee explained that his company, Backyard EDUs, has been building accessory apartments throughout the valley.

He noted that on June 7, 2018 Mr. Lococo was granted a special permit to build a larger (725 sq. ft.) two bedroom apartment. He shared his screen with the Zoom viewers to compare what was approved two years ago with what is now being requested instead – a 525 sq. ft., one bedroom, detached apartment. He said a mature wall of 25 ft. tall evergreens will screen the new building from one angle, and a new garage will hide much of it from another angle. He shared his screen with the other remote meeting attendees to show the Whately Zoning Bylaws definition of Accessory Apartment.

Roger asked why E.J. Lococo didn't act on the first permit. Christopher Lee answered that Mr. Lococo's mother became ill, then once Backyard ADUs got involved with the project aesthetics became an issue which they solved with a better idea. Mr. Lee said Building Inspector Jim Hawkins sent him a letter after he had reviewed the project information in the current application. Sharing his screen with the other meeting attendees, he showed an email thread containing a message from Mr. Hawkins reading, "Chris, Looks good – send it to the ZBA".

The board reviewed the requirements contained in the definition of the terms, ACCESSORY APARTMENT and ACCESSORY BUILDING OR USE (Bylaws ~ 171-37. Terms defined). Roger noted the requirement that “The owner of the property shall permanently occupy the principal or accessory residence.” Compliance will be met, with the applicant occupying the principal residence and his disabled brother living in the accessory residence. The new garage will take care of parking.

The discussion moved to the requirement that the accessory apartment be located in a *pre-existing* single family home or a *pre-existing* accessory structure such as a barn or a garage. Debra remembered asking the Planning Board to clarify this point for a different, past project, and remembered that they wrote back that they are in favor of the goals of families helping members. To the question, “How long must the building be in existence?”, she said Don Sluter answered, “An hour”. Christopher Lee commented that he had talked with Don about this matter and Don had told him the Planning Board had been letting that happen.

The board had no other questions. Roger asked whether there were any abutters or neighbors present, and there was silence from the other remote attendees. Roger closed the public comment portion of the hearing. He moved to approve the special permit, giving these as his reasons: there had been a prior approval, the current request is for a smaller apartment, and the apartment will be occupied by a disabled tenant. Roger, Debra, and Bob voted yes, and the special permit was granted unanimously.

The board discussed the method of writing and signing decisions reached at remote meetings. Roger will write the decision, circulate it for other members’ comments and signatures, and deliver the finished decision to the Town Clerk.

OTHER:

- 1) Bob agreed to collect ZBA mail delivered to the town offices.
- 2) RE: Collection (from applicants) of legal notice advertising fees charged by The Recorder:
The “Instructions” language on ZBA applications must change to accommodate this change, which involves use of an electronic payment method. Kristin will ask Town Clerk Lynn Sibley to add the language.

APPROVAL OF MINUTES

The board approved the minutes of July 16, 2020

ADJOURN

At 8:06, Host Debra closed the meeting.

5.

Documents Reviewed (kept in the ZBA files)

1. An 11-page set of plans for the Lococo project, dated 5/15/20 and labeled:
PROJECT DESCRIPTION
Backyard Home and garage
@ 148 Westbrook St

Drawings Provided By
Backyard ADUs

Mary McCarthy
Secretary
Zoning Board of Appeals
Town of Whately, MA