

**LUDLOW ZONING BOARD OF APPEALS  
MEETING MINUTES**

**September 17, 2020**

**Board of Selectmen's Conference Room**

**Ludlow Town Hall**

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Members Present: Manny Lopes, Chairman; Alan Aubin Vice Chair via Uber Conference; Joseph Wlodyka; Kathleen Bernardo

Members absent: Nicole Parker

Call to order at 7:04 pm. First Order of Business: Pledge of Allegiance

**\*COVID-19:** Please be advised that by the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20 relating to the 2020 novel Coronavirus outbreak emergency, the September 17, 2020 Zoning Board of Appeals meeting shall be physically closed to the public.\*

The Chairman stated that this hearing is being conducted via teleconference, anyone wishing to speak must be acknowledged by the Chairman; I ask that you respect everyone that is speaking and give them ample time to finish speaking.

The Chairman opened a public hearing on the application of Cristina Jorge, for the property located at 19-21 Kirkland Avenue (Assessors Map 15A, Parcel 175A, Zoning: Residential-B). The subject of the hearing is an Amendment to the Special Permit granted on July 12, 2018. Construction of the two-family dwelling on this pre-existing, non-conforming lot is in non-compliance of the previously issued Special Permit. The dwelling was not constructed to the required front yard setback of thirty (30) feet as required.

The applicant attended the hearing remotely via Uber Conference.

Chris Coelho, an abutter to the property attend the hearing via Uber Conference audio.

Mr. Lopes: Ms. Jorge, please present your case.

Ms. Jorge: like I wrote down in the application, so the Special Permit, yes it was granted with the 30 feet setback, we moved the house 5 feet forward figuring we were still within the rules but failed to realize that the Special Permit spoke specifically of the 30 foot setback so that's why I'm requesting this amendment and I also took some pictures, I don't know if you have them with you, that I would like to share, just to support what I wrote down in my application that I'm not, I'm able to line up with the neighboring properties and I'm still further back than those properties. I don't know if that will help my case.

Mr. Lopes: okay yes we do have the pictures, I believe every Board member has the pictures. Alan, you have the pictures?

Mr. Aubin was having audio difficulties.

Mr. Lopes: Cristina, looking at the abutters, we have the abutters list and everything is in order there. We have a check here from you for Turley Publications but you didn't write in the amount on here so we just need your permission to write in the amount of \$238.50.

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Ms. Jorge: okay, sure, of course.

Mr. Lopes: okay.

Mr. Aubin called in from his cell phone and was on video and audio on the cell phone.

Mr. Aubin: I do have the pictures.

Mr. Lopes: so again this was approved back on July 12, 2018 and going back on the original site plan it was approved with the 30-foot setback per their plot plan. That's how we arrived at the 30-foot and this is Residence B. Kathy what did you come up with, what's our requirement?

Ms. Bernardo: well I was looking for the provision is in our Zoning Bylaws where it talks about, Section 4 Dimensional and Density Regulations, section 4.0.7 which states with the exception of subdivisions, buildings or structures need to be located only as far back from the street as the average of the front yard depth of the buildings or structures nearest on either side within the same block and district or within 500 feet whichever is the lesser distance. So that's what I was looking for, which is that provision and it appears that with the pictures and I did drive down the street that the pictures that were provided by Ms. Jorge that their property, their front yard is actually greater than most of the houses on that street and definitely greater than the 2 immediately adjacent to their structure. So I just wanted to bring that to the Board's attention.

Mr. Lopes: okay. Alan did you hear that?

Mr. Aubin: I did.

Mr. Wlodyka: Manny, one thing?

Mr. Lopes: you have something to add?

Mr. Wlodyka: yeah. Joe Wlodyka, Board Member, just as a matter of record, the application states that the location of the land is at 20 Kirkland Avenue, I understand that it's 19 & 21, is that correct, numbers 19 & 21? I just wanted to clarify that as the application states that it's 20 which would actually be across the street so

Ms. Bernardo: it's lot 20.

Mr. Lopes: lot 20.

Ms. Bernardo: it's lot 20 on the plan but it's 19 & 21

Mr. Wlodyka: 19 & 21 on the street

Ms. Bernardo: yup

Mr. Wlodyka: very good

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Mr. Lopes: yeah so the address of the property is now 19 & 21 Kirkland on plot plan 20, it's a little confusing. Any Board members have any questions or any anything to add?

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Mr. Aubin: yes Mr. Chairman, I have a question, I mean I remember approving this way back when and I thought we were pretty clear, I'm just trying to figure out how, we're not talking 1 foot, we're not talking 6 inches, we're talking 5, a 5-foot difference of what was originally approved.

Ms. Bernardo: that is true.

Mr. Lopes: correct.

Mr. Aubin: so I don't know if Ms. Jorge can answer why, we're not talking a 6-inch difference, we're talking 5 feet.

Mr. Lopes: right. Alright let's go back to Ms. Jorge, Ms. Jorge can you just kind of go back and explain to us how, you know, why this happened?

Ms. Jorge: okay, so I'm gonna be totally honest, and I did notice that the number didn't match up

Mr. Lopes: which numbers?

Ms. Jorge: I don't want to blame anybody but somewhere along the process like obviously things weren't done per the correct ..... This survey was done in March 2019 and I think this is where it all started with the 25 foot in the front and the 25 in the back, while all the other papers said 30. I looked at this paper and I saw notes, that per section 4.4.7 of Ludlow Zoning Bylaws and I read that and I thought okay like they know what they're doing, maybe it has to be like this according to the Bylaws, that's what crossed my mind. So I trusted everybody, I paid people to do what they were supposed to do and somewhere along the line this happened.

Mr. Lopes: so what you have there in your hand is the, is that in our folder? What is the date on that one again please?

Ms. Bernardo: March 8, 2019

Mr. Aubin: it is in our packet Mr. Chairman.

Mr. Lopes: I got it. So this was a revised site plan, an as-built plan that the surveyor did on 7/13/2020.

Ms. Jorge: oh I'm holding the other one, this one is 2019, this one's the proposed building that was in the packet when I applied.

Mr. Lopes: the one I have when you applied is dated May 11, 2018, unless there's another one in there.

Ms. Bernardo: right so the one that came in our packet had a 30-foot front yard

Mr. Lopes: yeah the one that you used that we have in our packet that was used when you applied for the Special Permit was dated May 11, 2018 and it has the 30-foot setback, front yard setback. That's the one that we have, you have one dated 2019?

Ms. Jorge: I have one, March 8, 2019, and it has, and this was the proposed one.

Mr. Lopes: but that didn't come before us because that's after this date of

Ms. Bernardo: and that was prepared by whom?

Ms. Jorge: this was prepared by Paul N Smith.

Mr. Lopes: so that's the one that you used to get your building permit probably with the Building Department?

Ms. Jorge: yes.

Mr. Lopes: hold on a second, we'll verify that, so you applied for a permit to build and you probably used that one and that was a revised one and is different than the one that you used to apply for the Special Permit with the Zoning Board. Because that's dated 2019 and you applied in 2018 for the Special Permit. So let's just verify, we're just verifying that.

Ms. Converse went to the Building Department to check on the building permit application that was submitted.

Ms. Bernardo: Mr. Chairman, may I ask a question? Ms. Jorge, when did construction start?

Ms. Jorge: in July of 2019.

Ms. Bernardo: okay.

Mr. Lopes: same surveyor or no?

Ms. Bernardo: no.

Mr. Wlodyka: did you find that one?

Mr. Lopes: yes, well

Mr. Wlodyka: there's two, one is March 18 or March 8, 2019 and then July 13, 2020.

Mr. Lopes: right. Well one is an as-built and the other one is the proposed, likely. Ms. Jorge we're just waiting to check which one was used to apply for the building permit, to see what's in the folder.

Ms. Jorge: okay.

Ms. Converse: unfortunately the site plan that came with the application was not in the file.

Mr. Lopes: alright, for some reason it's not in the file. I'm gonna kind of surmise here that it looks like there was a site plan that was drawn up by Paul Smith on, and this is in our packet here, on March 8, 2019 and that shows a proposed location of the two-family with a 25-foot front yard setback, 10-foot side yard on each side and 25-foot rear yard, so that was the proposed, so I'm assuming that was what was submitted and then we have an as-built which might have, that's dated 7/13/2020 which is 5 days prior to the excavation inspection so I'm assuming and it says as-built on it so I'm assuming this survey was done when the foundation was poured or erected and hence the as-built of July 13, 2020. And again the excavation inspection occurred on 7/18 in 2019, just 5 days later. The original one, the original plot plan that was used to obtain the Special Permit through the Zoning Board of Appeals was dated May 11, 2018 and that was done by a different engineer, Michael E. Pietras, Civil Engineer, I'm not sure where he's out of, out of Ludlow as well. So we have two different engineers, one engineer was used for the, apply for the Special Permit and then another engineer, site engineer, was used for the application of the building permit so that might be why there's a discrepancy. Two different takes on it. Anybody have anything to add to that, any questions on that? Everybody following on that? Alan, you follow?

Mr. Aubin: yes I do, I do have a question for Ms. Jorge, why was there, actually 2 questions, why were there 2 different engineers used and then also did you share the plans that you submitted to this Board with your second engineer.

Ms. Jorge: I don't know who the second engineer is, I only worked directly with Michael Pietras, I'm guessing that that's probably somebody who works for him. Mike Pietras was also the person who arranged and talked to Paul Smith the land surveying to come here so I don't know who like the second engineer is.

Mr. Lopes: he's a surveying engineer so possibly

Ms. Bernardo: so maybe they worked together.

Mr. Lopes: yeah, possibly Mr. Pietras could have reached out to Paul Smith Surveying to have it surveyed and pinned or, you know, that's a possibility. Did that answer your question Alan?

Mr. Aubin: it does.

Mr. Lopes: I don't think it's unusual for one engineer to hire another engineer to do part of the work I guess. Joe, any questions?

Mr. Wlodyka: no, nothing.

Mr. Lopes: Kathy you have any other questions?

Ms. Bernardo: I do not.

Mr. Lopes: do we still have a caller, an abutter on the line?

Ms. Converse: Chris Coelho.

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Mr. Coelho: hello? Yup

Mr. Lopes: Mr. Coelho, have you been following and do you have any questions or anything to add?

Mr. Coelho: no I just wanted to speak on their behalf, it's a good project, she's 1 lot away from 40R Smart Growth zoning, this wouldn't have been a problem has she fallen underneath that magical envelope, there's really no reason to deny her at this point, the only problem I have really is the question of, as far as the Town's due diligence, I mean, seems to me that something like this could have caught during inspection or earlier and taken care of much more easier than having to go through this administrative process, I just don't understand how these things don't get caught sooner rather than the day of obtaining a Certificate of Occupancy. That's just disheartening a little bit but other than that it's a great project, they're great neighbors and again this wouldn't be a, this wouldn't have been a problem if they fell, in the arbitrary 40R Zoning overlay so. That's all I have to say.

Ms. Bernardo: is it the Town's practice to inspect prior to a foundation being poured? Or is it only after?

Ms. Converse: he's done excavation inspection and then he does a foundation inspection.

Ms. Bernardo: before it's poured?

Ms. Converse: yes

Mr. Lopes: and that, the inspection, the list of inspections I have here is exactly that, there was an excavation inspection done on 7/18 and then a foundation pre-backfill inspection on 8/7/2019. So it probably should have been caught at that time. Well probably should, I agree with you Mr. Coelho, probably should have been caught at some point

Ms. Bernardo: prior

Mr. Lopes: at those two inspections or possibly even time of application but it didn't so.

Mr. Coelho: Mr. Chairman, yeah that's water under the bridge but certainly something we have to look at moving forward.

Mr. Lopes: luckily, I mean, it is still behind, the front yard is still more than

Ms. Bernardo: greater than

Mr. Lopes: greater than the neighbor's, you know, on either side, had it been too close to the street we might have a real problem. Anybody else have anything to add or questions?

Mr. Aubin: Mr. Chairman, just one more question, what was the original, on the original proposal what was the square footage of the house? Is it just moved or is the house bigger?

Mr. Lopes: looks like the house is the same, the only difference that I see in looking at the proposed duplex on the original plot plan and the as-built is that in the rear of the house there's a small, it's probably the cellar hatchway I'm assuming, that sticks out in the middle of the back of the house and you can see that on the as-built

Mr. Aubin: right

Mr. Lopes: and you don't see it on the other proposed, it's not on that.

Mr. Aubin: okay.

Mr. Lopes: so I'm assuming and maybe the petitioner can answer that, is there a cellar hatchway in the back of the house?

Ms. Jorge: yes there is.

Mr. Lopes: so that's what that is so that kind of changes the, you know, it gives us an 18 foot 8 setback to the cellar hatchway but the house is at 25 feet rear yard and the original proposed was 20 feet so they still, it looks like the house is actually a little smaller, no they moved it forward, okay, so 20 25, yeah it's the same size.

Mr. Aubin: okay

Mr. Lopes: originally it was 20-foot setback now it's 25-foot setback.

Mr. Aubin: okay

Mr. Lopes: I don't think anything changed proportionately as far as the dwelling goes. And I did notice in driving by, I mean, there's a requirement for 2 cars parking per apartment for a 2-family or duplex and there is still room, there's a 2-car garage so 1-car garage for each apartment and there's still room in front of the garage for an additional car without obstructing any sidewalk or street activity. So by moving it forward my observation is that, you know, there's still four car parking as required. The picture doesn't show it but when I drove by there were cars in front of the garage.

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Mr. Wlodyka: I agree with that.

Ms. Bernardo: Mr. Chairman? I'd like to make a motion for consideration and discussion. I move that the Board approve the applicant's request to amend the special permit that was issued on July 12, 2018 to amend the front yard setback from 30 feet to 25 feet as shown on the as-built plan citing that Ms. Jorge is still within the definition of front yard pursuant to article 4.0.7 of the Ludlow Zoning Bylaw.

Mr. Lopes: anybody want to add anything or any comments on that? Alan did you hear it?

Mr. Aubin: yup I heard it.

Mr. Lopes: I'd just like to make a note that maybe, the rear yard has also changed from 20 feet to 25 feet so maybe that should be noted.

Ms. Bernardo: that's in excess of what was required so I don't know that we really need to change that but we can if you'd like, I'm amenable. Can we still change it, do I have to repeat myself because I have no idea what I said. I request that we amend my motion to include that the rear setback has been changed from 20 to 25 feet.

Mr. Lopes: any other comments from anybody?

Mr. Wlodyka: I'll second the motion.

Mr. Lopes: we have a second, we need to do a roll-call vote.

Mr. Aubin: is that second for discussion?

Mr. Lopes: is that a second for discussion or

Mr. Wlodyka: I seconded the motion. It was brought up for discussion when you stated the motion so I bring it up as a second for a vote.

Mr. Lopes: Joe is bringing it up for a second for a vote. Alan you okay with that?

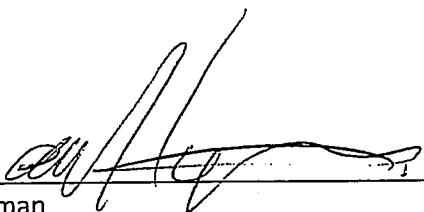
Mr. Aubin: yeah that's fine.

Roll-call vote: Mr. Aubin, yes; Mr. Wlodyka, yes; Ms. Bernardo, yes; Mr. Lopes, yes. Vote: 4-0 all in favor.

Ms. Jorge: thank you so much and I'm sorry for all of this and I don't know what to say and just thank you and everybody have a good evening.

Mr. Wlodyka made a motion, seconded by Ms. Bernardo, to close the public hearing for 19-21 Kirkland Avenue at 7:40 pm. Roll-call vote: Mr. Aubin, yes; Mr. Wlodyka, yes; Ms. Bernardo, yes; Mr. Lopes, yes. Vote 4-0 all in favor.

Ms. Bernardo made a motion, seconded by Mr. Wlodyka, to adjourn at 7:41 pm. Roll-call vote: Mr. Aubin, yes; Mr. Wlodyka, yes; Ms. Bernardo, yes; Mr. Lopes, yes. Vote: 4-0 all in favor.

  
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