

Town of Southborough
BOARD OF APPEALS
SOUTHBOROUGH, MASSACHUSETTS 01772

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James F. Hegarty
Town Clerk
Town House
Southborough, MA 01772

October 31, 2018

Notice of Decision for an Application for a Variance

Property Address: 120 Main St. Map 52 Parcel 4H; Recorded Worcester Registry of Deeds Book 53699, Page 148 ("Premises")

Appellants: Mr. Christopher Gahagan & Ms. Renee Murphy, 120 Main St. Southborough, Ma. 01772

Application Filed: July 10, 2018
The Board opened the public hearing in the Public Meeting Room of Southborough Town Hall on August 29, 2018 at 7:15pm continued until September 19, 2018 and then to October 17, 2018 when the public hearing was closed.

Petition: Variance request (pursuant to Section 174-8.2D (4) to allow a detached accessory structure exceeding the zoning of seventeen (17') feet/ one story to remain at the height constructed.

Sitting as a Board: Craig Nicholson, Chairman
Andrew R. Dennington
David Williams
Mike Robbins
Debbie DeMuria

For the Appellants: William M. Pezzoni, Esq.
Day Pitney LLP
One International Place
Boston, Ma. 02110

Procedural History:

1. An application for a Variance was filed in the Office of Southborough Building Department on July 10, 2018.
2. The application for a Variance is to allow an existing detached accessory structure which exceeds the allowed height pursuant to zoning of seventeen (17') feet/ one story to remain at the height presently constructed.
3. The Applicant is seeking a variance from Sec. 178-8.2D(4)
4. The record owner of the subject property is Christopher Gahagan and Renee Murphy, 120 Main St. Southborough, Ma.

5. A public hearing before the Zoning Board of Appeals was duly noticed in the Metro West newspaper on both Wednesday, August 15, 2018 and August 22, 2018.
6. Public Hearing opened on August 29, 2018, continued until September 19, 2018 and October 17, 2018 and closed same evening.

Plans / Documents:

1. Letters/Emails :

- (i) From Betsy Crowley an abutter at 116 Main street dated August 27, 2018 and October 17, 2018 in opposition to the requested relief, however suggesting if the ZBA decided to grant the petition they include restrictions / conditions .
- (ii) Memo with attachments dated October 10, 2018 from attorney William Pezzoni on behalf of the Applicants detailing a timeline and sequence of events regarding the Premises. Including : prior permitting (issuance of a Building Permit); infrastructure construction and the discovery of high groundwater and ledge issues (Change Orders and Photos)at the Premises in the area of the proposed construction during construction and landscaping post construction; original plan sheets of the proposed construction; representations that the prior building inspector signed off on the construction of the footings, foundation and frame of the accessory structure; septic as-built plan showing high water table and evidence of funds expended and options investigated to possibly bring the accessory structure into compliance including design concepts for a bridge connection to the house.
- (iii) Memo dated October 10, 2018 from attorney William Pezzoni on behalf of the Applicants detailing how the Petition as submitted by the applicant, with attachments, and the evidence submitted and testimony heard at the public hearings supported the request for a variance and adequately addressed the four (4) criteria required to be found by the ZBA in order to grant a variance.

2. Copy of photos and plans of the Premises including the main house, accessory structure (Carriage House) and views of the property from multiple locations.
3. Letter from the Building Commissioner / Zoning Enforcement Officer Mark Robidoux to Mr. Christopher Gahagan & Ms. Renee Murphy, dated July 9, 2018.

Findings:

1. The proposal constitutes a Variance request under the Town of Southborough Zoning Bylaw.
2. The property is located in the Residence A zoning district.
3. The Applicant is proposing that the accessory structure which exceeds the height restriction for accessory structures be allowed to remain on the property as constructed without a connection to the main house.
4. The proposal and evidence presented meets the criteria required to grant the relief, variance, requested:
 - (i) literal enforcement of the provisions of this bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant;
 - (ii) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures;

(iii) especially affecting such land or structures, but not affecting generally the zoning district in which it is located; and

(iv) Desirable relief may be granted without either: substantial detriment to the public good; or nullifying or substantially derogating from the intent or purpose of this bylaw.

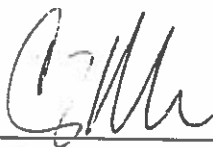
5. The Board was satisfied that the Applicant, if denied this request, would suffer a hardship, both financially and regarding the reasonable use of his property. In order for the petitioners to comply with the connection of the accessory structure to the main house requirement would result in a financial hardship.
6. The Board found that the Petitioner's hardship arises as a result of the shape, soil, or topography of the lot. Which in this case, is the substantial ledge and high water table as well as the close proximity to a wetlands resource area and poor soils; which cumulatively affect the Premises but not the zoning district generally.
7. The Board determined that desirable relief could be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the bylaw. In this case, there will be no substantial detriment to the public good with the location of the accessory structure as built and the location with the tree and ground cover creates a private area, hidden from the public view by trees and vegetation, with limited impact if any to the abutters.
8. Finally, this situation is not self-created.

Decision and Vote of the Board:

At its meeting on October 17, 2018, the Zoning Board of Appeals voted unanimously (5-0), to grant the Variance pursuant to Sec. 174-8.2 D (4) Max Height 17 feet and one story and allow the accessory structure to remain at the height as constructed, with the condition that the accessory structure may not be used as a residence/dwelling, unless the Applicant obtains any and all required zoning relief for uses which would be allowed by zoning or pursuant to a further special permit or variance. As well as the structure should not be used as a temporary dwelling such as an air B&B or other type rental.

After review of all evidence and facts presented at this hearing, and after deliberations on the same, voted unanimously (5-0) on a motion made by Mr. Williams, and seconded by Mr. Robbins, with member voting as follows to grant the requested Variance with the following conditions:

Craig Nicholson	Approve
Andrew Dennington	Approve
Debbie DeMuria	Approve
David Williams	Approve
Mike Robbins	Approve



Craig Nicholson, Chair

Signing on behalf of the Zoning Board of Appeals

**** NOT VALID FOR RECORDING UNTIL CERTIFIED BY THE TOWN CLERK OF SOUTHBOROUGH****

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Law, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: _____

Date: _____

James F. Hegarty, Town Clerk