

**MINUTES**  
**BOARD OF APPEALS**  
Tuesday, February 22, 2022

The Board of Appeals met on Tuesday, February 22, 2022, at the Bel Air Town Hall.

**MEMBERS PRESENT:** Rick Gerety, Chair  
Shannon Abel  
Greg Adolph  
Thomas Payne  
Robert Preston

**IN ATTENDANCE:** Charles Keenan, Town Counsel  
Kevin Small, Director of Planning  
Jane Sudbrink, Recording Secretary

**ABSENT:** Erin Hughes, Town Commissioner

**CALL TO ORDER:**

Mr. Gerety called the meeting to order at 7:02 p.m.

**I. Administrative Matters**

**A. Approval of Minutes – November 23, 2021**

Mr. Adolph moved to accept the agenda as prepared. Mr. Preston seconded the motion. All in favor. Motion carried. Next, Mr. Preston moved to accept the minutes of November 23, 2021, as written. Mr. Adolph seconded the motion. All in favor. Motion carried.

**B. Meeting Times**

After discussion, board members decided to keep the meeting times for Tuesday at 7:00 p.m. with allowance that if there is a conflict with a board of commissioners meeting, the time may change to 7:30 p.m.

**II. New Business**

**A. Review of a Special Exception request submitted by Nathan L. Booth for a Special Exception to permit a cottage house in the R-1 (Low Density Residential) District, Extension of an existing non-conformant structure, and a Variance to the rear yard setback of 11.0 feet and 11.3 feet at 135 Wallace Street.**

Mr. Small spoke first reading verbatim from the Board of Appeals Staff Report to describe the applicant's three requests and the minimum required findings of the board in order to approve this request.

Robert Kahoe, representing the applicant, Nathan Booth, spoke next. He provided background on the applicant. He noted that Mr. Booth is in the process of remodeling his house and the footprint will change very little. The changes he will make will improve the house's appearance. Mr. Booth asked for this variance so that he can extend the living space into the rear yard. The rear yard itself is narrow, and both the front and rear yards are nonconforming. Mr. Kahoe noted that this is an unusual lot in an unusual neighborhood and, as such, these conditions justify these requests. He noted the changes will have little impact on the neighbors. He said that the cottage house, to be built above the garage as a mother-in-law unit, will also have little impact on the neighbors. He noted that if the board can find for the variances, then they can also find for the special exception. Mr. Kahoe pointed out that the issues brought about by this request should be addressed in the future legislatively, i.e., via the board of commissioners.

Mr. Payne asked for details about the cottage house above the garage prompting the applicant, Nathan Booth, to speak. He said that the existing detached garage will be demolished, and a new one will be built, closer to the house, with the cottage house above it. Mr. Booth also clarified the site plan for Mr. Adolph, noting that some of the existing walls of the garage will remain. Mr. Small defined for Mr. Gerety and the board that the difference between a cottage house and an addition built onto a house is a kitchenette or stove. The inclusion of a kitchenette/stove creates a separate living space. Mr. Small and Mr. Keenan also stated for Mr. Gerety that the code for a 10,000-square-foot lot size was established in 1957 after this house was built. They did not have an explanation for the reason for this required lot size.

There were no further questions for the applicant, nor were there questions and comments from the public. Mr. Gerety opened the meeting to discuss the application.

## **1. Discussion**

Mr. Gerety expressed concern over a code that has been in existence since 1957 and, though he was accepting of the cottage house, he was wary of it being built in a lot that is nonconforming. Mr. Adolph said that it is not necessary to debate the 10,000-square-foot rule because most lots in town are small. He said that there is a need to discuss additional housing in town, particularly communal housing that involves housing a loved one. He felt that this issue should be further addressed by the town commissioners. Mr. Keenan added that this applicant's request is precedent-setting. Mr. Small said that the commissioners will look into this issue over the summer.

Mr. Booth, in answer to Mr. Gerety's and Mr. Adolph's questions, confirmed that there will be ample parking onsite for the cottage house: two spaces in the garage and four in the driveway (currently two spaces, but will be widened to four). Further, the loved one will move into the cottage house at least six to nine months from now.

Mr. Abel stated that he was concerned about the smaller lot size to accommodate the cottage house, in that the lot was significantly under 10,000 sq. ft. Mr. Preston reiterated that this is an issue that will be addressed in the future by the board of commissioners. Mr. Small added that a cottage house attached to an existing structure would need a bigger lot, but because it is part of the garage the lot does not have to be as large. Mr. Abel asked what would happen to the request if the board denied it. Mr. Keenan replied that the applicant can submit the request again in a year, but meanwhile it will sit in limbo. Mr. Abel also stated that he would be even more concerned if there was anything other than commercial property behind the lot.

Mr. Gerety determined for the board to vote on the three requests.

**a. Motion on Rear Yard Variance**

Mr. Preston read the following into the record: I move the variance requested by Nathan Booth to reduce the 40-foot rear yard setback to 22.6 feet on the property located at 135 Wallace Street be approved based on the board finding that the setback reduction, as described in hearing testimony meets the criteria of a variance based on the following: the property is unique due to the shallow lot configuration, the existing lot depth creates a practical difficulty on the property owner to construct an expansion to the existing home in a reasonable fashion without expanding the non-conformity and without violating the existing rear-yard setback, granting of the variance would not impair the spirit of the code and will do substantial justice to the owner, and the hardship is not caused by the property owner since the lot existed in the same configuration prior to zoning. Mr. Adolph seconded the motion. Mr. Payne and Mr. Gerety also voted in favor. Mr. Abel opposed. Motion passed four to one.

**b. Motion on Lot Size Variance**

Mr. Preston read the following into the record: I move the variance requested by Nathan Booth from Section 165-53.G(2)(d)[1][c] to allow a cottage house on less than a 10,000 sq. ft. property at 135 Wallace Street be approved based on the following: the property is unique based on its configuration but can accommodate the proposed cottage house due to the width provided, the Transition Overlay zoning anticipates more intense use, and the lot dimensions are adequate for accommodation of the proposed cottage house. Mr. Adolph seconded the motion. Mr. Payne also voted in favor. Mr. Gerety and Mr. Abel opposed. Motion passed three to two.

**c. Motion on Special Exception**

Mr. Preston read the following into the record: I move that the special exception request by Nathan Booth to allow a cottage house in the R-1 (Low Density Residential) zoning district at 135 Wallace Street be approved based on the following: the existing lot size of 8,821 sq. ft. is adequate to accommodate an additional accessory dwelling; the proposed cottage house use will not cause adverse impact to the neighboring properties; and the use will be limited to parents, siblings, or children of the residents of the principal structure on the lot. Mr. Adolph seconded the motion. Mr. Payne also voted in favor. Mr. Gerety and Mr. Abel voted nay. Motion passed three to two.

**2. Additional Discussion**

Board members and Mr. Small further discussed the precedent set by the approval of this request and how the board of commissioners needs to explore these issues. Currently, there is no regulation in place to prevent homeowners in town from constructing similar residences. Additionally, there is no mechanism in place to prevent these structures from one day being rented out to a non-relative, short of sending the homeowner a violation letter. Mr. Small noted these situations have recently come up, including two short-term stay issues in the last two months. The town does not currently allow for short-term stays. He predicted that these issues would continue and regulations will need to be put in place, including permits and parking requirements. Mr. Gerety asked if the 10,000-square-foot-lot minimum will be discussed. Mr. Small confirmed the board will discuss this issue, and that the minimum may be replaced by buffering, which would give the appeals board more subjective standards when making

their decisions. Mr. Small also noted for Mr. Payne that there is currently no property tax on a cottage house, but there are plans to change this status.

Meeting adjourned at 8:02 p.m.