

ZONING BOARD OF APPEALS DECISION SHEET

Petition Number: 34-20

Petitioner Name: Zachary Letendre

Map: 100

Lot: 1039-B

Address: 22 Weaver Street, W. Wareham, MA 02576

Project: Requesting to legalize a non-conforming accessory apartment

Special Permit Variance Both (Circle one)

Reason for granting/denying the application:

Conditions:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

THE COMMONWEALTH OF MASSACHUSETTS

Town of Wareham

BOARD OF APPEALS

Petition No. : 34-20
Book:52669 Page: 0106
Date: 02/11/2021

Certificate of Granting of Variance
(General Laws Chapter 40A, Sections 10 & 11)

The Board of Appeals of the Town of Wareham hereby certifies that a Variance has been granted:

To: Zachary Letendre

Address: 22 Weaver Street

City or Town: W. Wareham, MA 02576

Affecting the rights of the owner with respect to land or buildings at 22 Weaver Street, Assessor's
Map 100 Lot 1039-B

The Board of Appeals certifies that the decision attached hereto is a true and correct copy of its decision to grant a Variance and that copies of said decision, and of all plans referred to in the decision, have been filed with the ZBA, Conservation Commission, and the Town Clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 provides that no special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The owner or applicant shall pay the fee for such recording or registering. A copy of the registered decision shall be returned to the Board of Appeals as proof of filing.

Any person aggrieved by this decision may appeal to the Superior Court of Land Court as in Section 17 of Chapter 40A, M.G.L. by filing a NOTICE OF ACTION AND COMPLAINT within twenty (20) days of the date of filing of this decision.

Chairman

Clerk

TOWN OF WAREHAM
Board of Appeals
CLERK'S RECORD OF NOTIFICATION

No. 34-20

Petition of: Zachary Letendre

Location of Property: 22 Weaver Street, W. Wareham, MA 02576

Date of Notification of Hearing: December 24, 2020 & December 31, 2020

Date of Hearing: January 13, 2021

Date of Notification of Decision:

DECISION: See attached

REASON:

Name and Address of Abutting Owners: Certified Abutters List Attached

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Board of Appeals

NOTICE OF DECISION OF THE WAREHAM ZONING BOARD OF APPEALS

Petition: 34-20

Applicant: Zachary Letendre

Owner: Same

Owner Address: 22 Weaver Street Wareham, MA

Subject Property Address: 22 Weaver Street Wareham, MA

Subject Property Parcel ID: Map 100 Lot 1039-B

Date of Public Hearing: January 27, 2021

Date of Notice:

Record Plans: Entitled " Appendix B Apartment Layout"

Findings/Decision/Reason:

The Building Commissioner provided a chronological list of permitting events that took place at 22 Weaver Street over the last 21+ years:

- 1. On September 16, 2003, a building permit was granted to Eric Sobolewski for single level detached two car garage with second floor storage space.**
- 2. On April 12, 2016 a building permit was approved and granted to Zachary Letendre to finish the second floor over the garage for a "Game room / Man cave" to consist of 896 square feet, and to be insulation, sheetrock, and finish only.**
- 3. On June 9, 2016, a rough electrical and plumbing inspection was requested at which point we discovered that bathroom and kitchen connections had been roughed in to the structure. The building department does not have record of the structure ever being approved for a septic connection.**
- 4. On June 9, 2016, a certified letter from the former interim Building Commissioner David Moore was sent to Zachary Letendre ordering the removal of all kitchen connections before any further inspections will be performed.**
- 5. A Violation Notice was issued by the Building Commissioner David Riquinha on April 16, 2020, who determined that the Petitioner's detached accessory structure at 22 Weaver Street was being used as an accessory dwelling unit without zoning approval, final inspections or a certificate of occupancy.**
- 6. On October 24, 2020, a building permit application was submitted to "legitimize non-conforming garage apartment." The permit was subsequently denied on November 18, 2020 due to the lack of inspections and zoning relief required.**

The current Building Commissioner, David Riquinha, noted that the project expanded into a two bedroom dwelling unit without permission from the Building Department or the Zoning Board of Appeals for the use. It has curtains in the windows and a wrap-around deck on the second floor. It appears to be completely finished and the applicant stated that it is an apartment.

So, the Petitioner was before the Zoning Board of Appeals to petition for relief in the form of a Use Variance from the Zoning Board of Appeals. After hearing testimony from the neighbors, and much discussion, the Board finds that the Petitioner is properly before the Zoning Board of Appeals and that the additional unit qualifies for the granting of a Use Variance under the MGL chapter 40 Section 10, and Wareham Zoning By-Laws section 1470 and 1471.

The Petitioner stated that he met the statutory requirements of a Use Variance: “ ...such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

The Petitioner represented that he was displaced from Boston when COVID-19 struck, and that he and his finance had no other place to live. Under current conditions, the Board first finds this a legitimate hardship.

The Petitioner posited that the garage was a ‘mixed use building,’ however the Board does not consider a garage to be a mixed use building and rejects this appeal.

Second, the Board found that literal enforcement of the Town’s By-Laws would cause a hardship to the Petitioner. The Board finds that this lot is located in the MR-30 zoning district which is a multi-residence district that allows attached units under certain criteria such as sufficient area. The units in this case are unattached.

Third, the Board finds that the desired relief may be granted without substantial detriment to the public good. The character of the construction of the garage and unit is acceptable and fits into the neighborhood.

Lastly, the intent of the Wareham Zoning by- law clearly laid out in Article 1 Section 130 of which includes “to preserve and increase amenities by the promulgation of regulations to fulfill said objectives”. The Board found this approval of a Use Variance would not derogate from their Zoning By-Laws all factors considered.

However, the Board does not find this to be an acceptable condition after the current pandemic allows other housing choices. Consequently, the Board finds that this variance is only applicable to the Petitioner for so long as he resides in the unit.

Conditions

1. The applicant is required to secure a building permit and schedule the necessary inspections required to assure the safety of all individuals using the property. This property cannot be used as a dwelling unit until all inspections have been performed, any necessary repairs completed, and a certificate of occupancy issued.
2. Upon transfer of ownership, sale of the property, or in the event the applicant moves out of the unit, the Use Variance will be automatically rescinded and the space will no longer be allowed to exist as a residential unit. At that time, appliances and fixtures must be removed to eliminate the potential for continued use of the space as a residence.
3. A cash bond of \$5,000 for demolition of the space to remove the kitchen shall be submitted to the Building Commissioner before a C.O. is issued.

4. Any relief not expressly granted hereunder is hereby denied.
5. For this decision to become effective, a copy of said decision and notice thereof must be filed at the Plymouth County Registry of Deeds and must bear the certification of the Town Clerk that twenty (20) days have elapsed and no appeals have been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must be thereafter filed with the Board of Appeals.
6. If substantial use or construction permitted by this Variance has not commenced within one year from the date of which a copy of this decision is filed with the Town Clerk, excluding the amount of time required for an appeal period to expire and the amount of time required to pursue and await the determination of any such appeal, then this Special Permit/Variance shall expire in so far as the foregoing statement is modified by Chapter 195 of the Acts of 1984. Any person exercising rights under a duly appealed Special Permit/Variance does so at the risk that a court may reverse the permit and any construction performed under the permit may be ordered undone.
7. Any person aggrieved by this decision of the Zoning Board of Appeals may file an appeal pursuant to the provisions of M.G.L. Chapter 40A, section 17 within twenty (20) days of the filing of this decision in the office of the Town Clerk. If no appeal is taken within the allotted time, the Clerk will so certify.
8. If the applicant wishes to modify the approved Record Plans, it shall submit proposed modifications in accordance with the provisions of this paragraph. Where such modification is deemed substantial, the same standards and procedures applicable to an original application for approval shall apply to such modification and a public hearing shall be required by the ZBA; provided, however, that the ZBA may determine that a proposed modification is insubstantial and approve the same without the need for any further ZBA approval.

VOTE: (0-0-0) By the Wareham Zoning Board of Appeals