

ZONING BOARD OF ADJUSTMENT
MINUTES OF MEETING
AUGUST 19, 1993

MEMBERS PRESENT: Chris Jacobs, Bill Colbath, John Murphy Jr.
Robert Callan, and Dean Trefethen

ALSO PRESENT: Steve Stancel

Chris Jacobs, Chairman, called meeting to order.

ITEM #1: New Business

ITEM 2: Old Business - None

ITEM 3: H93-12, Nancy Leslie, 13 Richardson Dr., a/k/a
Assessor's Map F, Lot 34-Q, Zoned R-40, requests a
variance from (1) the terms of Article V, Section
170-16, to construct a breezeway and garage
addition to a single family dwelling within forty-
two (42) feet of a front property line where fifty
(50) feet is required; and (2) the terms of Article
X, Section 170-41.A to increase a non-conforming
structure.

Nancy Leslie - Reviewed the plot plan and her application.
Nancy corrected the lot dimensions from 150,00 sq. feet to
15,000 sq. ft. She stated that she cannot build at the
required setback due to the leach field.

Chris Jacobs - Asked applicant how she knew where the leach
field was.

Nancy Leslie - She had it replaced 8 years ago.

Chris Jacobs - Concerned about whether the fill from the
garage would fill over the septic field.

Nancy Leslie - No, there are a few yards between the proposed
garage and the septic field.

Bob Callan made the motion to accept the case.
John Murphy seconded the motion.
U/A

Raymond Leblanc - Abutter - Expressed his approval of the
addition.

PUBLIC HEARING CLOSED

Chris Jacobs - Appears that this neighborhood has similar non-conforming structures.

Steve Stancel - Richardson Dr. was constructed in the late 1950s and the zoning was different then. There are a number of garages in that neighborhood that are non-conforming. The Planning Dept. is in favor of granting this variance.

5 CRITERIA

1. Applicant does face an unnecessary hardship due to the fact that the existing location of the leach field does not permit compliance with zoning.
2. If granted, the variance will deliver substantial justice in that it will allow the applicant the same rights as the neighbors.
3. If granted, the variance will be in harmony with the spirit and intent of the zoning ordinance. The applicant has met all other setback requirements. The house is closer than the garage. The neighborhood was built prior to the R-40 zoning.
4. If granted, the variance will not result in a diminution in value of surrounding properties. No evidence was presented.
5. If granted, the variance will be of benefit to the public interest. Benefit to applicant does not negatively impact public's interest and improves the neighborhood.

Dean Trefethen made the motion to grant the variance.

Bill Colbath seconded the motion.

U/A

ITEM 4: H93-13, Raymond Hennessy, (applicant: Dover Group Home). 125 Silver St., a/k/a Assessor's Map 10, Lot 168. This application was withdrawn at the applicant's request.

ITEM 5: H93-14, Kathy Haight, (applicant: Dennis Munson), 125 Tolend Rd., a/k/a Assessor's Map E, Lot 62-A, Zoned R-20 requests a variance from the terms of Article V, Section 170-17 to construct an accessory structure (26' X 26' detached garage) within nineteen (19) feet of a front property line where thirty-five (35) feet is required.

Dennis Munson - Stated that he would like to build a detached garage.

Chris Jacobs - Asked what the hardship is.

Dennis Munson - Hardship is due to the layout of the lot and the wetlands on the back side.

Chris Jacobs - Questions the size of proposed garage.

Dennis Munson - It will be a 2-car garage, large enough to store larger vehicles (example: van or truck).

Chris Jacobs - Questioned Steve Stancel in regards to the Conservation District and a 50' set-back requirement.

Steve Stancel - There is a 50' set-back requirement. Dennis would have to apply for a Conditional Use Permit and he will have to show that he is taking erosion control procedures. A few years prior, applicants had to seek a Special Exception first and that was changed to reduce the number of steps necessary to get approvals.

Bill Colbath made the motion to accept the case.

Bob Callan seconded the motion.

U/A

Dean Trefethen - Asked whether there is running water in the brook at any time in the year.

Dennis Munson - Just in the spring during the run-off.

Chris Jacobs - Asked if there were a garage at one time on the other side of the building.

Dennis Munson - There still is but it is so close to the lot line that it cannot be expanded and it is a small garage. A pick-up truck cannot go into the garage. It was originally a carport.

Chris Jacobs - Concerned that it is a small lot and it will be necessary to stop the expansion at some point. The variance previously granted for a dormer has expanded the building, although not the number of bedrooms. If this variance were granted then a condition should be attached to keep the garages as garages and not converted as living space. Also, the septic system is not in compliance and it would never meet the State rules.

Bob Callan - Agrees on limiting future expansion. Upon viewing the lot, noted 4 vehicles in the yard. This garage would house all vehicles, improving the appearance of the lot. Applicant has done what he could as far as filling the lot and he has no where else to go but in this location.

Steve Stancel - Asked if applicant planned to use the garage for only residential items.

Dennis Munson - Yes, cars, tractors etc.

Steve Stancel - In regards to his plumbing business, asked if he planned to store plumbing supplies in the garage.

Dennis Munson - Just the supplies that are in the van or in the other garage.

Steve Stancel - Tom Clark recommends that a condition be placed on the variance if granted, that the garage be used only for residential use. The Planning Dept. agrees to the condition.

Chris Jacobs - Two concerns: (1) Making the applicant reduce the size of the garage to meet the required setback would not meet his needs and; (2) is having a garage on each end giving him greater use of his lot than his neighbors.

Bill Colbath - Asked what the measurement was from the pavement to the garage. Concerned about backing vehicles out of the garage into the street.

Dennis Munson - Approximately 19'. Vehicles have to go sideways and then out. That is why the garage was turned sideways.

PUBLIC HEARING CLOSED

5 CRITERIA

1. The applicant does face an unnecessary hardship due to the unique shape of the lot. The lot is long and narrow and the majority of structures lie within the set-back.
2. The variance will deliver substantial justice. The use is consistent with properties around them. (3 voted will and 2 will not)

3. The variance will be in harmony with the spirit and intent of the zoning ordinance.

The Board Members discussed the spirit and intent - Applicant does have full use of his property in that he already has a garage despite the fact that it is small. Reasonable use is that everyone gets a garage. Reviewed the Shaw case where he had a cleaning business and had 8 vehicles and wanted to clean up his property by putting up a garage and it was denied. Another case was noted where a request was made to build a garage five (5) feet from the side boundary line where fifteen (15) feet was required and it was denied. The garage was built behind the house. These cases were different in that they do not have the hardship that this case has.

It was the Board's conclusion that the spirit and intent of the ordinance was to have adequate set backs. This lot has 19' which is the most it can obtain. (4 voted will and 1 will not)

4. The variance will not result in a diminution in value of surrounding properties because there was no evidence presented.
5. The variance will be of benefit to the public interest in that the public interest is served by moving vehicles into the structure. (4 voted will and 1 will not)

Bill Colbath made the motion to grant the variance with the following conditions:

- (1) The garages and home cannot be used for commercial or retail use.
- (2) That both garages stay as garages for ever.

Bob Callan seconded the motion.
VOTE: 4 in favor and 1 against
Variance was granted.

ITEM 6: H93-15, Lillian Herlihy, (applicant: Michael Fortier), 6 Rainbow Dr., a/k/a Assessor's Map I, Lot 85-E, Zoned R-40, requests a variance from (1) the terms of Article V, Section 170-16 to construct an attached garage and mudroom addition to a single family dwelling within twenty-seven (27) feet from a front property line where fifty (50) feet is required, and (2) the terms of Article X, Section 170-41.A to increase a non-conforming structure.

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Michael Fortier - Contractor - Reviewed the plot plan. Due to the location of the pool, the required set-back cannot be met.

Dean Fortier - Asked if the existing porch & stairs would remain.

Michael Fortier - No. It will be a finished room and the stairs will be removed.

Michael Fortier - Presented a letter from an abutter, Wm. Gowen.

Chris Jacobs - Read the letter in which Mr. Gowen gave his approval of the request for a variance to construct a garage and mudroom.

Steve Stancel - Tom Clark wished to point out that the set-back measurement was taken from the pavement and not the property line.

Discussion on the actual set-back and the lack of a plot plan giving accurate information. Garage could go behind the house.

Michael Fortier - There is an in-ground pool and an existing shed behind the house. There is no other place on the property to place the garage that would be financially feasible and this would also be in keeping with the neighborhood.

Chris Jacobs - Not in favor of accepting the application due to insufficient set-back information.

Lillian Herlihy - Due to the size and room on the lot, the garage cannot be placed anywhere else. Also will be in keeping with the neighborhood.

Michael Fortier - I measured from the road to the edge of the pavement and came up with 26 feet from the building to the closest point. Also measured side set-back, 23 feet road width and 11 foot center of road width. The measurements are as accurate as the tape measure is. Client wishes to be heard this evening. The garage will be one (1) foot back from the existing building and it would be in keeping with the neighborhood.

Discussion was held on where the pins are and how measurement was taken.

John Murphy - questioned the location of the pool and applicant's anticipated plans for a garage.

Lillian Herlihy - The pool was placed in its present location due to the location of the leach field.

Dean Trefethen made the motion to accept the case.
John Murphy seconded the motion.
4 voted for acceptance and 1 against.

Steve Stancel - Can justify its going either way. The applicant created her own hardship by the location of the pool. However, the surrounding neighbors have garages that are closer than 50'.

PUBLIC HEARING CLOSED

Dean Trefethen - This area has a bunch of little subdivisions. Cars are being parked on City right-of-ways even though they are in the driveways. The garage will remove the cars from the City right-of-way.

Dean Trefethen and Chris Jacobs - Discussed the possibility of reducing the size of the garage. Nothing would be gained by doing this because it still would not be in compliance.

5 CRITERIA

1. The applicant does face an unnecessary hardship due to the location of the existing pool prevents owners from meeting setbacks. (3 votes does and 2 votes does not).
2. The variance will deliver substantial justice in that it will allow a use similar to the neighbors. (4 votes will and 1 will not).
3. The variance will be in harmony with the spirit and intent of the zoning ordinance. Spirit and intent is to give a reasonable setback. This neighborhood has the same setback as the proposed construction. (4 votes will and 1 will not).
4. The variance will not result in a diminution in value of surrounding properties in that no evidence was presented.

5. The variance will be of benefit to the public interest. No detriment to the public interest shown. (4 voted will and 1 will not).

Dean Trefethen made the motion to grant the variance.
Bill Colbath seconded the motion.
4 voted to grant the variance and 1 voted against.
Variance was granted

Dean Trefethen made the motion to accept the June 17th. minutes with the following corrections:

- (1) On page 11 Steve Stancel's statement is corrected to read as follows: "Site inspection showed that surrounding properties do not meet the set back requirement. The applicant is not receiving a higher standard than surrounding neighbors."
- (2) On page 11, at the bottom, item (1) is corrected to read as follows: "That guardrails and handrails be installed if required by code."

Bill Colbath seconded the motion.
U/A

Dean Trefethen asked Steve Stancel if the City is required to meet the fence regulations.

Steve Stancel - No, the City does not have to meet the fence regulations.

MEETING ADJOURNED