

Zoning Board of Appeals
January 18, 2017

The Zoning Board of Appeals met for a scheduled meeting on Wednesday, January 18 2017 at 7:00 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Acting Chairman Robert Lanier and Members Judy Smith and Jordan Haug; Building Inspector Tim Dexter; City Planner John Clarke; City Attorney Eric Gordon; and City Administrator Anthony Ruggiero were present. Chairman Jack Dunne and Member Neil Sullivan were excused.

Mr. Lanier called for corrections/additions or a motion to approve the minutes of the November 15, 2016 meeting. Ms. Smith made a motion to approve the November 15, 2016 meeting as presented, seconded by Mr. Haug. All voted in favor. Motion carried.

City Attorney Eric Gordon explained this is the first meeting of a five member board, a reduction approved by the City Council. A review of the revised law established that it still requires four votes to adopt a resolution approving an application. Therefore, because only three board members were present at the meeting, the board cannot approve any applications for variances until the law is modified. City Attorney Gordon explained public hearings will be open and comments will be heard from applicants and members of the public who took the time to show up and want to be heard. However; no applications can be voted on or approved by the board at the meeting that evening. The miscellaneous business item can be heard and action taken because it is a previously determined matter that falls under General City Law and is not a formal application for a variance.

Ms. Smith made a motion to open the meeting to allow applicants to either present their appeals or return next month, seconded by Mr. Haug. All voted in favor. Motion carried.

ITEM NO. 1 REVISED APPLICATION SUBMITTED BY DAVID BUCKLEY, 73 WEST WILLOW STREET, TAX GRID NO. 30-5955-76-960179-00, R1-7.5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223.17(E) TO CONSTRUCT A 480 SQ. FT. ACCESSORY BUILDING (ONE-STORY DETACHED GARAGE) (416 SQ. FT. PERMITTED)

The public hearing on the application submitted by David Buckley, 73 West Willow Street, for relief from Section 223.17(c) to construct a 480 sq. ft. accessory building was opened on a motion made by Ms. Smith, seconded by Mr. Haug. All voted in favor. Motion carried. The applicant, Mr. Buckley, chose to defer his appeal until the February meeting. Mr. Lanier opened the floor for public comment.

Barry Herbold, 82 East Willow Street, read two letters he submitted regarding his opposition to the requested variance from last month and a letter from TEC Land Surveying.

Letter #1

I am writing to you in reference to the request for an area variance submitted by David Buckley for 73 West Willow Street. At the November 15th meeting the accuracy of the scale of the survey submitted by the applicant was questioned. The building inspector, who provides consultation to

the board, attested to the accuracy of the drawing and indicated that he drew the proposed structure on the survey.

I sent the originally submitted survey to a licensed surveyor for a second opinion. I have attached a letter with their findings. I realize the applicant has now submitted a revised survey but I believe there are points in the letter that also apply to the revised survey so I would like to submit it for the record.

Letter from TEC Land Surveying

Dear Mr. Herbold,

I am in receipt of a survey map of your neighbor's property at 73 West Willow Street in Beacon, New York. The survey was prepared by Robert Kalaka, LS and dated July 22, 2015 and has a proposed garage hand drawn on the map. In response to your questions concerning the scaled dimensions and property offsets we inserted the map into CAD and scaled the map to check dimensions. There is no survey offset dimension on the side of the house with the proposed garage but this dimension scales to be approximately 26 +/- feet in CAD. The dimensions of the proposed garage and offsets equal 27 feet. With the proposed garage being so close to the property line where offset dimension are critical we recommend the following:

1. An actual surveyed dimension should be shown on the survey map to confirm the offset between the house and the side and rear property lines.
2. When the garage is constructed, layout of the structure should be done by the surveyor to ensure proper setback from the property line.
3. Property line stakes should be set in the vicinity of the garage for visual reference.

Another item of concern is that the alteration or addition to a survey map bearing a Licensed Surveyor's seal is a violation of Section 7209(2) of the New York State Education Law which states: *"To all plans, specifications, plats and reports to which the seal of a professional engineer or land surveyor has been applied, there shall also be applied a stamp with appropriate wording warning that it is a violation of this law for any person, unless he is acting under the direction of a licensed professional engineer or land surveyor, to alter an item in any way. If an item bearing the seal of an engineer or land surveyor is altered, the altering engineer or land surveyor shall affix to the item his seal and the notation "altered by" followed by his signature and the date of such alteration, and a specific description of the alteration."*

While this practice is relatively commonplace in some regions, the New York State Association of Professional Land Surveyors and other professional associations are working with the New York State Office of Professional Development to increase enforcement and reduce its occurrence. All maps that show a dimension to a property line from either an existing or proposed item are required to be certified by a Licensed Surveyor and/or Engineer under New York State Education Law and Office of Professional Development regulations. If we can be of further assistance, please do not hesitate to contact me.

Sincerely,

Thomas E. Cerchiara, PLS

Letter #2

I am writing to you to voice my opposition to the request for an area variance submitted by David Buckley for 73 West Willow Street. My property abuts the property at 73 West Willow Street and I will be able to see the proposed structure from my property. The reasons for my objection are as follows.

1. The 16' x 30' structure in the survey is more than 15% larger than what is allowed by code. This is not a matter of a few inches or feet to accommodate a difficulty with the site plan or existing conditions. It is a substantial deviation from the zoning code. This seems unreasonably large for a single car garage on a 0.19 acre lot that will be sited at the minimum setback from the side property line.
2. The neighborhood consisting of East Willow and West Willow north of Wilkes is an established neighborhood that is unique in character among Beacon neighborhoods. It is my understanding that the houses were all built in the 1950's by the same builder. All of the garages in the neighborhood have detached garages or accessory buildings. The average size of an attached garage addition in the neighborhood is 308 sq. ft. A detached garage of 480 sq. ft. will be 55% larger than the average attached garage addition and will be seriously out of place with the harmony, pattern and scale of the existing built environment.
3. At the previous meeting on November 15th Mr. Buckley state that he originally planned to build a garage with dimensions of 14' x 29.5", but he felt that a 16' wide garage would look better. (Note that a 14' x 29.5' garage would not require an area variance). State law requires the Zoning Board of Appeals to grant the minimum variance necessary to provide relief, but there is no need for relief in this case as there is no difficulty or hardship. A 416 sq. ft. garage is more than sufficient for a single car detached garage. Thank you for your consideration.

Zoning Board members were provided copies of the above letters prior to the meeting. A copy of the approved minutes from the November 2016 meeting were provided to Mr. Herbold. Mr. Lanier read the following letters that were also submitted to the board prior to the meeting.

My name is Gloria Lane and I reside at 67 West Willow Street. David Buckley has discussed with me his desire to build at 16' x 30' garage at 73 West Willow Street that will **directly border** my property and will be in plain view from my home. I have **no issue** with his request to build this garage and feel that in no way will this distract from the character of the neighborhood. I have been a resident in this neighborhood and house for 60 years.

My name is Steve Poletta and I reside at 79 West Willow Street, the property adjoining 73 West Willow Street. David Buckley has discussed with me his desire to build at 16' x 30' garage at 73 West Willow Street that will be in plain view from my home and visible daily to me. I have **no issue** with his request to build this garage and feel that in no way will this distract from the character of the neighborhood. I have been a resident in this neighborhood and house for 15 years.

My name is Shawn Fajardo and I reside at 72 West Willow Street, the property **directly across the street** from 73 West Willow Street. David Buckley has discussed with me his desire to build at 16' x 30' garage at 73 West Willow Street that will be in plain view from my home and visible daily to me. I have **no issue** with his request to build this garage and feel that in no way will this distract from the character of the neighborhood. I have been a resident in this neighborhood and house for 45 years.

My name is David Burke and I reside at 66 West Willow Street, which is across the street and faces 73 West Willow Street. David Buckley has discussed with me his desire to build at 16' x 30' garage at 73 West Willow Street that will be in plain view from my home and visible daily to me. I have **no issue** with his request to build this garage and feel that in no way will this distract from the character of the neighborhood. I have been a resident in this neighborhood and house for 40 years.

My name is Gwendolen Nerrie and I reside at 78 West Willow Street, which is across the street and faces 73 West Willow Street. David Buckley has discussed with me his desire to build at 16' x 30' garage at 73 West Willow Street that will be in plain view from my home and visible daily

to me. I have **no issue** with his request to build this garage and feel that in no way will this distract from the character of the neighborhood. I have been a resident in this neighborhood and house for 45 years.

Ms. Smith made a motion to continue the hearing to the February 22, 2018 meeting, seconded by Mr. Haug. All voted in favor. Motion carried.

ITEM NO. 2 APPLICATION SUBMITTED BY LAUREN & NICOLE PERAGINE, 290 EAST MAIN STREET, TAX GRID NO. 30-6054-48-444607-00, R1-10 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223.17(C) TO DEMOLISH EXISTING 343 SQ. FT. DETACHED GARAGE AND BUILD NEW 352 SQ. FT. DETACHED GARAGE WITH 2.8 FT. SIDE YARD SETBACK (15 FT. REQUIRED) AND 3 FT. REAR YARD SETBACK (15 FT. REQUIRED)

The public hearing on the application submitted by Lauren & Nicole Peragine, 290 East Main Street, seeking relief from Section 223.17(c) to demolish existing 343 sq. ft. detached garage and build new 352 sq. ft. detached garage with 2.8 ft. side yard setback and 3 ft. rear yard setback was opened on a motion made by Ms. Smith, seconded by Mr. Haug. All voted in favor. Motion carried.

Ms. Peragine chose to defer her application until the February meeting. Mr. Lanier opened the floor for public comment. No one from the public wished to speak. Ms. Smith made a motion to continue the public hearing at the February 22, 2017 meeting, seconded by Mr. Haug. All voted in favor. Motion carried.

ITEM NO. 3 APPLICATION SUBMITTED BY MICHAEL & SALLY SCHEIN, 16 NORTH STREET, TAX GRID NO. 30-6054-29-112767-00, R1-5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223.17(C) TO CONVERT THE EXISTING INTERIOR ATTIC INTO A BEDROOM WHICH IN EFFECT CREATES A THIRD STORY (2.5 STORIES MAXIMUM PERMITTED)

The public hearing on the application submitted by Michael & Sally Schein, 16 North Street, for relief from Section 223.17(c) to convert the existing interior attic into a bedroom which in effect creates a third story was opened on a motion made by Ms. Smith, seconded by Mr. Haug. All voted in favor. Motion carried.

Ms. Schein, one of the applicants, described her proposal to convert the existing attic into a master bedroom and asked why a variance was needed. Mr. Dexter explained the zoning code definition of “story” is very specific and triggers the need for a variance in this case. Ms. Schein understood and chose to defer further presentation or review of the application until the February meeting. Mr. Lanier opened the floor for public comment. NO one from the public wished to speak. Ms. Smith made a motion to continue the public hearing at the February 22, 2017 meeting, seconded by Mr. Haug. All voted in favor. Motion carried.

ITEM NO. 4 APPLICATION SUBMITTED BY LANDSTAR PROPERTIES, LLC (JAMES CASTAGNA), 192 MAIN STREET, TAX GRID NO. 30-5954-27-817951-00, CB ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223.15(E)(3) FOR A NEW 17.5 SQ. FT. SIGN (10 SQ. FT. MAXIMUM PERMITTED)

Neither the applicant nor representative were in attendance to present the case. Ms. Smith made a motion to open the public hearing on the application submitted by Landstar Properties, LLC, 192 Main Street, seeking relief from Section 223.15(E)(3) for a new 17.5 sq. ft. sign, seconded by Mr. Haug. All voted in favor. Motion carried. Mr. Lanier opened the floor for public comment. No one from the public wished to speak. Ms. Smith made a motion to continue the public hearing at the February 22, 2017 meeting, seconded by Mr. Haug. All voted in favor. Motion carried.

Miscellaneous Business

Request for rehearing submitted by Hudson Todd, LLC, (Joe Donovan), 36 North Cedar Street

Although the applicant was not in attendance, City Attorney Eric Gordon outlined the rehearing process, which is a procedure under General City Law 81-a (12) and was not in the City of Beacon Zoning Code. Mr. Gordon explained that all members of the board who are present must vote unanimously for the case to be reheard. He further explained a case can be reheard if it is believed that the board's determination was incorrect or that information exists that wasn't previously presented. If the board voted to hold a rehearing, the applicant would need to re-submit the application that had previously been rejected and a new public hearing would be held and notice given to the required neighboring property owners regarding the application.

City Administrator Ruggiero explained the City put out a Request for Proposals (RFP) for the 36 North Cedar Street property which has been a garage and mechanic's shop for several years. The operation was disruptive to the neighborhood and over the years several complaints arose from the neighbors. As a result, the City wanted to change its use to something more conforming with the zoning district and the RFP limited submissions to residential uses.

Mr. Dexter explained a mechanic's garage is a non-conforming commercial use in a residential zone and under City zoning regulations a non-conforming use can be changed to either a conforming use, or any use that is less non-conforming use as determined by the Zoning Board of Appeals. City Planner John Clarke explained the meaning of the zoning code and what was allowed with respect to changing non-conforming uses. Mr. Clarke said that most of the concerns presented at the meeting where the application had been denied had to do with parking, traffic, environmental concerns, etc. He explained that the board has two questions they needed to consider with respect to whether the rehearing should be granted. One is whether the proposed two family residential use is more or less non-conforming than a highway department maintenance garage. He stated that concerns about parking, the building's appearance, or how many people will reside there are site plan issues to be addressed by the Planning Board and do not necessarily impact whether a proposed use is less non-conforming than an existing non-conforming use. The second question before the board is whether they are willing to re-hear the case based on the applicant's letter which explained his belief that important information regarding the application was not adequately communicated in his absence at the November meeting. Mr. Clarke explained that the existing garage and mechanic's shop is a commercial use

in a residential district that generates noise, traffic, deliveries and welding and diesel fumes while the use that was proposed to replace it was a two family residence. He stated that a good case could be made that a two family residence would have less impact on the neighborhood.

After a lengthy discussion members agreed the applicant must be in attendance to present his information and arguments before a vote is taken to re-hear the case. It was determined that the matter would be adjourned to the February 22, 2017 meeting. If the applicant is not present at the February 22, 2017 meeting, the request for a rehearing will be denied. Ms. Smith then made a motion to notify neighbors, in the same manner as an application for a variance, that the board will hold a public hearing on the request for re-hearing the with respect to the application involving 36 North Cedar Street at the February 22, 2017 meeting, seconded by Mr. Haug. All voted in favor. Motion carried.

There was no further business and Ms. Smith made a motion to adjourn the meeting, seconded by Mr. Haug. All voted in favor. Motion carried. The meeting adjourned and a training session with City Attorney Eric Gordon began at 7:50 p.m.