

Zoning Board of Appeals
January 15, 2019

The Zoning Board of Appeals met for a scheduled meeting on Tuesday, January 15, 2019 at 7:00 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Chairman John Dunne, Members Robert Lanier, Jordan Haug (in at 7:15 p.m.), Judy Smith, and David Jensen; City Attorney Drew Gamils and Building Inspector Dave Buckley were in attendance.

Mr. Dunne outlined the format of the Board's proceedings for the benefit of the public, explaining five out of five members were present and three votes would be needed to take action on a variance request. Mr. Lanier made a motion to open the meeting, seconded by Ms. Smith. All voted in favor. Motion carried.

Executive Session

Mr. Lanier made a motion to go into executive session for advice of counsel, seconded by Ms. Smith. All voted in favor. Members went into executive session at 7:13 p.m. Mr. Haug joined the meeting at 7:15 p.m. Ms. Smith made a motion to come out of executive session, seconded by Mr. Lanier. All voted in favor. Motion carried. The regular meeting started at 7:30 p.m.

Regular Meeting

Mr. Dunne called for corrections/additions or a motion to approve the minutes of the December 18, 2018 meeting. Mr. Jensen made a motion to approve the minutes of the December 18, 2018 meeting as presented, seconded by Mr. Lanier. All voted in favor. Motion carried.

ITEM NO. 1 APPLICATION SUBMITTED BY MARINO ESPINOZA, 362 VERPLANCK AVENUE, TAX GRID NO. 30-6054-29-105838-00, R1-5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(C) TO CONSTRUCT A ONE-STORY REAR KITCHEN ADDITION WITH A 1.6 SIDE YARD SETBACK (10 FT. REQUIRED)

The public hearing on the application submitted by Marino Espinoza, 362 Verplanck Avenue, seeking relief from Section 223-17(C) to construct a one-story rear kitchen addition with a 1.6 ft. side yard setback was opened on a motion made by Mr. Haug, seconded by Mr. Lanier. All voted in favor. Motion carried.

Aryeh Siegel described his client's proposal to enlarge the small kitchen into the existing covered rear porch which has a 1.5 ft. side yard setback. The kitchen addition will follow in line with the porch and house footprint. A letter of support was submitted by the adjacent neighbor. Discussion took place regarding the pre-existing non-conforming undersized lot and Mr. Buckley explained the lot is legal but any improvements must meet current setback requirements. Mr. Dunne opened the floor for public comment.

Michele Ullian, 366 Verplanck Avenue, reviewed the proposal and supported the applicant's variance request.

Theresa Kraft, 315 Liberty Street, asked how a 90% variance could be considered and had concern for setting precedent.

Mr. Dunne explained every application is dealt with on a case by case basis and members will not set a precedent that can be challenged. City Attorney Drew Gamils explained the board only needs to explain why they deviate from any previous exception and state reasons for their decisions. Mr. Dunne read the following letter into the record:

I am writing to confirm that I have gone over the plans for the extended kitchen with my next door neighbor Marino Espinoza's house as well as discussed the proposed extension with Marino. As his next door neighbor we are fine with the plans and the project for the extended kitchen and offer our wholehearted support. We hope the powers that be will grant the variance. I would come to the meeting tonight to express those thoughts in person but my early commute to teach public school in New York City prevents me from being able to attend.
Peter Ullian, 366 Verplanck Avenue

There were no further comments from the public and Mr. Dunne verified with the Board secretary that no additional correspondence had been received regarding this appeal. Mr. Haug made a motion to close the public hearing, seconded by Mr. Jensen. All voted in favor. Motion carried.

Members carefully reviewed each of the five criteria established for granting area variances as they related to the request for a kitchen addition with a 1.6 foot yard setback. Members discussed each factor and gave careful consideration to any impacts to the character of the neighborhood, achieving the benefit by other feasible methods, whether the request was substantial, review of environmental and physical impacts, and whether the need for a variance was self-created. The applicant agreed to all the standard conditions set forth in the draft resolution. Mr. Jensen made a motion to approve the variance as requested and subject to conditions outlined in the draft resolution, seconded by Ms. Smith. All voted in favor. Motion carried; 5-0.

ITEM NO. 1 CONTINUE PUBLIC HEARING ON APPLICATION SUBMITTED BY PIE DEVELOPERS, 53 ELIZA STREET, TAX GRID NO. 30-6054-29-031870-00, R1-5 ZONING DISTRICT, SEEKING RELIEF FROM SECTION 223-17(C) FOR A USE VARIANCE (AND POSSIBLE AREA VARIANCE) TO ALLOW A 9-UNIT MULTI-FAMILY DEVELOPMENT

The public hearings on the application submitted by PIE Developers, 53 Eliza Street, seeking relief from Section 223-17(C) for a Use Variance and Area Variance to allow a 9-unit multi-family development were reopened on a motion made by Mr. Haug, seconded by Ms. Smith. All voted in favor. Motion carried.

Attorney Taylor Palmer was joined by applicant Ed Pietrowski, Architect Aryeh Siegel, and Robert McAlpine of McAlpine Construction. Mr. Palmer reported this project has the support of neighbors, including Mr. Cleary, who originally spoke against the variance, but now backs the project after discussion with the applicant. The project requires an area variance for the nine dwelling units, when only six are permitted by Code, and a use variance to permit multi-family housing. As requested the applicant provided additional financial documentation for review. Two real estate experts were contacted for financial opinions and determined the fair

market value of the property to be between \$400,000 and \$450,000. Mr. Palmer felt the area and use variances should be looked at together but as a matter of course however deferred to the City's counsel who determined the use variance would be considered first.

A lengthy discussion took place with regard to the property valuation provided by NYS licensed real estate brokerage firms Thomas Cervone of CR Properties and Kevin McGrath of McGrath Realty, Inc. Mr. McAlpine explained both firms had similar opinions with regard to the property valuation and both considered the fact that the property is a non-conforming commercial use located in a residential area. The original restricted appraisal utilized four comparable properties however they were on main highways rather than accessed from a one-way street embedded in a residential area. A question arose about the DeWindt Street property used as a comparable in the original appraisal. Although the DeWindt Street property is also located in a residential area, it is in an RD-3 zone which permits multi-family residential use and is therefore distinguishable from 53 Eliza Street. Mr. Dunne opened the floor for public comment

Theresa Kraft, 315 Liberty Street, felt variances should not be self-created and asked where vehicles would park on the site.

Mr. Siegel presented the Site Plan and explained 16 parking spaces are provided where 14 are required. It is mainly garage parking as well as regular outdoor parking on the site. Mr. Palmer explained they do not need a variance for parking, and the Site Plan will be subject to Planning Board approval.

Mr. Haug asked if anyone who submitted information for this application would be working on development of the project. Mr. Palmer reported there are no written agreements with regard to future development of the project in place at this time.

Mr. Jensen asked if the applicant had an accountant and felt a statement should be provided to determine the applicant's capital account balance. Discussion took place about general accounting principles and the need for capital information in order for members to determine reasonable return. After a lengthy debate about establishing a reasonable return, Mr. Palmer advised members that a statement would be obtained from the applicant's accountant. Further discussion took place with regard to market value of the property as it exists, if subdivided as-of-right, and with six or nine units.

Members discussed statutory limits imposed on making a determination if the public hearing is closed. Consideration was given to holding a special meeting because this may be the Chairman's last meeting before his term expires.

Theresa Kraft, 315 Liberty Street, asked how feasible it would be to sell nine single family units adjacent to a low income housing facility. Members explained that is not a factor for the board to consider.

City Attorney Drew Gamils led members through each of the factors that must be considered for a use variance and advised them to ask for additional information they feel may be necessary to make a determination on any factor.

Factor #1: The applicant cannot realize a reasonable return from each of the uses permitted in the zoning district.

Members reviewed values, assessments, and costs presented as well as considered the property location, permitted uses, and whether evidence provided met the burden of proof needed to make a determination on this factor. Members requested the applicant's accountant provide a statement outlining the basis of property value presented. The Board considered the location of the property and discussed that such location may not be ideal for commercial uses, that it may be better suited for multi-family units, and considered whether enough information had been provided to determine if a reasonable rate of return can be achieved in another manner.

Factor #2: The hardship is unique, and does not apply to a substantial portion of the district or neighborhood.

Members considered the property's size, irregular shape, location and whether it stands out as unique relative to other uses in the neighborhood. Although not precedent setting, discussion took place with regard to 123 Rombout Avenue in that some similarity existed in terms of their request to change a commercial use to multi-family use in a residential neighborhood.

Factor #3: The requested use variance, if granted, will not alter the essential character of the neighborhood.

Members considered the neighborhood character and surrounding uses – the Hamilton Fish building which is low-income housing, a multi-unit building at the intersection of Verplanck and Fishkill Avenue, and various multi-family houses on the block. This property is a commercial use in a mainly residential neighborhood.

Factor #4: Was the alleged hardship self-created.

Consideration was given to the fact that the applicant purchased the property a long time ago and could not have predicted the direction Beacon would take in the future. Zoning has changed over time with direction more toward residential uses to improve on the nature of the existing neighborhood. When the property was purchased it was a pre-existing, non-conforming use in a residential zoning district. A lengthy discussion took place with regard to how to conclude any use as being self-created and case law that supports such a determination. Specific case law in question will be forwarded to members to allow further understanding of this particular factor.

City Attorney Drew Gamils led members through each of the factors that must be considered for the area variance to allow three additional units:

Factor #1: Will the variance create an undesirable change in the neighborhood or create an adverse impact to the character of the neighborhood.

Members discussed the difference between six and nine dwelling units in terms of additional traffic and impact to the neighborhood. City Attorney Drew Gamils noted that the

traffic study prepared by Maser Consulting P.A. on September 27, 2018, was based nine dwelling units and Mr. Palmer reported the analysis concluded that there would be little or no impact on the neighborhood as a result of construction of the nine dwelling units. Members considered whether an undesirable change would be created in terms of a multi-unit development existing in a single family zoning district. It was noted that other multi-family dwellings exist in the neighborhood. A lengthy discussion took place with regard to the size, parking, access, and number of units that exist in the Hamilton Fish low income housing facility.

Factor #2: Can the benefit sought by the applicant be achieved through another method, feasible for the applicant to pursue, that does not require the variance.

The benefit sought by applicant in this case goes to the applicant realizing a reasonable return in the difference between six and nine units. Members asked for a statement from the applicant's accountant cost basis statement. Members discussed what benefit the applicant was seeking. A majority of the Board agreed that the benefit the applicant sought was to obtain a reasonable return on its investment. The applicant argues that it can only obtain a reasonable return if it constructs nine multi-family dwelling units. The Board reviewed the applicant's materials concerning possible alternatives and whether such returns provided a reasonable return. The Board discussed that a statement from the applicant's account may provide additional guidance on this issue.

Factor #3: Is the variance substantial.

Members considered factors to determine whether the requested variance is substantial. Based on a percentage of increase the proposed use of six units vs. nine units increases density by one-third. The Board agreed that numerically this variance was substantial.

Factor #4: Will the variance create any adverse impacts to the physical or environmental condition of the neighborhood.

Members considered the physical condition of the property, the make-up of the area, and the traffic study to determine whether three additional units would have an adverse impact on the neighborhood.

Factor #5: Was the need for a variance self-created.

Members felt this factor would be determined in the same manner as the use variance and further review of case law is needed.

Members also considered whether nine units would be the minimum amount of dwelling units and whether the benefit can be achieved without the variance. The applicant was advised to provide the accountant statement as discussed.

There were no further comments and Mr. Lanier made a motion to close the public hearing, seconded by Mr. Haug. All voted in favor. Mr. Palmer noted there were two public hearings open therefore Mr. Lanier rescinded his motion. Mr. Lanier made a motion to close the public hearings on both the use and area variance, seconded by Mr. Haug. All voted in favor. Motion carried.

Members authorized the City Attorney's office to draft a SEQRA resolution, use variance resolution, and area variance resolution for consideration. Discussion took place with regard to holding a special meeting prior to the next meeting before Chairman Dunne retires from the board. After much debate, it was decided that a special meeting could be held prior to the regular meeting which will be held on Wednesday, February 20, 2019 (*due to President's Day Holiday*). The special meeting would start at 7:00 p.m., be properly noticed, and posted on the City's website. City Attorney Drew Gamils advised members to consider conditions focusing on the community character and environmental preservation that they may want added to the resolutions.

There was no further business to discuss and the meeting was closed on a motion made by Mr. Haug, seconded by Mr. Lanier. All voted in favor. Motion carried. The meeting adjourned at 9:49 p.m.