

Zoning Board of Appeals
February 20, 2019

The Zoning Board of Appeals met for a scheduled meeting on Wednesday, February 20, 2019 at 7:07 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Chairman Robert Lanier, Members John Dunne, Judy Smith, and David Jensen (in at 7:10 p.m.); City Attorney Drew Gamils and Building Inspector David Buckley were in attendance.

Mr. Lanier outlined the format of the Board's proceedings for the benefit of the public, explaining three votes would be needed to take action on a variance request. Mr. Lanier called for corrections/additions or a motion to approve the minutes of the January 15, 2019 meeting. Mr. Haug made a motion to approve the minutes of the January 15, 2019 meeting as presented, seconded by Mr. Dunne. All voted in favor. Motion carried. Mr. Haug made a motion to open the meeting, seconded by Mr. Dunne. All voted in favor. Motion carried.

ITEM NO. 1 CONTINUE REVIEW OF 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 AREA VARIANCE TO ALLOW A 9-UNIT MULTI-FAMILY DEVELOPMENT (*THIS IS NOT A PUBLIC HEARING*)

Attorney Taylor Palmer described his client's proposal to convert the commercial property at 53 Eliza Street into a 9-unit residential development which requires both area and use variances. He reported they have been before the board since September of 2018 and summarized documentation that has been submitted in support of their appeal. They reviewed the draft Negative SEQRA Declaration and Resolution prepared before the meeting for the board's consideration.

City Attorney Drew Gamils advised members to review and discuss each finding listed for the use and area variances, and to make changes or agree with the statements as written. Members began with review of factors that must be considered for the use variance. (Mr. Jensen joined the meeting at 7:10 p.m.)

USE VARIANCE

1. The Applicant cannot realize a reasonable return as demonstrated by competent financial evidence

Members reviewed and discussed at length documents outlining costs associated with the applicant's purchase and renovation of the property to demonstrate proof that a reasonable return cannot be realized. Mr. Jensen asked what the rate of return was. He questioned the fair market value of the property, estimates provided, and felt the applicant did not provide information proving that a reasonable return cannot be achieved without a variance. However, the majority of the board agreed that the applicant submitted dollars and cents proof to demonstrate that it cannot realize a reasonable return.

2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood

Members reviewed and discussed findings in the draft resolution outlining reasons why the property is unique and does not apply to a substantial portion of the neighborhood. Members were in general agreement however Mr. Jensen questioned how the uniqueness related to the requested use variance to build multifamily dwellings. Mr. Jensen stated that if the hardship is based on the shape of the lot, then he believed the hardship was not unique. The board discussed the other unique characteristics of the property that create a unique hardship for the applicant.

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

Members reviewed and discussed findings in the draft resolution outlining reasons why the essential character of the neighborhood will not be altered. Members were in agreement however discussion took place as to whether reference to the Comprehensive Plan should be eliminated from the resolution. All agreed that paragraph should be removed.

4. The alleged hardship has not been self-created

Members reviewed and discussed findings in the draft resolution outlining factors that show the hardship was not self-created. Members in general agreed with the findings and had reviewed case law as it related to this case. Mr. Jensen felt this factor to be directly related to the applicant's belief that a reasonable return cannot be achieved without a use variance. Mr. Jensen stated that this factor is based on how the board defines hardship.

Members reviewed the draft SEQRA Negative Declaration prepared by City Attorney Drew Gamils based on supporting information, documents, public comments, and reports. After careful consideration, Mr. Haug made a motion to issue a Negative Declaration on the SEQRA environmental review, seconded by Mr. Jensen. All voted in favor. Motion carried.

After careful consideration, Mr. Haug made a motion to grant a use variance to allow multi-family units in a single family zoning district for reasons set forth in the resolution, seconded by Ms. Smith. On roll call, Mr. Haug, Ms. Smith, Mr. Dunne and Mr. Lanier voted in favor of the motion; Mr. Jensen voted against the motion. Motion carried; 4-1. Variance granted.

AREA VARIANCE

1. The area variance for nine multi-family units will not produce an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties created by the granting of the area variance.

Members reviewed and discussed findings in the draft resolution outlining reasons why an area variance to allow nine units will not change the character of the neighborhood. All agreed that several multi-family dwellings exist in the general area therefore this development will not create an undesirable change in the neighborhood.

2. The benefit sought by the Applicant cannot be achieved by some method feasible for the Applicant to pursue, other than the requested area variance.

Members reviewed and discussed findings in the draft resolution outlining reasons why the benefit sought by the applicant cannot be achieved in other ways. Based on information provided by the applicant, members in general agreed that economically three additional units are necessary to achieve financial benefit.

3. The requested variance is mathematically substantial; however, this does not outweigh the other factors meriting the granting of the variance.

Members reviewed and discussed findings in the draft resolution acknowledging that the variance requested is mathematically substantial yet does not outweigh other factors under consideration. Discussion took place with regard to removing the statement “the variance is not substantial in its effect to the community” and all agreed that it is mathematically substantial but doesn’t outweigh other factors. The sentence can be removed and the resolution reworded to reflect the discussion.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Members reviewed findings set forth to show that the variance will not have an adverse effect or impact and were in general agreement with the resolution as written.

5. The alleged difficulty is not self-created for the reasons discussed above.

Members reviewed and discussed findings in the draft resolution which similar factors as outlined in the use variance. Mr. Jensen believed the applicant did not provide financial proof that the additional units are necessary to make reasonable return.

After careful consideration of the factors and information presented, Mr. Haug made a motion to grant the area variance as requested, seconded by Mr. Dunne. On roll call Mr. Haug, Mr. Dunne, Mr. Lanier and Ms. Smith voted in favor of the motion; Mr. Jensen voted against the motion. Motion carried; 4-1. Variance granted.

Prior to reviewing conditions outlined in the variance, Mr. Palmer informed the board that other Planning Board applicants have had difficulty getting through the County Health Department approval process due to staffing changes. As a result applicants have had to request extensions, therefore he asked members to consider that as a factor when placing conditions on the approved variances.

Members reviewed conditions outlined in the draft resolution and agreed to allow the applicant six months to commence construction following the date of issuance of a building permit and 24 months after the date of issuance of said building permit to complete construction. The applicant will have one year to obtain a building permit from their last appearance before the Planning Board.

After careful consideration, Ms. Smith made a motion to accept resolution as amended and with the conditions discussed and agreed upon, seconded Mr. Jensen. All voted in favor. Motion carried.

ITEM NO. 2 APPLICATION SUBMITTED BY TRAVIS & KATHERINE HAYES, 11 IRIS CIRCLE, TAX GRID NO. 30-5954-43-786650-00, R1-7.5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(C) TO CONSTRUCT A ONE-STORY DINING ROOM AND LIVING ROOM ADDITION WITH A 6 FT. SIDE YARD SETBACK (10 FT. REQUIRED)

The public hearing on the application submitted by Travis & Katherine Hayes, 11 Iris Circle, for relief from Section 223-17(C) to construct a one-story dining room and living room addition with a 6 ft. side yard setback was opened on a motion made by Mr. Haug, seconded by Mr. Jensen. All voted in favor. Motion carried.

Travis and Kathleen Hayes presented their proposal to construct an addition on each side of their house to increase the size of the living room and dining room. The addition only requires a variance on the left side as it will extend 4 ft. into the required 10 ft. side yard setback. They could not add to the rear of the house because it is a split level ranch and moving the deck would change the character of the back yard; either way they would need a variance.

Mr. Lanier opened the floor for public comment. There were no comments from the public and Mr. Lanier verified with the Board secretary that no correspondence had been received regarding this appeal. Mr. Haug made a motion to close the public hearing, seconded by Ms. Smith. 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 to construct an addition with a 6 ft. side yard setback where 10 ft. is required. 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. Mr. Dunne made a motion to grant the variance, seconded by Mr. Jensen. Mr. Dunne and Mr. Jensen rescinded their motions. The applicant was informed of the standard conditions set forth in the draft resolution and agreed to each condition. Mr. Dunne made a motion to approve the variance as requested and subject to conditions outlined in the draft resolution, seconded by Mr. Jensen. All voted in favor. Motion carried; 5-0. Variance granted.

ITEM NO. 3 APPLICATION SUBMITTED BY THOM & LOUANN JOYCE, 136 WASHINGTON AVENUE, TAX GRID NO. 30-6054-32-389796-00, R1-10 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(C) FOR A FRONT AND REAR ADDITION WITH 26 FT. FRONT YARD SETBACK (35 FT. REQUIRED) AND A 26 FT. REAR YARD SETBACK (35 FT. REQUIRED)

The public hearing on the application submitted by Thom & LouAnn Joyce, 136 Washington Avenue, for relief from Section 223-17(C) for a front and rear addition with 26 ft. front yard setback and a 26 ft. rear yard setback was opened on a motion made by Mr. Haug, seconded by Mr. Jensen. All voted in favor. Motion carried.

Thom and LouAnn Joyce described their proposal to increase the size of their living room and add a bathroom by extending into the rear back porch and seasonal room. A new foundation will be constructed to make the rear portion of the house 4-feet longer and 16-inches wider

which will remain in line with the existing house. The footprint for the front won't change as the addition will only extend to limits of the existing covered front porch. Although a small stoop will be added, the front of their house is set back behind the line of others on the street. Mr. Joyce reported they also own the rear lot where the driveway is located so the extension will not affect anyone to the rear. They looked at other ways to gain space however a variance would be required for any other configuration. Roof lines will be consistent to maintain the character of the existing house and they have no plans to build on the rear lot.

Mr. Lanier opened the floor for public comments. There were no comments from the public and Mr. Jensen made a motion to close the public hearing, seconded by Ms. Smith. 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 front and rear addition with 26 ft. front yard setback and a 26 ft. rear 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. Ms. Smith made a motion to approve the variance as requested and subject to conditions outlined in the draft resolution. Mr. Lanier read the following letter of support signed by adjacent neighbors into the record:

I/We _____, who is/are the legal owner of the property at _____, do not object to the proposed additions that LouAnn and Thomas Joyce are planning on their home at 136 Washington Avenue, Beacon, NY. Their proposal will help to improve the look on our street and add to the wonderful character of our neighborhood.

Jack & Kim Curtis
142 Washington Avenue

Dylan Assael
131 Washington Avenue

Janice Dolan
53 Overlook Avenue

Sheila A. Blair
126-128 Washington Avenue

Phyllis Sandford
137 Washington Avenue

The motion to approve the variance was seconded by Mr. Haug. All voted in favor. Motion carried; 5-0. Variance granted.

ITEM NO. 4 APPLICATION SUBMITTED BY RYAN HAVERS & LORI MERHIGE, 104 SOUTH CHESTNUT STREET, TAX GRID NO. 30-5954-44-880723-00, R1-5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(C) FOR A SECOND FLOOR ADDITION WITH 21 FT. FRONT YARD SETBACK (30 FT. REQUIRED) AND A 4 FT. SIDE YARD SETBACK (12.5 FT. REQUIRED)

The public hearing on the application submitted by Ryan Havers & Lori Merhige, 104 South Chestnut Street, for relief from Section 223-17(C) for a second floor addition with 21 ft. front yard setback and a 4 ft. side yard setback was opened on a motion made by Mr. Haug, seconded by Ms. Smith. All voted in favor. Motion carried.

Architect Steve Whalen, of Whalen Architecture, PLLC, described his client's proposal to reconstruct the second story of their house at 104 South Chestnut Street. The footprint of the

house will not increase as they are only extending the existing roof to add two bedrooms and a bath on the second story of the house. The pre-existing setbacks are non-conforming therefore a variance is needed to expand the size of the structure. Mr. Whalen explained the roof will be raised to extend the walls by two feet and the expansion will have no impact on the view from the corner lot. There were no further comments and Mr. Lanier opened the floor for public comment.

Ann Laviglia, 94 South Chestnut Street, supported her neighbor's variance request and felt the addition would enhance the neighborhood.

Mr. Lanier read the follow email of support:

To Beacon City Zoning Board,
I own and live at 86 South Chestnut Street. I fully support Ryan Havers & Lori Merhige in their appeal for relief from section Section 223-17(C). Please grant them whatever variances they need for their project at 104 South Chestnut Street, Beacon, NY. Stanislaw Yankowski

There were no comments from the public and Mr. Lanier 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 second floor addition with a 21 ft. front yard setback and a 4 ft. side 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 Mr. Haug. All voted in favor. Motion carried; 5-0. Variance granted.

Miscellaneous Business

98 Rombout Avenue - Consider Request for Extension

Gloria Gamble was present to request a 6-month extension for three variances that were granted on July 17, 2018. Due to personal family issues construction did not start within the six month time frame therefore she requested the board consider granting a six month extension for all three variances granted. After careful consideration, Mr. Dunne made a motion to grant a six month extension as requested, seconded by Mr. Haug. All voted in favor. Motion carried.

Mr. Lanier thanked Mr. Dunne for over 20 years of service on the Zoning Board of Appeals. His leadership and direction to the City of Beacon is much appreciated.

There was no further business to discuss and the meeting was closed on a motion made by Mr. Dunne, seconded by Mr. Haug. All voted in favor. Motion carried. The meeting adjourned at 8:38 p.m.