

Zoning Board of Appeals
March 19, 2019

The Zoning Board of Appeals met for a scheduled meeting on Tuesday, March 19, 2019 at 7:00 p.m. in the Municipal Center courtroom, One Municipal Plaza, Beacon, New York. Chairman Robert Lanier, Members Judy Smith, Jordan Haug, David Jensen, and Garrett Duquesne; City Attorney Drew Gamils and Building Inspector David Buckley were in attendance.

Training Session

City Attorney Drew Gamils provided members with a presentation outlining reasonable conditions and/or restrictions outlined in NYS General City Law that the Zoning Board of Appeals can impose on variances. The conditions must be directly related to the use of land, and can include measures related to additional fencing, landscaping, installation of safety devices, etc. Members reviewed case law related to conditions which were placed on variances and whether or not those conditions were upheld in higher courts.

Regular Meeting

Mr. Lanier 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. Haug made a motion to open the meeting, seconded by Ms. Smith. All voted in favor. Motion carried. The regular meeting started at 7:30 p.m.

Mr. Lanier called for corrections/additions or a motion to approve the minutes of the February 20, 2019 meeting. Ms. Smith made a motion to approve the minutes of the February 20, 2019 meeting as presented, seconded by Mr. Haug. All voted in favor but for new member Garrett Duquesne who did not attend the February meeting. Motion carried; 4-0.

ITEM NO. 1 APPLICATION SUBMITTED BY MARK DELBIANCO, 52 ANDERSON STREET, TAX GRID NO. 30-6054-31-337824-00, R1-7.5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(C) TO CONSTRUCT A TWO STORY ADDITION ON A PRE-EXISTING NON-CONFORMING TWO-FAMILY HOUSE WITH AN 18 FT. FRONT YARD SETBACK (35 FT. REQUIRED), AND SECTION 223-10(C)(1) TO EXTEND A NON-CONFORMING USE

The public hearing on the application submitted by Mark Delbianco, 52 Anderson Street, for relief from Section 223-17(C) to construct a two story addition on a pre-existing non-conforming two-family house with an 18 ft. front yard setback and Section 223-10(C)(1) to extend a non-conforming use was opened on a motion made by Mr. Haug, seconded by Ms. Smith. All voted in favor. Motion carried.

Mark Delbianco described their proposal to construct a garage with a second story to add two bedrooms and two baths to their home. The front yard setback will be 18 ft. rather than the required 35 ft. however it will remain in line with the existing house. In order to increase the

size of the pre-existing two family house a variance is needed. Mr. Delbianco reported they could not feasibly put the addition on the other side due to the driveway location. He presented a letter of support signed by neighboring property owners:

Dear Neighbor

We are writing this letter to reiterate the previous certified letter you have received concerning our proposed 52 Anderson Street home renovation. If approved we will be adding a garage and second story above it onto the right side of our house. We understand that construction projects can sometimes be a burden to quiet city streets so we thank you in advance for all of your support. Our contractors will make every effort to minimize disruption during this time. Once again thank you for all of your understanding and continuous support for our home renovation project.

Ori Alon
60 Anderson Street

William Tobar
44 Anderson Street

Jonathan Braun
44 Anderson Street

Timothy T. Price, Jr.
65 Anderson Street

Tom Cerchiara
10 Tillot Street

Christopher E. Wolfe
52 Anderson Street

Mr. Delbianco confirmed that they are not exceeding the existing house footprint and explained they want to begin construction as soon as possible. Mr. Lanier opened the floor for public comment.

Theresa Kraft, 315 Liberty Street, wanted to be certain the addition would remain in line with the existing non-conforming setbacks and that they are only expanding the non-conformity. She had concern that this would set precedent.

There were no additional 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 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 to construct a two story addition on a pre-existing non-conforming two-family house with an 18 ft. front yard setback where 35 ft. is required and to extend a non-conforming use. 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 was informed of the standard conditions set forth in the draft resolution and agreed to each condition. Mr. Jensen made a motion to grant 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.

ITEM NO. 2 APPLICATION SUBMITTED BY CAROLINE EISNER, 38 JUDSON STREET, TAX GRID NO. 30-6054-47-297552-00, R1-5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(C) TO CONSTRUCT AN ADDITION OVER THE EXISTING FIRST FLOOR STRUCTURE WITH A 3 FT. SIDE YARD SETBACK (10 FT. REQUIRED) AND A TWO-STORY ADDITION WITH A 3 FT. SIDE YARD SETBACK (10 FT. REQUIRED)

The public hearing on the application submitted by Caroline Eisner, 38 Judson Street, for relief from Section 223-17(C) to construct an addition over the existing first floor structure with a 3 ft. side yard setback and a two-story addition with a 3 ft. side yard setback was opened on a motion made by Mr. Haug, seconded by Ms. Smith. All voted in favor. Motion carried.

Caroline Eisner described her proposal to construct a second story addition to the rear of her house. The house has no bath on the second floor and the bedrooms are very small. Architect Beth Sickler explained the house has been remodeled several times over the years and more recently the kitchen and first floor bath were renovated. They want to keep the kitchen and bath therefore do not want to expand on that side of the structure. She reported this proposal will keep in within the character of the neighborhood and in line with other houses. Ms. Eisner met with the neighbors about the project and they seemed to be in favor of the proposal. Mr. Lanier opened the floor for public comment.

Allan Wilson and Lisa Wilson, 36 Judson Street and adjacent neighbor to the left of the subject property, had concern about the rear expansion and height of the roof. Mr. Wilson reported they had to meet setbacks and consider the neighboring properties when their house was built 26 years ago. The subject house is so close to theirs that the addition of a second story would create a situation where all they would see out of their second story windows is a wall. They will lose views of the mountain and sunlight. Ms. Wilson showed photos to depict how close the houses are and to show how their back bedroom window will be blocked. She expressed concern for the lack of sun and light as well. In addition the balcony proposed off the second floor will look directly down into their yard. Mr. Wilson felt it would be more feasible for them to expand on the other side of the house rather than extend the rear deck. He felt the drawings appear out of scale and incomplete without showing other houses on the block. In summary, they had concerns for the length of the extension and the height of the roof.

Theresa Kraft, 315 Liberty Street, felt the request to expand the house to this degree was too much. She asked where requests to extend beyond existing zoning would ever stop.

Dennis Pavelock, 34 Judson Street, said the proposed additions are excessive and there is not a house on the street that would match this proposal. The new house just built on the street comes nowhere near the size of this and all other houses on the street remain within zoning regulations.

Michael Pavelock, 34 Judson Street, thought the proposal would improve the neighborhood and noted there are other longer houses on the street. He felt it would match other homes in the area. Ms. Wilson countered that she will be the most affected and the Pavelock house is not right next to the subject house.

Ms. Eisner reported she met with neighbors to listen to their concerns and everyone was nice about the proposal. She reiterated that the house has no bedroom on the first floor and no bathroom on the second floor. After meeting with the neighbors she was willing to shorten the rear extension to only three feet from the rear porch and they were fine with it at the time. Ms. Eisner has worked with the neighbors and offered to remove unwanted trees and repair a fence. She reported the Wilson house is out of character, and a house at the end of the street extends back similar to her proposal.

There were no additional comments from the public and Mr. Jensen made a motion to close the public hearing, seconded by Mr. Haug. All voted in favor. Motion carried.

Mr. Duquesne was not prepared to vote and asked if any other methods for expansion had been considered. He asked for more information to verify line of sight with actual dimensions before considering a vote. Members felt a site visit would also help, and asked the applicant to show the neighboring house and window location on the plans. The applicant will also provide a revised plan showing a reduced rear extension.

Mr. Jensen made a motion to reopen the public hearing for the purpose of obtaining more information and to consider a revised site plan submission, seconded by Mr. Haug. All voted in favor. Motion carried. The applicant will submit revisions and additional information by the March 26, 2019 deadline and return to the April 16, 2019 meeting. Ms. Smith asked if they could mark the property to show how far back the addition would extend to the rear.

ITEM NO. 3 APPLICATION SUBMITTED BY DENNIS MARONEY, 10 MACKIN AVENUE, TAX GRID NO. 30-5955-83-755085-00, R1-7.5 ZONING DISTRICT, FOR RELIEF FROM SECTION 223-17(E) TO CONSTRUCT A NEW 576 SQ. FT. DETACHED GARAGE (348 SQ. FT. MAXIMUM PERMITTED)

The public hearing on the application submitted by Dennis Maroney, 10 Mackin Avenue, for relief from Section 223-17(E) to construct a new 576 sq. ft. detached garage was opened on a motion made by Mr. Haug, seconded by Mr. Jensen. All voted in favor. Motion carried.

Dennis Maroney described his proposal to remove an old and very small detached garage and replace it with 24 ft. wide garage. A variance is needed because the proposed structure would exceed the minimum square footage permitted based on the footprint of the house. He wants a larger garage to store his car, motorcycle and miscellaneous equipment he currently has no space to store. Mr. Maroney reported the existing 3.5 ft. side yard setback will increase to 7 ft. which conforms to zoning requirements. There are no other accessory structures on the property and the garage will be one story with a small storage loft above. Mr. Lanier opened the floor for public comment.

Melissa Dunne, 12 Mackin Avenue, reported Mr. Maroney rents the house and does not live on the premises. She read her statement previously emailed to board members:

To the Members of the Zoning Board:

I am writing in regard to the variance Dennis Maroney has applied for to demolish the free-standing garage at 10 Mackin Avenue and build a new garage — enlarging the footprint of the structure to 576 sq. ft. (above the allowed 348 sq. ft). I object to this structure being demolished

unless Mr. Maroney can assure us that the demolition will comply with lead safe protocols for demolition in accordance with Federal EPA code 40 CFR Part 745 (Lead Based Paint Poisoning Prevention in Residential Structures). I want to stress that Mr. Maroney verify that his contractors have lead safety certification and take reasonable precautions to prevent lead contamination — including hosing down the structure to prevent the lead dust from becoming airborne, adequately tarping the perimeter to catch dust and paint chips, and notifying neighbors when the date and time the demolition will take place (so we can keep our children out of the area while the demolition is underway). There are 16 children that live on our block of Mackin Avenue. More than half of them are under 6 years old — the age when children are most vulnerable to lead poisoning. All of them play in our backyard, which abuts the structure proposed for demolition. Studies have shown that lead dust from the demolition of older structures can travel as far as 600 feet from the job site — contaminating ground and soil. I will support Mr. Maroney's petition for variance if he will comply with the law — and I want to give him notice that I will report any violations if he does not comply.

Melissa Dunn
12 Mackin Avenue

Ms. Dunn added that she once had a contractor that did not follow lead based removal regulations and because this structure is near her property line she asked for assurance that all rules would be followed. She knew of children in the neighborhood that have gotten lead poisoning from another demolition that took place. Ms. Dunn said she would support the variance only if removal complies with lead removal abatement regulations and warned that she would report any violations.

A very lengthy discussion and debate took place with regard to lead abatement regulations. Mr. Buckley reported the federal government regulates lead abatement and noted contractors are required to be trained in lead removal. Mr. Maroney reported he would be sensitive to neighbors and follow requirements set forth for lead abatement.

Mr. Lanier read the following correspondence into the record:

Dear Zoning Board,

My husband and I live at 14 Mackin Avenue and we recently received a notice about a request from the owners of 10 Mackin Avenue to demolish their existing detached garage and build a larger one with a square footage of 576 sq. ft., which is more than the allowance of 348 sq. ft. for detached garages. I have some concerns about this:

1. It looks to me like the setbacks of the proposed unit are nowhere near what the law requires. It seems like the garage will be out of scale with the property and will abut our neighbors' yard.
2. I am very concerned about the existing structure being contaminated with lead paint and would want a guarantee that the owners will abide by proper lead demolition procedures. My kids play in our neighbors' yard every single day and I am concerned about the yard becoming contaminated if the owners do not follow the lead removal guidelines. I live two houses down and I am also concerned that our yard will be contaminated by the lead dust. It is my understanding that an entire block can become contaminated with lead dust if the proper demolition procedures are not followed.

Thank you for hearing our concerns.
Rachel Shuman and David Sampliner
14 Mackin Avenue

Mr. Jensen asked the applicant what he would do if the variance was denied and Mr. Maroney explained it would be a waste of money to rebuild the same size garage. He has experience with asbestos removal and will take every precaution when removing the lead sources during demolition. Mr. Maroney reported he needs the space and the structure is old. He reported that when he repainted it several years ago there was hardly any paint left on the structure.

There were no additional comments from the public and Mr. Lanier verified with the Board secretary that no additional correspondence had been received regarding this appeal. Mr. Jensen made a motion to close the public hearing, seconded by Mr. Haug. 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 construct a new 576 sq. ft. detached garage where 348 sq. ft. maximum is permitted. 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 was informed of the standard conditions set forth in the draft resolution and agreed to each condition.

A lengthy and detailed discussion continued with regard to establishing a condition with regard to the lead abatement. Mr. Maroney reported he will remove the lead first and then have the contractor finish the demolition, and added he will work closely with the neighbor. Mr. Buckley reported the building permit covers state and City laws and if there are any federal infractions the EPA would be contacted. Further, the building permit will include demolition of the structure.

After careful consideration Ms. Smith made a motion to grant 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.

There was no further business to discuss and the meeting was closed on a motion made by Mr. Haug, seconded by Ms. Smith. All voted in favor. Motion carried. The meeting adjourned at 9:11 p.m.