
**Zoning Board of Appeals
July 25, 2018**

Notes from ZBA Meeting 7/25/2018 taken by CEO James A. Kier

Attendees: Art Babcock, Rosemary Garlapow, Mark Thorn, and Sonja Torpey

Others present: Jim Kier (Code Enforcement Officer), Shannon Hahn (Applicant)

Babcock called the meeting to order at 7:30 pm.

I. TV3-18 Area Variance Shannon Hahn, owner of property at 2399 State Route 64 North wishes to build a 2 ½ car garage in an area that is most reasonable to get in and out of the home.

Art explained that the case we are looking at tonight was for an area variance for a front setback. It looks like we are working with a 27 ½ feet setback off of the right of way. Art asked resident to describe what he is looking to do.

Hahn stated they have an existing garage that is only 19 feet wide and doors swing in so it can't fit their cars. He said there are a lot of trees on the property and they have been there for 50 years. He wants to try not to disturb the property any more than necessary. He continued on to say that there is a slope of the road to the inside of the property, so if he were to put the garage at the end of the driveway going back further into his property, that the rain would run right toward the garage. In addition, there is a 100 year old Catalpa tree that would need to be cut down if they put the garage straight ahead. In addition, they would need to bring in at least 10 truckloads to deal with the drop off in elevation at that location.

Hahn presented an alternative proposal to the one originally submitted to the Board and passed out a modified map to show the change. The garage structure would be located in the same general spot but the front would be rotated on an angle toward State Route 64.

Hahn spent some time showing pictures of his neighbor's property, and how the neighbor's house is also non-conforming and closer to the road than his house or his proposed new garage structure. He went on to show the rest of the pictures of his property. Hahn made the argument that if he went with the alternative option, he would have to add to the existing driveway and then he would have to have a zig-zag approach to come out to the driveway to the road.

There was a discussion led by Babcock, the members of the ZBA Board, and Hahn. They discussed what a right of way is, and how it pertains to Hahn's property. Hahn discussed that Kier called the NYS DOT on the Right of Way (ROW), and Kier discussed how Greg Trost, NYS DOT, said that the road had been widened significantly and the ROW varied significantly, even within Hahn's property. Hahn said he is proposing a 27 ½ foot structure off of the ROW.

Babcock asked Hahn if there were gutters or drain out by the road. Hahn said there was a gutter on the other side of the driveway and in front of the house. He said the power lines for the property are across the street from Dan Compton's property.

Babcock reviewed the request. The house is 40 feet off the ROW, which is not unusual to have an accessory structure in front of the house in this area. He said you don't want obstructions to traffic/view or focus taken off the road. Babcock asked the Board if they had any comments.

Thorn stated that the first thing he thought of when considering this request is the need for a 75 feet setback off of the ROW, but in this situation not coming anywhere close. He feels this is the biggest issue, but not the exact location. He said this is substantial.

Torpey stated it doesn't change the characteristics of the neighborhood. She said she was worried about setting precedents.

Thorn said that they need to make sure all of the criteria are laid out to account for the substantiality. Torpey said she appreciates in the proposal that he is leaving the older trees.

Babcock asked Hahn if there was a sign in the yard. Hahn said yes. Babcock asked if he sent out the letters to the neighbors and brought in the documentation from the post office. Kier got folder and showed board that the letters were sent out.

A short discussion was had about SEQR. Thorn made a motion, Torpey second-to declare this a Type II unlisted action with no further action required. All Board members voted Aye.

Babcock began speaking about the 5 criteria when considering an area variance.

He said the first one, most people get wrong when they are filling out the application because most situations are self-created, meaning you can choose not to build the structure, but even though it is self-created, it does not preclude you from getting the variance.

Is this an undesirable change for the neighborhood or nearby properties? Babcock expressed no real change. There would be the screening from the trees/bushes. Thorn said he agreed with Babcock, and thinks with the trees, it won't be seen. Rosemary agrees and believes it's possible that in the old days, there could have been a farm out close to the road, so there would have been similar situations.

Babcock discussed other means for a variance. He said the Board should consider them and figure out if it's feasible. Sonja said that if he put it straight on at the end of his driveway that there would be water issues. The alternative plan that Hahn presented would bring a bad angle to the road. She said he would still need a setback variance with the alternative plan regardless. Thorn said the state requires for the boards to grant minimal variance when looking at the criteria, but he is considering that with the weighing in on visibility. Torpey said she was looking at aesthetics of neighborhood and with the alternative plan with the tilted structure, it would change the aesthetics of the neighborhood. Babcock said with the alternative plan, Hahn would have to extend his driveway 20-30 feet and bring in fill due to the elevation drop-off, which would be expensive.

Substantiality. Garlapow suggested it is only 12 feet closer to the road than the house, Babcock and Thorn said it still is a substantial variance.

A discussion was had about impact on the environment. They all agreed that there was no negative impact on the environment. They also wanted to officially note that there was an additional expense the owner would incur if the Board accepted the alternative plan presented at the beginning of the meeting. Babcock discussed the fact that the road had been widened several times, which has led over time to create more substantiality required for this variance. Babcock also said that this house and property doesn't follow the typical layout of a typical neighborhood, and explained the example of a more highly populated street where there were more houses located on the street closer together. He said if you just look at the numbers, then yes it's substantial, but if you consider other factors-no. All Board members agreed. Garlapow commented if they approve the original requested variance option, it would be less impact on the environment.

Babcock said any visual impact would be screened by the trees/bushes/natural screening. Torpey asked if Hahn planned on having any windows in the garage. Hahn stated facing the street and facing the back side of the property. Torpey said then it will look like a residential structure.

Babcock said it will be in keeping with the architecture of the neighborhood. Babcock asked if he planned on having a home occupation out of this garage. Hahn responded no. Babcock said he hates to see this location become a huge storage location for garbage since it is closer to the road. Babcock said that they could make that a condition of the motion.

Garlapow asked if they could put reasonable conditions on an approval and all answered yes.

A discussion was had about conditions of color as they can put it in the motion.

Babcock talked about lighting for the building and told Hahn if he did, that he would need to make sure it does not shine off of his property and is dark sky compliant and not shinning on other people's property. He also talked about water being pitched away from the structure.

Thorn said he would preface decision with the idea that this property is pre-existing and non-conforming with the current road right of way. Road right of way has been widened over the years and this not a typical neighborhood. It is densely populated.

Thorn made a motion and Torpey seconded the motion to approve the original requested variance as presented:

1. Whereas there is not a significant change in the neighborhood
2. Whereas alternative means would be costlier and a financial burden on the owner
3. Whereas the Board considered the substantiality of the variance and the original proposal is more aesthetically pleasing to the neighborhood.
4. Whereas the set back is considered substantial, but does not out way reasonableness of request.
5. Whereas the original plan has less impact on the environment as it saves trees, minimizes fill needed, if any, and has less disturbance of green areas:
6. Whereas this is self-created and with the stipulation that the foliage screening from the South be maintained.
7. Where as in keeping with the neighborhood, color needs to be matching to color of existing structures, including house. The structure must match the color scheme of the house and existing structures.
8. Whereas nothing can be stored on the South and West side of the structure outside of the building.
9. Whereas the lighting must be dark sky compliant and downward facing.

Record of Vote:

Art Babcock Aye Mark Thorn Aye Sonja Torpey Aye Rosemary Garlapow Aye

All Board members present voted Aye. Vote was carried unanimously.

Babcock made a motion to close the meeting at 9:15 pm. Thorn Second motion. All voted Aye.