



TOWN OF WARE

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Zoning Board of Appeals

Meeting Minutes from

June 17, 2020

Select Board Room, Town Hall

Board Members Present: Chairman Lewis Iadarola, Jodi Chartier, Chuck Dowd, George Staiti, Phillip Hamel, Greg Eaton, David Skoczylas

Staff Present: Rebekah DeCoursey-PCD Director, Anna Marques-Building Inspector

Public in Attendance: Creig Galford, Kathy Galford

PLEDGE OF ALLEGIANCE

Chairman Iadarola called the meeting to order at 7:00 pm and led the Pledge of Allegiance.

APPROVAL OF MINUTES

Motion by P. Hamel to approve January 22, 2020 meeting minutes. Seconded by G. Eaton. Approved 5-0

Motion by J. Chartier to approve March 25, 2020 meeting minutes. Seconded by G. Eaton. Approved 5-0

PUBLIC HEARING

Variance - 54 Chestnut Street – Creig Galford. The Applicant is petitioning the ZBA to grant Variance approval from Section 5.1, Area Requirements, of the Zoning Bylaw to exceed the minimum side setback of 20' to build a garage on a pre-existing non-conforming single family home. The applicant is proposing an attached three car garage on his property that would be 1.9' and 2.4' from the neighboring property line on the south side of the house.

G. Staiti recused himself given his stated relationship to the applicant.

G. Staiti stated that there is a hardship involved given that the applicant's mother-in-law is going to be moving into the house and suffers from health issues. Placing the garage in any other location on the property than what is being proposed would impose a greater financial hardship. It cannot be placed in the backyard because Mirabile Drive is a private and cannot be used to access a rear garage.

J. Chartier raised a point about possibly placing the garage on the north side of the house given that it would be adjacent to a road (Mirabile Drive) rather than another property. A discussion between the applicant and Board ensued where the applicant expressed that there is not enough room on the north side of the house to build the desired garage. He would build within the minimum setbacks if it was possible, but due to the size and shape of the lot there is not room for a garage with encroaching on the setback. Further discussion was held as to how the abutters felt about the proposed garage. The wife of the applicant, K. Galford, stated they had spoken to the property owner to the south and explained their project. She said his response was, "you pay taxes on it, it's up to you guys what you do with it." The applicants were willing to get written permission from him if requested by the Board.

D. Skoczylas asked the applicant where the door from the garage to the house would be going. The applicant said that the door will be going where there is an existing window in the kitchen that would be converted to a door.

The Chairman noted that there are a number of odd shaped lots in the neighborhood and that the bylaws are in place to protect setback requirements and that there needs to be a really good reason for a variance to be granted. He then stated that personal hardships are not something the board can consider. He claimed hardship only refers to a physical aspect of the property. The Chairman went on to explain to the applicant that the reason for other properties nearby that don't meet the minimum setbacks is because they were developed before the existing regulations were put in place. Also it was stated that the setback regulations only apply to structures and not driveways. Chairman stated he felt that the proposed project did not meet the three criteria for a Variance: size/shape/topography, hardship other than personal, and the proximity to the abutting property line would be detrimental to the overall intent and purpose of the bylaw.

The Chairman then raised what he felt were his concerns over the distinction between the term "no comment" and no "concerns" given that someone could not comment and still have a concern. This was a discussion over the report given to the Board by the Director involving the comment requested from the other town departments regarding the Variance application.

Discussion was continued about alternative locations on the property for the garage. J. Chartier expressed again that the north side of the house seemed like a much more workable location for the garage. J. Chartier then asked the Chairman if future abutters/property owners should be considered when approving a Variance and not just the current occupants. The Chairman responded by saying that yes, future property owners should be considered and that the setback requirements are in place to prevent overcrowding. The fact the current abutter supports the project does not mean that a future property owner would as well.

The Director raised her concern about granting a Variance in this situation for a 1.9 ft. side setback would set a precedent going forward for other property owners who wished to be granted a variance under similar circumstances.

G. Staiti addressed the Chairman taking issue with the Board considering future property owners when making decisions to grant a Variance. He stated that decisions should only be made regarding the current property owners and not basing decisions on unknown future occupants. The Chairman then read from the introduction to the Zoning Bylaws noting the section where it addresses the purpose of protecting both "current and future" members of the community. A discussion was then held on the three criteria that must be met in order to grant a variance.

The Chairman asked the applicant if he would consider reducing the size of the garage to fit two cars front to back as opposed to side by side but the applicant stated that would cause an inconvenience. Every time the person parked in the rear needed to leave, both cars would have to be moved. Their plan with the three car garage was to leave the car used the least – Ms. Galford's mother's – in the rear bay. The two cars used daily would be parked in the double bays closer to the road. A point was

then made about possibly making the garage free-standing rather than attached to house and then it would only be restricted to a 10' setback instead of 20' but also located behind the house. The applicant claimed that a free-standing garage would need to be a minimum of 10' from the side of the house which would not fit on the lot. Further discussion ensued between the Board members and applicant regarding potential alternative locations for a free-standing garage on the property. Size, setbacks, and design configurations were all discussed.

A. Marques answered questions regarding building code regulations related to the placement of the garage. It was noted that there is more room on the south side of the house for an attached garage than the Mirabile Drive side of the house. Measurements to the site plan confirmed this.

J. Chartier requested that the Chairman present the three hardships that must be met to grant a variance according to the Zoning Bylaw. R. DeCoursey read from the Zoning Bylaw which states:

7.3.2 Mandatory Findings. Before the granting of any variance from the terms of this bylaw, the Board of Appeals must specifically find that:

- A.** Owing to circumstances relating to the soil conditions (e.g. wetlands, ledge, etc.), shape (e.g. oddly shaped lot or building, but not simply undersized lot) or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the Ware Zoning Bylaw Amended by Town Meeting March 11, 2019 104 provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant; and
- B.** That desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this bylaw.

A discussion ensued on the slope of the north side property line and the south abutting property with a steep slope and whether or not it potentially imposes a hardship.

J. Chartier stated her concerns of granting the variance given it could "open a can of worms" going into the future and potentially detrimental to the public good. R. DeCoursey raised the concern about ensuring the Boards statements for justify the deciding vote on the Variance request given the possibility of appeal. P. Hamel and C. Dowd expressed agreement in J. Chartier's concerns about setting a future precedent and had concerns about future situations.

R. DeCoursey requested there be a motion on the findings followed by a motion to vote on the variance. The Chairman stated that is not how the Board has voted on Variances in the past.

Motion by P. Hamel to close the public hearing. Seconded by L. Iadarola. All in favor.

Motion by J. Chartier to vote on the variance. J. Chartier voted deny the Variance because it could not be granted without substantial detriment to the public good due to the 1.9' setback to the adjacent property. This was seconded by G. Eaton.

Discussion

D. Skoczylas raised the question of whether voting against the Variance at this hearing if the applicant would be required to go through the application process all over again if they came up with alternative plans. The Chairman stated that the applicant could withdraw the application without prejudice but if the application is voted against tonight, the same application cannot be brought up again for two years. R. DeCoursey stated that if the application was withdrawn without prejudice, if the applicant moved the location of the garage, the applicant would still be required to have a new site plan completed as part of new application. The applicant expressed this is not a favorable option.

Roll Call Vote:

- J. Chartier: Aye
- G. Eaton: Aye
- P. Hamel: Aye
- L. Iadarola: Aye
- C. Dowd: Aye

Request for Variance Denied 5-0

ADJORN

The Chairman made a motion to adjourn the meeting to Executive Session in accordance with M.G.L. Chapter 30A Section 21 (a) (3) Litigation, not to reconvene in regular session. Seconded by P. Hamel. All in favor: 5-0.

Next scheduled meeting July 15, 2020

Minutes from June 17, 2020

Respectfully submitted by,

Jack Carolan
Department Assistant

Minutes Approved on: _____
L. Iadarola _____
P. Hamel _____
G. Staiti _____
G. Eaton _____
D. Skoczylas _____
J. Chartier _____