

Board of Zoning Appeals
Public Hearing Meeting
October 26, 2015
Minutes

The Regular BZA Meeting was called to order by Chairman Stanard at 6:01pm.

PRESENT AT ROLL CALL: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard

Others Present: Rick Loconti, Building Commissioner, Aimee Lane, Assistant Law Director, Jeff Filarski, Village Engineer, Sherri Arrietta, Clerk of Council

Mayor Renda made a motion seconded by Mrs. Cooper to approve the minutes from the Regular BZA Meeting of September 28, 2015.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard,

NAYS: None

MOTION CARRIED

At this time, Mrs. Lane administered the oath to those who wanted to speak at either hearing this evening. Chairman Stanard declared the public hearing open at 6:03pm.

Les Vinney

85 West Juniper

Sideyard Setback Variance –

Generator

Mr. Les Vinney, homeowner, was present at the meeting. He stated that he would like to install a generator because he has been inconvenienced over the last year having power outages occur for several hours at a time, especially when they have been out of town. They have 2 decks and in between them is a wall of windows so it is not practical to put the generator there. The gas, electric, and water meters are on the east side of house. The proposed location would allow for the least extension of lines going into a generator that would support ongoing electric to the house but the unit would have a small window above it and therefore would have to be moved 6

feet from the house, putting it at 28 feet from the property line instead of the required 35 feet. Mr. Vinney stated that would require a 7 foot variance from the east side of property to place the generator there as well as a variance to allow it to be placed in the side yard. He stated that the other conditions required would be met and landscaping around the generator has already been worked on with the landscaper. The property is very well treed from the front, east, and back side of the property already. Mrs. Lane clarified that there is only one variance required. The way the Code reads, the Building Commissioner determines if it can be placed in the side yard so in this case the board is only looking at the 7 foot side yard variance request.

Mr. Loconti stated that the backyard is not conducive for the placement of generator and it does meet the required standards regarding noise if it is placed in the side yard and believes that it still will if it is granted the 7 foot variance. He stated that he left that request on the application so that the board could see that it was up to his discretion to allow it to be placed in the side yard.

There being no one present wishing to comment on this request, Chairman Stanard declared the public hearing closed at 6:08pm.

Mr. Stanard stated that the applicant provided the information that stated that it would produce 69.1 decibels in seven meters so it does satisfy the sound rating requirement based upon the information given. Mrs. Cooper stated that she looked at the property and she is concerned that that neighbors' (to the east) living room is the closest area to the generator. Mr. Vinney stated that it is not their living and believes it is a study. Mrs. Cooper stated that she believes it would be better if there was a reverse swale in between for noise, so her only concern would be the noise bouncing off Mr. Vinney's house and going toward the neighbors. She stated that she would recommend having evergreen landscaping to help block the noise. Mr. Vinney stated that he has heat pumps there already and the noise does not carry. Mrs. Cooper reiterated the importance of trying to dampen the noise. Mr. Vinney stated that the generator will not be run often; it does need to be tested once a week (10:00 am on a weekday for 10-15 minutes) so it should not be too disruptive. Mr. Vinney stated that since it will be located under his bedroom, he also cares and is concerned that it is quiet enough.

At this time Mrs. Lane read findings of fact. The applicant, Les Vinney, has applied for a side yard setback variance from Section 1348.08(c) of the Codified Ordinances for the address 85 West Juniper, requesting a 7 foot variance to place a generator within the side yard setback.

1. Special conditions and circumstances do exist that are peculiar to the land involved and are not applicable generally to other lands or structures in the same zoning district. The location of the decks and windows on the back of the house make placement of the generator in the rear yard difficult, with an established recreational area. Additionally, all utilities are located on the side of the home where they are proposing to put the generator.
2. The property will yield a reasonable return and there can be beneficial use of the property without the variance. Based on the applicant's application, installing the back-up generator should enhance their property value.
3. At 7 feet, the variance is not substantial and is the minimum necessary to make possible the reasonable use of the land or structures. All utilities currently exist on that side of house.
4. The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer substantial detriment as a result of the variance. The applicant has testified that there is existing screening in place and that additional screening will be added. Furthermore, neighbors were notified of this hearing and there are no neighbors in attendance.
5. The variance would not adversely affect the delivery of governmental services.
6. The property owner purchased the property without the knowledge of zoning restrictions.
7. There are no special conditions or circumstances that were a result of the actions of the owner.
8. The owner's predicaments cannot be obviated by through some method other than a variance.
9. Granting the variance would serve the spirit and intent behind the zoning requirements and substantial justice done by granting a variance. The Building Commissioner has noted that the proposed unit does meet all standards at the property line.
10. Granting of the variance request will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
11. A literal interpretation of the provision of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code.

Mr. Fritz made a motion seconded by Mrs. Cooper to approve the findings of fact.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard

NAYS: None

MOTION CARRIED

Mr. Fritz made a motion seconded by Mr. Stanard to approve the 7 foot side yard setback variance for the placement of a generator located at 85 West Juniper Lane.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda Mr. Stanard

NAYS: None

MOTION CARRIED

Chairman Stanard declared the public hearing open at 6:16pm.

Mike Ambrose

376 Miles Road

Third Accessory Structure Variance

Front Yard Accessory Structure Variance

Front Yard Setback Variance

Mr. Mike Ambrose, homeowner, was present at the meeting. He stated that the reason for the accessory building is for additional storage space. Their house does not have a basement and they currently have a 3-car garage. Mr. Ambrose stated that he thought it was okay to put it next to the garage and he placed it as close to the garage as possible. The contour of the lot does not provide any other level space to put it; behind the house has a hill and placing it there would not provide him access to the building. The other side of property is essentially a mud pit; water drains down the hill making that area damp all the time. This was the only feasible place to put it, which is in front of the garage on a parking spot; the garage sits in front of the house. Behind the garage area is a dry bed stream, where run off from the hill goes when it rains, therefore it could not be placed behind the garage in that area.

Since no one was present wishing to comment, Chairman Stanard declared the public hearing closed at 6:19pm.

Mr. Stanard stated that there are three (3) separate variances being requested; since the Village allows two accessory structures per lot and this property already has two (2), the first variance is to allow a third accessory structure; accessory structures are typically not allowed in the front yard, so the second variance would be to allow placement of said structure in the front yard; and the third variance would be a front yard setback variance of 27 feet (the required setback on Miles Road is 120 feet).

Mr. Bolek asked what the square footage of the existing garage is. Mr. Ambrose stated that he believes it is 24 x 36. Mr. Bolek stated that one of the solutions could be to attach the accessory building to the garage and make it one structure but the roof pitches will need to match. He stated that while all the issues presented are valid issues, it might be worth investigating in order to eliminate the need for the variances. Mr. Loconti stated that you cannot just attach the two buildings. A foundation that matches that of the garage would be needed to be put underneath the accessory building. Because the garage is over 600 square feet, it required a continuous foundation, not just a monolithic 12 inch foundation. The roof would also need to be torn off and rebuilt. He stated that Mr. Ambrose would be better off relocating the accessory structure. Mr. Bolek stated that it becomes a question as to which is a more reasonable request. Mr. Loconti stated that we cannot grant a variance from the Building Code; Building Code issues are dictated by the state and, thus, have to be met.

Mrs. Cooper asked about the location behind the garage and stated that there appears to be a space between the garage and the other accessory building where it could be placed. Mr. Ambrose stated that area is like a river back there when it rains and so it needs to be kept clear. He stated that they have had instances where it has backed up and water has come into the front yard as well as into the garage. Mrs. Cooper asked if the area where the other accessory building is located is high and dry. Mr. Ambrose stated that it is because it is on stilts on the side of the hill. He stated that the building that they are referring to is currently a workout room.

Mr. Bolek asked whether Mr. Ambrose could adjudicate those issues with the State. Mr. Loconti stated that more than likely he would lose and that typically those issues are hard and fast rules. He stated that adjudications are typically for existing buildings, and in his opinion, it would not fly with the State.

Mr. Ambrose asked if it could be moved within six inches of the garage so that it appears to be attached and change the roof pitch to match that of the garage. Mr. Stanard asked if there were any photos of the structure from the front of the driveway or from the street. Mr. Ambrose stated that he does not have any pictures from those views. Mr. Fritz asked Mr. Ambrose if he considered the area to west of house by the driveway turn around. Mr. Ambrose stated that it is damp all the time and he even tried to put drainage in to try to dry it out, however, the water from the hill is constantly coming down to that area. Mr. Fritz asked for clarification that Mr. Ambrose is claiming the water problems on both sides of his house as his hardship. Mr. Ambrose stated that was correct and that the only spot that he would actually be able to get into

and out of in order to use the building, is where it is currently placed. He stated that he can barely cut the grass on the west side because it is always wet.

Mrs. Cooper asked what number of feet the front yard setback variance request is. Mrs. Lane stated that the requested variance amount is 27 feet, which would leave a 92 foot setback. Mr. Stanard stated to Mr. Ambrose that he does have a difficult situation because of the property shape, the water issue, and the fact that there are already two accessory buildings; however it is a lot of variances to request all at once. Mr. Bolek stated that he is hesitant to vote on this tonight and does not want to be in a position to accept it just because the accessory building is already there. He stated that he would probably vote no or abstain. Mr. Pogatschnik stated that without pictures with views from the road, it is hard to say if it fits with everything.

Mr. Filarski stated that he has been to the property several times. He stated that the only area that could possibly be a viable location is directly to the left of the house, if it were to be flattened out. Mr. Filarski stated that it could be put right up to the driveway so that Mr. Ambrose can walk from the driveway right into the shed. He stated that he is not sure what the issue with the dampness is if it were to be put on treated wood skids, however, he does not live there so he does not know the issues first hand. Mr. Ambrose stated that it would be all muddy going in and out all the time. Mr. Filarski responded to Mr. Ambrose that he just planted grass there. Mr. Ambrose stated that he did but every time he tries to mow he gets ruts in that area. Mr. Filarski stated that the accessory building could be put on 57 limestone, which would alleviate that problem. Mr. Ambrose stated that there still would be an issue walking up to the building and asked if Mr. Filarski is suggesting that he puts gravel in the side yard. Mr. Filarski stated he could put a gravel path in or put it up to where the driveway is, so that he would not have to walk on the grass. He stated that he could also set it back 5 feet and make a gravel path up to it. Mr. Fritz stated that he had a similar situation on his property so when he built his shed, he used two footers to raise it with a ramp going up to it. He stated that during a heavy rain, the water flows right underneath it. Mr. Ambrose stated that his intent was to try not to make it look like a compound with a bunch of different buildings.

Mayor Renda stated that she would not vote yes on this tonight, and she thinks that Mr. Ambrose has not examined every solution and needs to look at different alternatives and then come back to this board. She stated that to her, the mud can be dealt with in much the way that Mr. Fritz suggested. Mr. Ambrose asked if the building were sided and had the same roof pitch as the garage, would the proposed location still be a bad location to put it. Mr. Pogatschnik stated that part of the problem is that they cannot see the property as a whole. He stated that if he were

walking up to the house and saw a couple buildings on the right, the house on the left, and now a small shed, it seems as though it would look like an afterthought. Mr. Ambrose explained that if you are walking up the driveway, the house is straight in front; there is nothing to the left, next to the house up on the hill is a studio building on stilts, and in front of that hill is a garage and it is all connected with railings. Mrs. Cooper stated that street level photos from across the street and from the west side would be helpful for this board to see.

Mr. Bolek reiterated trying to make it part of the garage. He stated that he likes the placement of it but does not think it was thought through all the way. Mr. Bolek informed Mr. Ambrose that he needs to think about it further as well as how to minimize the variance requests.

Mr. Fritz stated that he agrees with the Mayor's assessment that putting it there makes it look more crowded and he thinks placing it on the west side of house would be better. Mr. Stanard stated that he believes that if you put the structure to the west, then there is going to be a broader expanse of structures. He stated that in his opinion, if it could be made to look more like it was part of the garage, it could be more favorable. Mr. Ambrose stated that his goal was to not make it appear crowded with additional buildings.

Mr. Stanard explained to Mr. Ambrose that if this board were to vote on this request and not approve it, he would not be able to present this same request to the board.

Mr. Stanard advised Mr. Ambrose that more photographs would be helpful for this board to see, specifically a more panoramic view of the property, as well as the specific locations to the east and west that were discussed. He stated that it would also benefit Mr. Ambrose to provide an additional screening plan. Mr. Stanard stated that there were also some ideas for dealing with the water issue, as Mr. Filarski pointed out and Mr. Bolek also made excellent points about trying to match the building to the garage, if it will be located next to the garage. Mr. Stanard stated to Mr. Ambrose that to ask the commission to grant three variances just because you did a thorough job of putting information together but did not vet out all other possibilities, he feels they would not be inclined to grant an approval at this point.

Mr. Bolek encouraged Mr. Ambrose to thoroughly look at whether he wants to attach the accessory building to the garage (look at roof pitches, shingle color, etc.) and discuss with Mr. Loconti what can and cannot be permitted. Mr. Loconti explained that if it is over 600 square feet, it requires a full foundation and the garage is already over that square footage therefore the

accessory building would require its own matching full foundation; the accessory building is currently just on a slab.

Mr. Ambrose stated that he would withdraw his application at this time.

Mrs. Lane asked if the board would be inclined to continue this case until next month instead of having the applicant withdraw his request because with a withdraw, the applicant would need to reapply, but if this board makes a motion to continue, the applicant would need to provide additional materials in the coming weeks in order to get placed on the next agenda.

Mr. Stanard asked if Mr. Ambrose were unable to get the additional information in time for the November meeting, could he still be put on the January agenda, since there is no meeting in December. Mrs. Lane stated that if that is the case, Mr. Loconti can update the commission and the applicant should be in communication with us to whether he wants to further continue it until January.

Mr. Stanard made a motion seconded by Mr. Bolek to continue this application so the applicant can provide additional information for the accessory building located at 376 Miles Road.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard

NAYS: None

MOTION CARRIED

Mayor Renda made a motion seconded by Mr. Pogatschnik to adjourn the meeting at 6:46pm.

ROLL CALL:

AYES: Mr. Bolek, Mrs. Cooper, Mr. Fritz, Mr. Pogatschnik, Mayor Renda, Mr. Stanard

NAYS: None

MOTION CARRIED

Respectfully Submitted,

Sherri Arrietta, Clerk of Council