

TOWN OF NORTH EAST
ZONING BOARD OF APPEALS
MINUTES

April 21, 2016

The regular monthly meeting of the Town of North East Zoning Board of Appeals (“ZBA”) took place on Thursday, April 21, 2016 at 7:30 PM in the Town Hall, Millerton, NY. ZBA members present were Chair Julie Schroeder, Edith Greenwood, Carl Stahovec, Patti Lynch-VandeBogart and Jon Arnason. Also present were Michael Jacoff, Hilarie Thomas and John Allee.

**Michael Jacoff, owner of
227 Charlie Hill Rd in the A5A Zoning District
Public Hearing for a dimensional variance of Section 98-12 D (6)
Tax Parcel #7070-00-425641**

Chair Schroeder opened the public hearing at 7:35 PM by reading the notice of public hearing into the record.

Michael Jacoff, owner of a 20 acre parcel located at 227 Charlie Hill Rd in the A5A district, seeks to construct a 26 x 26 square foot subterranean two car garage 60 feet from his house. Currently the parcel has no garage and the applicant parks on a blacktop pavement section of the driveway. An existing barn approximately 150 feet to the east of the house could be remodeled but is not in a convenient location. Jacoff is before the Board to request a dimensional variance under §98-12 D (6) for the reduction of the required 50 foot side yard setback from the neighboring parcel to 25.7 feet.

ZBA members discussed building the garage elsewhere on the property to avoid encroachment into the side yard setback. Jacoff showed the Board plans for the proposed garage that would be built into the existing slope. The design would all but hide the garage from view except for the doors which would only be visible from the direction of the applicant’s house. The applicant stated that it is his inclination is to demolish the existing barn entirely.

Chair Schroeder requested a confirmation of the impact of the view by the neighbors to the applicant. Jacoff stated that the inconspicuous nature of a subterranean garage would not obstruct the view of the neighbors.

Board members agreed that everyone is entitled to a garage. Arnason commented that everyone is entitled to a garage near their house as well.

Citing §98-62 (C) of the Town of North East zoning code Chair Schroeder then read through the state mandated criteria needed to grant a dimensional variance. In considering

standard (a) Schroeder stated that the addition of a garage did not create an undesirable change in the neighborhood. In examining standard (b) whether the benefit sought by the applicant can be achieved by any other means, the Board members agreed that it could not. Standard (c) asks if the requested area variance is substantial. The Board agreed the requested variance is substantial. The fourth standard of concern (e) was whether the alleged difficulty was self-created. ZBA members agreed that the difficulty was self-created because of the applicant's desire for the garage to be near to the residence and subterranean in nature.

A motion was made by Arnason to close the hearing and open the regular meeting, which was seconded by Greenwood and passed unanimously.

It was agreed that the SEQR review was unnecessary due to the residential nature of the requested variance.

Chair Schroeder requested a motion to grant the side yard set-back variance of 25.7 feet from the neighboring parcel. The motion was made by Arnason, seconded by Greenwood and passed unanimously.

A motion to recess the meeting and to open a public hearing was made by Arnason, seconded by Greenwood and passed unanimously.

**David Elwell, owner of
23 Reagan Road in the A5A Zoning District
Tax parcel # 7269-00-190462
Public hearing on the application of for:**

- 1. A special permit for an accessory apartment in a pre-existing, non-conforming accessory building.**
- 2. A variance requesting a reduction of the required 5 acre lot size to 3.41 acres.**
- 3. A variance requesting a reduction of the required side yard of 50 feet to 22.5 feet to allow the conversion of the pre-existing barn to an accessory apartment.**
- 4. A variance to allow more than a 10% expansion of the floor area of an existing structure being converted to an accessory apartment.**
- 5. A variance to allow a reduction of the required side yard of 50 feet to 22.5 feet for a proposed addition to the existing barn.**
- 6. A variance to allow a reduction of the required side yard of 50 feet to 14.7 feet for a pool house.**
- 7. A variance to allow a reduction of the required side yard of 50 feet to 12 feet for an in-ground pool and skirting.**

8. A variance to allow a reduction of the required front yard of 100 feet from the center of the street to 20.6 feet for a shed.

Chair Schroeder requested a motion to reopen the public hearing for the Elwell application at 8:35 PM. A motion was made by Greenwood to reopen the public hearing, seconded by Lynch-VandeBogart and passed unanimously.

Hilarie Thomas, counsel at Downey, Haab & Murphy and John Allee, architect, appeared before the ZBA on behalf of the David Elwell, property owner of 23 Reagan Road. The 3.41 acre parcel is located in the A5A zoning and is a pre-existing non-conforming lot. Thomas stated that when her client purchased the property in 1998 the lot already contained an historic single family Colonial style residence circa mid-1800s, a garage/carriage house, and a barn. Thomas stated that until Elwell purchased the parcel in 1998, the deed had not changed hands in over 100 years. In 2003 Elwell was granted a building permit to build a 60.3 x 22.3 barn to rebuild the barn on the original footprint. A plot plan, notarized by the applicant, was included in the submittal materials to indicate the property boundaries. The barn received Certificate of Occupancy #: 02-04 in 2004. Elwell then applied for and was granted a permit to construct a swimming pool in 2005. Certificate of Occupancy #: 37-08 for the pool was issued in 2008. In 2007, an application to construct a 27' x 18' square foot Pool House was denied by Kenneth McLaughlin, building inspector for the Town of North East, on the grounds that the proposed structure did not comply with the Zoning Law of the Town of North East, Section 98-12 D (4) pertaining to front yards-whereby no part of any building or structure shall extend nearer to the street line than 75 feet. According to the plot plan submitted with the application, the proposed pool shed was no more than 64 square feet from the front street line. Elwell made application to the ZBA in and was granted an area variance for construction of a pool shed on April 19, 2007.

Thomas presented an unattributed and undated article to the Board discussing the historical significance of the parcel. An original source was requested for the text presented by Ms. Thomas. Allee later explained that it was given to Thomas by Lynn Mordas, the administrative secretary of the Coleman Station Historical Society. Chair Schroeder asked if it had been written by the historical society, but this could not be confirmed.

Chair Schroeder asked if there had been any changes regarding the current barn and what the current footprint of the existing barn was. Allee replied that there may have been changes and the existing footprint was 1320 square feet. Schroeder requested what the footprint of the proposed addition would be. Allee explained the proposed addition would add 373 square feet to the existing footprint creating a 1693 square foot footprint of the building. Allee confirmed that the dimensions of the proposed addition would be 14 feet by 26 feet 8 inches. The addition would add a bathroom and living space for a caretaker on the upper floor and also to a storage area for a tractor on the first floor.

Chair Schroeder read §98-14.2 (F) to the representatives of the applicant stating that the expansion shall neither increase floor area or lot coverage by more than ten percent, which the proposed addition would do. Allee confirmed that part of the proposed addition would be living space while the other half would be used for an additional storage area. Board members noted that there was already an existing garage as well as additional storage sheds on the property. Allee explained that the additional storage area in the proposed addition was necessary to accommodate a tractor with a loader. Schroeder read §98-12.7, with the caveat that the section

did not entitle the applicant to an additional shed to house a tractor, but that the code permitted accessory uses included a playhouse, tool house or garden house.

Board members discussed the Exhibit B, new plans for the accessory apartment addition, as well as Exhibit C, photos of the existing barn and poured pad slab.

Arnason questioned if there was a possibility of constructing a separate shed for the tractor. Thomas asked if it would conform to a definition of a tool house or garden house. Schroeder confirmed it could be considered a tool house.

Arnason questioned the shed that is directly on the property line abutting the road. Brief discussion ensued regarding whether or not the structure was preexisting. Chair Schroeder explained that there was a belief that the structure had been enlarged, which was confirmed by Thomas. An original source showing that a structure existed in that area was requested, as well as when the new structure was built.

Arnason questioned when the foundation for the addition was poured and Thomas could not confirm when this had been done. Arnason questioned how the foundation was poured without a building permit. Allee believed that a building permit had been issued. Thomas commented that there must have been a building permit because there had been inspections made.

Board members briefly discussed the various building on the property and how they could be brought into conformity with the zoning code. The setbacks were discussed in regards to various buildings on the property and whether they were presented before the ZBA in the list of variances requested.

Greenwood commented that the old maps of the property showed the driveway had been moved. She felt it was reasonable to believe that the shed had probably also been moved.

Thomas commented that she could not confirm that a stop work order had been issued and that it may have been informal via email contact with the building department.

Hand draw maps were discussed regarding the distance of the barn from the side yard setback. Chair Schroeder mentioned the possibility of a need for an accurate survey or drawing. Arnason commented that due to the cost of the projects, the cost of a survey seemed trivial. Thomas commented that she felt there was an unfair bias regarding some Board members having preconceived notions on the applications and the applicant. Chair Schroeder stated that every variance was treated individually without biases and that the Board members were simply attempting to understand the details of each building mentioned in the applications.

Chair Schroeder requested another site visit to 23 Reagan Road so the Board members that were unable to attend the previous site visit could view the site and examine the layout of the property. It was decided to make a second site visit to the property at 23 Reagan Road on May 6, 2016 at 5 PM.

A motion was made by Arnason to recess the public hearing on the Elwell applications until May 19, 2016 at 8 PM. The motion was seconded by Greenwood and passed unanimously.

A motion was made by Arnason to reopen the meeting, seconded by Greenwood and passed unanimously.

Minutes

Zoning Board members reviewed the unapproved draft minutes of March 17th 2016. The minutes remain unapproved.

A motion to adjourn was made by Arnason, seconded by Greenwood and passed unanimously.

Respectfully submitted,



Sarah Cottell
Acting Secretary

approved May 19, 2016

① Greenwood ② Lynch-VanderBogert