

See

11-39B

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

ALAN MCGUIRE

For area variances as follows:

DECISION

- *Grant of a variance allowing a front yard setback of 5 feet where a minimum of 40 feet is required;*
- *Grant of a variance allowing a building coverage of 16% where 15% is the maximum coverage allowed;*
- *Grant of a variance allowing a lot surface coverage of 34% where 30% is the maximum coverage allowed;*
- *Grant of a variance allowing an accessory structure to be setback 2 feet from the property line where a minimum of 5 feet is required.*

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Introduction

Alan McGuire seeks permission to maintain a prior built shed, build a new roof and construct a wrap around covered front porch that will be attached to the front of his home. In order to accomplish this objective, area variances as follows are required: (1) An area variance allowing an accessory structure to be setback 2 feet from the property line where a minimum of 5 feet is required; (2)

An area variance allowing a front yard setback of 5 feet where a minimum of 40 feet is required; (3) An area variance allowing a lot building coverage of 16% where 15% is the maximum allowed; and (4) An area variance approving a lot surface coverage of 34% where 30% is the maximum allowed.

The property is located on 61 Taft Avenue in the R-3 Zoning District and is identified on the Town of Newburgh tax maps as Section 73, Block 5, Lot 21.1.

A public hearing was held on November 22, 2011, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

The bulk tables for the R-3 District limit lot building coverage for a single-family home use to 15% of the lot and the lot surface coverage to 30% of the lot.

These schedules also require, for this single-family dwelling in the R-3 Zoning District, front yard setbacks of 40 feet.

Lastly, section 185-15 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Accessory buildings," provides, at section 185-15(A)(2) that such buildings "shall be set back at least five feet from the property line."

Background

After receiving all the materials presented by the applicant and the testimony of Jonathan Cella, P.E., and Mr. McGuire, the public hearing held before

the Zoning Board of Appeals on November 22, 2011, the Board makes the following findings of fact:

1. The applicant is the owner of a 15,000+/- square foot (tax parcel 73-5-21.1) located on 61 Taft Avenue.
2. The lot is improved by a single family residential dwelling. The applicant now proposes to build a new roof and construct a wrap-around covered front porch that will be 5 feet from the front yard line where 40 feet is required. Additionally, the lot building coverage limit of 15% will be exceeded as well as the lot surface coverage of 30%.
3. The lot is also improved by a prior built 10' x 14' shed. This shed does not meet the requirement that it be setback 5 feet from the property line as it is setback only 2 feet from the property line. The shed was built without the required building permit.
4. The applicant's proposal is set forth on a series hand drawn plans. Those plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
5. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Front Yard Setback	40'		5'	35'	87.5%
Lot Building Coverage	15%		16%	1%	1%
Lot Surface Coverage	30%		34%	4%	4%
Setback from Property Line	5'	2'	2'	3'	60%

6. No members of the public were heard during the hearing.

7. The Building Inspector denied a building permit application by letter dated November 4, 2011.

The applicant has appealed the Building Inspector's determination seeking variances to build the new roof and construct the covered porch.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an area variance(s) for a single-family, two-family or three-family residence [6 NYCRR §617.5(c)(13)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

GML 239 Referral

This application is not required to be referred to the Orange County Planning Department for review.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but

no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the Hearing that the both the existing shed as well as the proposed new roof and covered porch would be in harmony with this existing neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

No contrary evidence or testimony was submitted to Public Hearing.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from the construction of the proposed roof and covered porch.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the area variances will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

Based upon the testimony and evidence submitted at the Hearing the Board finds that it is not feasible for the applicant to build the roof and construct the porch in a way that would have any meaningful use and benefit to the applicant without the requested area variances.

Regarding the shed¹, the applicant testified at the hearing that the size, weight and location of the shed made any physical movement virtually impossible.

¹ The applicant testified that the shed was a stick built shed and was not prefabricated.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot be achieved by any other method other than the issuance of the requested variances. Based upon the testimony and evidence received by the Board, it appears that the relief sought by the applicant may only be obtained by the variances sought herein.

(3) Substantial Nature of Variances Requested

Two of variances requested – those relating to the shed location and the front yard setback - are substantial. However, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the substantial nature of the variances requested does not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variances would result in any adverse physical and/or environmental effects. The applicant testified that no such effect would occur.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variances will not adversely impact the physical and environmental conditions in this neighborhood.

(5) Self-Created Difficulty

The need for these variances is clearly self-created in the sense that the applicants purchased this property charged with the knowledge of the existing

Zoning Code and while aware of the need to obtain a variance or variances in order to build on the property.

However, given that no complaints were received from any neighbors regarding the shed and given that the new roof and covered porch will improve the appearance of the house, the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of these variances.


Decision

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the requested variances conditioned upon the following:

1. The variances hereby granted are granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.
2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.
3. During its' review of this application, Code Compliance uncovered

an open permit for a swimming pool. This variance is therefore specifically conditioned upon the resolution of any and all outstanding building code issues to the satisfaction of the Town Building Department including, but not limited to, a resolution of the open permit for the swimming pool.

Dated: November 22, 2011



Grace Cardone, Chair
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
Member Brenda Drake
Member Ronald Hughes
Member John McKelvey
Member James Manley
Member Michael Maher

NAYS: None

ABSENT: Member Ruth Eaton

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on November 22, 2011



BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on

DEC 28 2021



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH

ZBA MEETING – NOVEMBER 22, 2011

(Time Noted – 7:10 PM)

ALAN MCGUIRE

61 TAFT AVENUE, NBGH
(73-5-21.1) R-3 ZONE

DEC 06 2011

Applicant is seeking area variances for the maximum lot building coverage, maximum lot surface coverage and front yard setback to build new roof and wraparound front porch and the required minimum 5-ft from property line to keep a prior built accessory building (shed).

Chairperson Cardone: Our next applicant Alan McGuire.

Ms. Gennarelli: This applicant sent out thirty-eight registered letters, fourteen were returned. All the mailings and publications are in order.

Chairperson Cardone: Just identify yourself for the record. You can move that up or take it off the stand either way.

Mr. Cella: All right, good evening I'm Jonathan Cella. I am a civil engineer assisting Alan in getting this Zoning Board of Appeals variance. We're here for the residence...the existing residence at 61 Taft Avenue which is in the R-3 zone located on the western side of Taft Avenue. We're here for a...two area variances, one for a shed in the rear yard existing, a...an existing shed from the rear yard which is two feet from the rear property line where five foot is required and the second reason that we're here is for a...a...we're proposing to replace his roof which is a...needs some structural repairs and at the same time we'd like to put a covered porch, a covered porch which would a...increase the front yard encroachment. The existing building is already close to the front yard, its 9.1-foot away from the front yard and we're proposing to be approximately 5-foot away. The submitted applications, plot plans based upon a survey completed in August, 2011 and we felt that the a...variance requested were not major. We're not increasing any a...number of bedrooms or livable...livable area. We just need to structurally repair the roof which he a had some water problems last year when the snow...from the snow and we want to get this done before the upcoming winter if possible.

Mr. Hughes: Do you have a proxy to represent the client? I don't have it in my packet.

Chairperson Cardone: He's right here.

Mr. McGuire: Yes, I am.

Mr. Maher: One question for you, on the a...on the survey...

Mr. Cella: Yes.

Mr. Maher: ...it shows obviously the 5-foot you are requesting for the variance there but on the hand drawing it shows 18.6 inches to the corner of the house.

Mr. Cella: The hand drawing?

Mr. Maher: Correct. Yes. There's a hand drawing submitted of the...and it shows 18'6 from the corner down to the property line.

Mr. Cella: (Inaudible)

Ms. Gennarelli: Excuse me you are going to have to talk into the microphone. You can take it with you if you'd like.

Chairperson Cardone: You can take it with you.

Mr. Cella: A...that hand drawing was done before the property was surveyed and a sorry we submitted that we should have just referred to the survey. We're going off the survey map.

Mr. Maher: O.K.

Mr. Cella: Just to clarify that, sorry.

Ms. Drake: When was the shed installed on the property?

Mr. McGuire: (Inaudible)

Ms. Gennarelli: Excuse me, there's two...

Mr. Cella: 1998.

Ms. Gennarelli: ...yes there's two microphones. There's one on the desk there that you can't take too. And just identify yourself.

Mr. McGuire: My name is Alan McGuire.

Ms. Gennarelli: Thank you.

Mr. McGuire: Approximately 1998.

Ms. Drake: And did you install it or was it there before you purchased it?

Mr. McGuire: I had somebody install it for me.

Mr. McKelvey: With a Building Permit?

Mr. McGuire: No, I did not have one I wasn't...it wasn't...not to my knowledge that I needed one, is what they told me. I know better now.

Ms. Drake: Who is they?

Mr. McGuire: The person that did it for me. It was a friend of a friend that built the shed for me.

Chairperson Cardone: Had they gone for the Building Permit they would have realized it had to be 5-feet away then you wouldn't have that problem.

Mr. McGuire: That's right.

Mr. McKelvey: Is there anybody living behind you there?

Ms. Gennarelli: Can you hold that microphone up?

Mr. McGuire: The lot is...right behind me there's a house to each side but the lot right behind me is empty.

Ms. Drake: The lot behind you is a buildable lot though right? Somebody could move in?

Mr. McGuire: (Inaudible)

Ms. Gennarelli: I'm sorry Alan, can you just tell me is the light on that (mic) or is it red?

Mr. McGuire: It's red.

Ms. Gennarelli: All right, Jon can you give him the other one? Thanks.

Mr. McGuire: The Mejia's, I'm pretty sure is the name of the people that live behind me. They purchased that lot in combination with the lot that their house is on over to the...looking towards my backyard...to the right.

Ms. Drake: O.K.

Mr. McKelvey: They don't want anybody to build there.

Ms. Drake: I (inaudible).

Mr. Donovan: And could you explain to the Board why you can't move the shed?

Mr. McGuire: I'm...it probably could be moved but it would be quite a big...it's heavy and bulky and it's kind of on a hill. I don't know how easy it would be to move.

Mr. McKelvey: It's a pretty good size shed.

Mr. McGuire: Yeah, it's a pretty heavy shed.

Ms. Drake: This is a stick built shed therefore not like a prefab shed that's easy to move?

Mr. McGuire: Yeah, it's a stick built shed and it has some landscaping around it with a retaining wall so I don't know how easy it would be to do all that.

Mr. McKelvey: This porch is going right straight from the edge of the house that sticks on the right there.

Mr. Cella: Yes, correct we are just extending the existing building line.

Ms. Drake: Jerry, there's Permits and everything for that's necessary for the above ground pool and so forth?

Mr. Canfield: (Inaudible)

Ms. Drake: O.K.

Mr. Maher: Is there a Permit or a variance in place for the garage?

Mr. Cella: That was there when he purchased the property? So that's...we assume so.

Mr. Maher: My concern it's a 4 ½-foot setback on that it doesn't make the requirement either.

Mr. McKelvey: Yeah.

Mr. Cella: Well like I said he purchased the property approximately 1996 and the garage was existing so that wasn't brought up at that point so...and that was not modified since he bought the property.

Mr. McGuire: On the paperwork I had gotten when I purchased the house it was somewhat vague but I'm thinking early '50's is when the garage was put up along with some other paperwork that came with the house of little moderate work they had done on the house but other than that I don't have any information on the garage. There was...next to me was a vacant lot also, the year before I purchased the house so I really not sure of the garage.

Ms. Drake: Jerry, is that something that during break we could determine whether that has a...needs a variance or if it does we might as well clear it up now...so that everything meets Code going forward? Or...?

Mr. Canfield: Yeah, what we can do is we will also verify the pool and the deck that you inquired about.

Ms. Drake: O.K.

Mr. Canfield: I'll make certain of that and also I'll see what we have on the garage.

Ms. Drake: Thank you. He'll do that when we take a break and then we'll know when we finish up whether it needs it or not and that way there if it does you can get everything taken care of, I guess...? He wouldn't have to resubmit everything; we could...take care of everything at...?

Mr. Donovan: No, I wouldn't think but I think also the Code Compliance is generally pretty thorough so if there was an issue since all these structures went into the lot surface coverage and the lot building coverage a...

Chairperson Cardone: Yeah, I think Joe would have picked it up.

Mr. McKelvey: Joe would have picked it up. Yeah.

Mr. Canfield: He would have but it wouldn't hurt to just double check it.

Chairperson Cardone: You could double check it.

Mr. Hughes: Are you on Town sewer over there?

Mr. McGuire: Yeah, we have water and sewer.

Mr. Hughes: Town water too?

Mr. McGuire: Yeah.

Mr. Hughes: And how many bedrooms do you have in the house?

Mr. McGuire: Three.

Mr. Hughes: What do you do for parking?

Mr. McGuire: (Inaudible)

Mr. Hughes: I mean you're a young guy you don't have kids driving yet but...

Mr. McGuire: I do have them starting to drive and that's another...a whole another fiasco made for the spring to extend my driveway and do something. I basically have room for three cars right now and the other one I park on my grass.

Mr. McKelvey: Well you only need...

Mr. Hughes: You've got a lot going on here on a 100 x 150, it's pretty loaded up. You don't use the garage for parking?

Mr. McGuire: Third, my one car in the winter.

Mr. Hughes: And then, because I was out there and I was looking around where you would park vehicles, you know, and I'm guessing it was a three bedroom house that's why I asked. It looks as though to me you only have parking there for a couple of cars.

Mr. McGuire: The driveway isn't very big. It wasn't when I bought it.

Chairperson Cardone: It's not finished.

Mr. McGuire: I would like to extend the driveway but that's another undertaking.

Mr. McKelvey: Yeah, the driveway is not finished.

Mr. Hughes: Yeah. Well at the same time where is the square footage you're going to put the cars later on? No matter where you locate the driveway or what you do to it.

Mr. McKelvey: He is only required to have a spot for two cars, Jerry?

Mr. Canfield: (Inaudible)

Mr. Hughes: Yeah.

Chairperson Cardone: And he has that.

Mr. McKelvey: He has that.

Ms. Gennarelli: Affirmative from Mr. Canfield.

Chairperson Cardone: Any questions from the public? Anything else from the Board?

Ms. Drake: I'll make a motion we close the Public Hearing.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Cella: Thank you.

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal issues. I would ask in the interest of time if you would wait out in the hallway and we'll call you in shortly.

(Time Noted – 7:20 PM)

ZBA MEETING – November 22, 2011 (Resumption for decision: 7:36 PM)

ALAN McGUIRE

61 TAFT AVENUE, NBGH
(73-5-21.1) R-3 ZONE

Applicant is seeking area variances for the maximum lot building coverage, maximum lot surface coverage and front yard setback to build new roof and wraparound front porch and the required minimum 5-ft from property line to keep a prior built accessory building (shed).

Chairperson Cardone: On the application Alan McGuire seeking an area variance for the maximum lot building coverage, maximum lot surface coverage and front yard setback to build new roof and wraparound front porch and the required minimum 5-ft from property line to keep a prior built accessory building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Drake: In review of the Building Department's files it was determined the house was built in the 1800's and the garage was built in the early 1920's or in the 1920's which kind of predates zoning so therefore the garage would not need to get a variance because it predated the zoning. It was also determined that there is an open Building Permit for the pool that would need to get closed out. So if we were to grant the variance here we would

condition it that all existing Building Permits get closed out and resolved. Is there anything else we want to add?

Chairperson Cardone: No I think that's it.

Mr. McKelvey: No I think that's all.

Chairperson Cardone: That covers it.

Mr. Hughes: The electrical inspection and close out of the Permits. I'll move it.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
RONALD HUGHES
MICHAEL MAHER
JAMES MANLEY


ABSENT:

RUTH EATON

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 7:37 PM)

 12/8/11