

Section 2, Block 2, Lot 22.31

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

WILLIAM A. CARPENTER

DECISION

For area variances as follows:

- *Grant of variance allowing an accessory building to be located closer to the fronting street than the main dwelling.*

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Introduction

William A. Carpenter seeks permission to maintain a 12' x 20' shed in his front yard. In order to accomplish this objective, he will require an area variance as follows: (1) An area variance allowing an accessory structure to be located closer to the fronting street than the main dwelling.

The property is located at 27 Decker Road in the R-R Zoning District and is identified on the Town of Newburgh tax maps as Section 2, Block 2, Lot 22.31.

A public hearing was held on January 24, 2013, 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 185-15(A) [Accessory buildings] of the Code of Ordinances of the Town of Newburgh provides that an accessory building may only be located in a rear or side yard.

Background

After receiving all the materials presented by the applicant and the testimony of Mr. Carpenter at the public hearing held before the Zoning Board of Appeals on January 24, 2013, the Board makes the following findings of fact:

1. The applicant is the owner of 1.0+/- acre lot (tax parcel 2-2-22.31) located at 27 Decker Road.
2. The lot is improved by a single family home.
3. The applicant has previously constructed a 12' x 20' shed on that portion of the lot that is located closer to the fronting street than the main dwelling.
4. The applicant's proposal is set forth on a series of photographs and unattributed plans. Those photographs and plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
5. The Building Inspector denied a building permit application by letter dated April 18, 2012.

The applicant has appealed the Building Inspector's determination seeking variance to maintain the shed.

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 has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

In reviewing the facts presented for the requested area variance, 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 variance.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the hearing that the shed is in harmony with this existing, mature, neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

The Board takes special notice of the fact that the applicant's property is oddly shaped leaving little usable area for the construction of a shed except for the area where the prior built shed was in fact constructed.

No contrary evidence or testimony was submitted at the Public Hearing.

Absent any testimony or evidence indicating such, the Board can not conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from allowing the shed to remain in its present location.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the area variance 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 maintain the shed in a way that would have any meaningful use and benefit to the applicant without the requested area variance.

Accordingly, the Board finds that the benefit sought to be achieved by the applicants cannot be achieved by any other method other than the issuance of the requested variance.

(3) Substantial Nature of Variances Requested

The variance requested is substantial in the sense that the prohibition against accessory structures in a front yard is absolute. However, the shed occupies a very small area in the front yard and the overall impact of this shed in the front yard is small. Moreover, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we be-

lieve, under the circumstances presented here, that the substantial nature of the variance requested does not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

The applicant testified that no adverse physical or environmental effects would occur if the variance requested herein was granted.

No contrary testimony was submitted at the public hearing. Based upon the evidence and testimony submitted therefore, the Board finds that no adverse physical or environmental effects would result from issuance of the variance requested.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the need to obtain a building permit and variance in order to maintain the shed wherein it is located.

However, the board believes, under the circumstances presented, that the self-created nature of the need for the variance 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 this variance.

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 variance as requested upon the following conditions:

1. The variances hereby granted are granted for the purpose of au-

thorizing 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.

Dated: January 24, 2013



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 James Manley
 Member John McKelvey
 Member Michael Maher
 Member Roseanne Smith

NAYS: None

ABSTAIN: John Masten

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 Decision rendered by the Zoning Board at a meeting of said Board held on

January 24, 2013

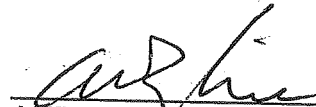


BETTY GENNARELLI, SECRETARY

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

MAR - 4 2013



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH

ZBA MEETING – JANUARY 24, 2013

(Time Noted – 7:15 PM)

WILLIAM A. CARPENTER

27 DECKER ROAD, WALLKILL
(2-2-22.31) R / R ZONE

1
RECEIVED

FEB 08 2013

TOWN OF NEWBURGH
TOWN CLERK'S OFFICE

Applicant is seeking an area variance for no such accessory building shall project closer to the fronting street than the front of the main building to keep a prior built accessory structure (shed).

Chairperson Cardone: Our next applicant William A. Carpenter

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

Chairperson Cardone: And just for the record would you please state your name.

(Inaudible)

Ms. Gennarelli: If you could tilt that (mic) up towards you?

Mr. Carpenter: How's that? Is it working?

Mr. Donovan: No.

Mr. Manley: No.

Ms. Gennarelli: It's not picking up. I don't know what's going on with the microphones.

Mr. Donovan: It's too cold.

(Inaudible)

Mr. Maher: Not yet.

Chairperson Cardone: No.

(Inaudible)

Mr. Carpenter: Can you hear me now?

Chairperson Cardone: Yes, that's good.

Mr. Carpenter: My name is William Carpenter. I am seeking an area variance for a shed, an outdoor shed that I have that was a pre-built shed. I had it installed on my property towards the front of my house near Decker Road a number of years and I understand now that it's a Violation. I didn't know at the time so I'm seeking a variance to allow the shed

to stay. I had a little bit of a handicap, a disability handicap and I could not reach the shed that I have in the rear of my property. If you can see there is a shed to the rear...

Chairperson Cardone: I noticed that, yes.

Mr. Carpenter: ...okay I had a...I used that for years until I had a stroke...a...I wasn't able to get back there in the wintertime especially so I had the shed installed near the street and it's an area where I can pull in with my car and get to my tools and stuff like that, I have a small snow blower and now that I realize it is a Violation I'm asking for a variance to leave the shed and I've put in some photographs and I keep it neat and clean. I'd like to be able to have that stay there.

Mr. McKelvey: You didn't have a Permit when you put it in?

Mr. Carpenter: No, I did not.

Chairperson Cardone: Do we have questions from the Board?

Ms. Drake: Mr. Canfield, Jerry, Mr. Canfield is there anything you would need to inspect on that? So you would handle whatever inspections that need to be done?

(Inaudible)

Ms. Gennarelli: Mr. Canfield said yes.

(Inaudible)

Chairperson Cardone: And I'll read the report from the Orange County Department of Planning, which is Local Determination. Any other questions from the Board? Any questions or comments from the public?

(No response)

Mr. McKelvey: I'll make a motion we close the Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Abstain

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted – 7:19 PM)

ZBA MEETING – JANUARY 24, 2013 (Resumption for decision: 8:57 PM)

WILLIAM A. CARPENTER

27 DECKER ROAD, WALLKILL
(2-2-22.31) R / R ZONE

Applicant is seeking an area variance for no such accessory building shall project closer to the fronting street than the front of the main building to keep a prior built accessory structure (shed).

Chairperson Cardone: On the application of William A. Carpenter at 27 Decker Road, seeking an area variance shed in a front yard. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Drake: He keeps the shed looking nice. There isn't too many other places on his property to make use of it. I think it's a special case for why he needs to have it there, his health reasons and so forth. I'll make a motion to approve the application.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Abstain

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

- GRACE CARDONE
- JOHN MC KELVEY
- BRENDA DRAKE
- MICHAEL MAHER
- JAMES MANLEY
- JOHN MASTEN
- ROSEANNE SMITH

ALSO PRESENT:

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

(Time Noted – 8:58 PM)

2/28/13
[Signature]