

ZBA MEETING – JUNE 24, 2010

(Time Noted – 7:29 PM)

SCOTT & SHERI DRIVANOS

235 QUAKER STREET, WALLKILL
(2-1-14) A/R ZONE

Applicant is seeking area variances for the maximum allowed 1000 square feet of accessory structures and the maximum allowed height to build a two-car garage.

Chairperson Cardone: The next applicant Scott and Sheri Drivanos.

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

Chairperson Cardone: O.K. For the record state your name

Mr. Drivanos: Scott Drivanos.

Ms. Drivanos: Sheri Drivanos.

Chairperson Cardone: And state your request.

Mr. Drivanos: We're here for a variance for a two-car detached garage on our side lot.

Chairperson Cardone: And this was referred to the Orange County Department of Planning and their recommendation is Local Determination.

Ms. Drake: Could you explain why you need the shed to be more than 1000 sq. ft. allowed by Code?

Mr. Drivanos: Well the garage itself is under the 1000 sq. ft. but I have a shed that I got a Permit for previously that puts me over the 1000 sq. ft. I believe the garage I want to put ups is just under 1000 sq. ft. but with the shed I have already it puts me over the total allotted amount.

Mr. Hughes: What's the reason for the height variance?

Mr. Drivanos: That was in my set of plans, my plans that I already had. I didn't realize that the 10 inches...I guess there is a requirement of a detached of 15-feet and my plans have a 15 ft, 10 inch height to be able to fit a higher garage door because I have large pickup truck to be able to pull into there.

Ms. Drake: Whereabouts is the shed located? It's not shown.

Mr. Drivanos: The shed is in the backyard behind the pool. We got a Permit for that when we first a...probably within the first year of when we purchased the house.

Ms. Drake: And what size is the shed?

Mr. Drivanos: The shed is a 12 x 16 shed.

Chairperson Cardone: You're also constructing a deck or something there?

Mr. Drivanos: No. Where?

Mr. McKelvey: On the house.

Mr. Drivanos: The deck is done already. We already closed that Permit out.

Chairperson Cardone: O.K.

Mr. Drivanos: Yeah.

Chairperson Cardone: Anything else from the Board?

Mr. Hughes: No water and sewer out to the garage?

Mr. Drivanos: No.

Mr. Hughes: Electric?

Mr. Drivanos: There will be electric. Yes.

Mr. Hughes: Jerry.

Mr. Canfield: (Inaudible)

Mr. Manley: Is there going to be any business conducted on the premises at all?

Mr. Drivanos: No. It's for...just for the cars. I have a tractor that I want to keep, you know, be able to put in there when I need to. So its not sitting out in the wintertime and stuff like that.

Chairperson Cardone: Any comments from the public? Do I have anything else from the Board?

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

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: Thank you.

Mr. Drivanos: Thank you.

Chairperson Cardone: O.K. Before proceeding the Board will take a short adjournment to confer with counsel regarding legal questions raised by tonight's applications. I would ask you to please step out in the hallway and we will call you back in.

(Time Noted – 7:34 PM)

ZBA MEETING – JUNE 24, 2010 (Resumption for decision: 8:17 PM)

SCOTT & SHERI DRIVANOS

235 QUAKER STREET, WALLKILL
(2-1-14) A/R ZONE

Applicant is seeking area variances for the maximum allowed 1000 square feet of accessory structures and the maximum allowed height to build a two-car garage.

Chairperson Cardone: On the next application Scott and Sheri Drivanos, 235 Quaker Street, seeking area variances for the maximum allowed 1000 square feet of accessory structures and the maximum allowed height to build a two-car garage. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Hughes: This 144 sq. ft. over and 10 inches on the height?

Chairperson Cardone: Right.

Mr. Hughes: And that only?

Chairperson Cardone: Right.

Mr. Hughes: I'll move it.

Mr. McKelvey: I'll second it.

Mr. Manley: I would just like to before we have the vote, just indicate for the record, let the record reflect that the applicant testified that there would be no business conducted in the garage or on the property.

Mr. Hughes: And the applicant should know to these things are to be built the way they are presented to us by the plans.

Chairperson Cardone: Right.

Ms. Gennarelli: O.K. 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

DAVID A. DONOVAN, ESQ.

ABSENT: RUTH EATON

(Time Noted – 8:19 PM)

Section 2, Block 1, Lot 14

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

SCOTT DRIVANOS

DECISION

For area variances as follows:

- *Grant of a variance allowing accessory structures to have a total square of 1,144 square feet where 1,000 square feet is the maximum allowed¹;*
- *Grant of a variance allowing an accessory structure to have a height of 15'10" where 15 feet is the maximum height allowed.*

-----X

Introduction

Scott Drivanos seeks area variances as follows: (1) An area variance allowing construction of 34'x28' detached garage that will result in a total square footage of 1,144 square feet allocable to accessory structures where 1,000 square feet is the maximum square footage allowed pursuant to the formula established by the Town Code; and (2) An area variance allowing the detached garage to have a height of 15'10" feet where 15 feet is the maximum height allowed.

¹ The applicant currently has a 12'x16' shed on the premises. He now wishes to construct an accessory structure (a garage) that is 34'x28'. With construction of the new accessory structure, he will exceed the maximum square footage allowed and this variance application is thus necessary.

The property is located at 235 Quaker Street in the AR Zoning District and is identified on the Town of Newburgh tax maps as Section 2, Block 1, Lot 14.

A public hearing was held on June 24, 2010, 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 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Accessory buildings," imposes, in subdivision (4), a requirement that the total square footage of all accessory structures be no greater than provided for in the formula contained within that provision of the Town Code. This section further provides, in subdivision (1), that accessory structures shall have a maximum height of 15 feet.

Background

After receiving all the materials presented by the applicant and the testimony of Scott Drivanos, at the public hearing held before the Zoning Board of Appeals on June 24, 2010, the Board makes the following findings of fact:

1. The applicant is the owner of a 1.8+/- acre lot (tax parcel 2-1-14) located at 235 Quaker Street.
2. The lot is improved by a single-family residential dwelling with a fully permitted 12'x16' shed.
3. The applicant now wishes to construct a 34'x28' detached garage.
4. The total combined square footage of the accessory structure will total 1,144 square feet. This exceeds the maximum allowable of 1,000

square feet that is permitted under the formula set forth in section 185-15(A)(4).

5. Additionally the height of the newly proposed accessory structure is 15'10" feet where 15 feet is the maximum height allowed.
6. The applicant's proposal is set forth on a series of photographs, architectural drawings and an unattributed survey. Those drawings, survey and photographs are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
7. 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 |
|-------------------------|------------|----------|------------|----------|------------|
| Accessory Building | 1,000 S.F. | | 1,144 S.F. | 144 S.F. | 14.4% |
| Maximum Building Height | 15' | | 15'10" | 10" | 5.6% |

8. No members of the public were heard during the hearing.
9. The Building Inspector denied a building permit application by letter dated February 17, 2010.

The applicant has appealed the Building Inspector's determination.

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 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 accessory structure will be in harmony with this existing, mature, neighborhood and will not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties. The applicant further testified that no commercial or business use would be undertaken at the premises.

No contrary evidence or testimony was submitted at the 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 garage.

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 construct the garage in a way that would have any meaningful use and benefit to the applicant without the requested area variances. The board notes the applicants testimony that the additional 10 inches of height were needed to accommodate the size if the applicants vehicle.

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.

(3) Substantial Nature of Variances Requested

The variances requested are not substantial.

(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 physi-

cal 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 this variance is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the Town Code as it relates to accessory structures.

However, under the circumstances presented, the Board believes 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 the variances.

Decision

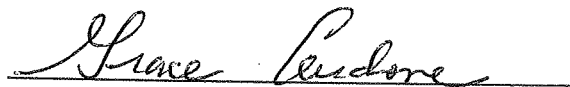
In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the area variances as requested upon the following conditions:

1. The variance is hereby 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 deci-

sion.

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. Consistent with the applicants testimony at the hearing, the accessory structures shall not be used for any business or commercial enterprise and shall be used for the applicants personal, private use only.

Dated: June 24, 2010



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

ABSTAIN: 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 June 24, 2010



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 JUL 23 2010



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH