



Section 2, Block 2, Lot 46

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

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*In the Matter of the Application of*

LINDSEY MCGANN

**DECISION**

*For area variances as follows:*

- *Grant of a variance allowing an accessory structure to have a height of 21.5 feet where 15 feet is the maximum height allowed.*

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**Introduction**

Lindsey McGann seeks an area variance as follows: (1) A variance allowing an accessory structure to have a height of 21.5 feet where 15 feet is the maximum allowed to allow the construction of a second story addition to an existing detached garage.

The property is located at 59 East Road in the R/R Zoning District and is identified on the Town of Newburgh tax maps as Section 2, Block 2, Lot 46.

A public hearing was held on February 27, 2014, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

## Law

### *Accessory Building*

Section 185-15 [Accessory buildings] of the Code of Ordinances of the Town of Newburgh provides that a permitted accessory building may be located in any required side or rear yard, provided that (1) such building, except for farm purposes, shall not exceed 15 feet in height.

### Background

After receiving all the materials presented by the applicant and the testimony of the applicant at the public hearing held before the Zoning Board of Appeals on February 27, 2014 the Board makes the following findings of fact:

1. The applicants are the owners of a 1.1+/- acre lot (tax parcel 2-2-46) located at 59 East Road.
2. The lot is improved by a single family residential dwelling with a detached garage. The applicant now proposes to construct a second story addition to the existing detached garage. The proposed addition will cause the height of the existing garage to be 21.5 feet and therefore exceed the 15 foot maximum height allowance.
3. The applicant testified at the hearing that the addition would not be utilized as a business nor would it be utilized as an apartment. Its' purpose, according to the applicant, is to provide additional living space to the owners of the property.
4. The applicant's proposal is set forth on a series of photographs and plans prepared by Zen Design Consultants, Inc. dated December 20,

2013. 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. No members of the public were heard during the hearing.
6. The Building Inspector denied a building permit application by letter dated January 30, 2014.

The applicant has appealed the Building Inspector's determination and is seeking the said variance to allow construction of the proposed second story addition to the existing accessory structure.

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 proposed addition to the garage would be 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 applicant further testified that the addition would not be utilized as a business nor would it be utilized as an apartment. Its' purpose, according to the applicant, is to provide additional living space to the owners of the property.

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 allowing the applicant to construct the addition to the garage.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the requested 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 construct an addition 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 applicant 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. 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 variance 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 variance would result in any adverse physical and/or environmental effects. The applicant testified that no such effect would occur.

***(5) Self-Created Difficulty***

The need for the requested variance is clearly self-created in the sense that the applicants purchased this property charged with the knowledge of the need to obtain a variance in order to construct an addition to the garage resulting

in the height proposed.

However, because the garage will not cause any undesirable change in the character of the neighborhood the Board finds that the self-created nature of the variance requested is not a bar to the relief requested herein.

### **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 variance as requested upon the following conditions:

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. The addition may not be utilized as a business nor may it be utilized as an apartment. It is approved for its stated purpose only - to provide additional living space to the owners of the property.

Dated: February 27, 2014



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 John Masten  
Member Michael Maher  
Member James Manley  
Member Roseanne Smith

**NAYS:** None

**ABSENT:** Member John McKelvey

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 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 February 27, 2014



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

APR - 2 2014



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH