

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

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In the Matter of the Application of

RONALD WASSON

DECISION

For area variances as follows:

- *Grant of a variance allowing a side yard setback of 12 feet where 15 feet is required;*

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Introduction

Ronald Wasson wishes to add a 12' x 20' screened porch and 12' x 6'-8" open deck (a total of 12' x 26' 8") to his residence. The proposed porch and deck will encroach into the required side yard. Accordingly, the applicant seeks an area variance as follows: (1) An area variance allowing a side yard setback of 12 feet where 15 feet is required.

The property is located at 9 Paul Avenue in the R-3 Zoning District and is identified on the Town of Newburgh tax maps as Section 27, Block 7, Lot 2.

A public hearing was held on May 28, 2009, 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 ordi-

nance.

These schedules require, for this single family dwelling in the R-3 Zoning District, a side yard setback of 15 feet.

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 May 28, 2009, the Board makes the following findings of fact:

1. The applicant is the owner of a 0.43+/- acre lot (tax parcel 27-7-2) located at 9 Paul Avenue.
2. The lot is improved by a single family dwelling. The applicant now proposes to construct a screened porch and open deck to his dwelling. Upon completion, the proposed addition will be 12 feet from the side yard line. This setback does not comply with the bulk requirement of 15 feet.
3. The applicant's proposal is set forth on a set of photographs and unattributed plans and hand-drawn on a survey entitled "Map of Survey of Lot No. 31R on a Map Entitled Hillcrest," prepared by Peter R. Hustis, L.L.S. dated June 21, 1991. Those photographs, plans and survey are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

4. 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
Side Yard Setback	15'		12'	3'	20%

5. No members of the public were heard during the hearing. The Building Inspector denied a building permit application by letter dated May 5, 2009.

The applicant has appealed the Building Inspector's determination seeking variances to construct the porch and deck.

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

No undesirable change in the character of this neighborhood or detriment to the neighbors in that neighborhood will result if the requested variance is granted.

The applicant testified at the Hearing that the proposed porch and deck 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 placement, size, configuration and orientation of the porch deck have been designed in a fashion that is consistent with the existing character of the neighborhood. The porch and deck will be at the rear of the home and will, thus, be minimally visible from the public street line.

No contrary evidence or testimony was submitted at 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 porch and deck.

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

It would appear that the need for the variance is generated by the applicant's desire to construct a porch and deck. It is, of course, extremely difficult for the Board to evaluate this objective as it relates to the *need* for a variance. However, there was no contrary testimony and there was no public opposition to the variance requested. The applicant further testified that the proposed location was the only location feasible for the construction of the porch deck. There was no contrary testimony or evidence submitted at the hearing.

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 variance sought herein.

(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 side yard variance requested does not prohibit us from granting the application as it will not result in any change to the neighborhood nor cause any adverse impact upon the neighborhood.

(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.

Based upon the evidence and testimony before the Board, therefore, the Board cannot conclude that any adverse physical or environmental effects would occur if the variance were granted.

(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 existing non-conformity and therefore aware of the need to obtain a variance in order to enlarge the existing building in any dimension.

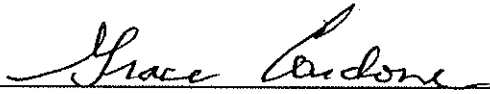
However, because of the existing nonconformity and because it is not feasible to construct the porch and deck without a variance of some kind, the board believes, under the circumstances presented, that the self-created nature of the need for the variance requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of 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 variance as requested upon the following conditions:

1. The variance hereby granted is 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.

Dated: May 28, 2008



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 Ruth Eaton
 Member Ronald Hughes
 Member John McKelvey
 Member James Manley
 Member Michael Maher

NAYS: None

ABSENT: None

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 May 28, 2009.



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 - 7 2009



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH