

Minutes of the regular meeting of the Fairport Zoning Board, held May 27, 2014 at 7:00 p.m., in the Board Room, Village Hall, 31 South Main Street, Fairport, New York.

PRESENT:

J. Himmelberg
M. Fortner
E. Wierzbicki
Sean Gibbons (alternate)
G. Wolf, Attorney
J. Steen, Code Enforcement Officer

OTHERS PRESENT:

Franklin Minnick
Joan Lackey
Steve Brown
Andrew Hintenach
Andrew Westcott
Michael Newcomb
Scott Copp

ABSENT:

T. Nadler
P. Cantwell (alternate)
D. Davis

Area Variances

Joan Lackey, owner of premises at **97 Summit Street** in the R-C Residential District, for variances pursuant to section 550-Attachment-1 to permit the construction of a carport having a front yard setback of 25 feet instead of 30 feet and a side yard setback of 2.50 feet instead of 5 feet.

The legal notice was read as it appeared in the Daily Record on May 8, 2014.

Joan Lackey and Franklin Minnick appeared to present the application for a carport to accommodate Mr. Lackey. Mr. Lackey is ill and uses a wheelchair to maneuver to and from a vehicle. Having protection from the elements would make the use of a wheelchair much easier.

M. Fortner asked if the columns for the proposed carport will be located within the existing driveway location or if the driveway would be expanded. Mr. Minnick explained that the columns from the proposed carport will be within the existing driveway area, with no expansion of the driveway.

E. Wierzbicki asked the age of the house, the number of vehicles kept at the home, if there will be a ramp used to enter the home and why the carport cannot be moved back. Mrs. Lackey responded that she is not sure the age of the house. The carport being moved back would block the natural light into the home and would interfere with a shed at the rear of the home. There is a ramp currently on the home and it would be reconstructed for use under the carport. One vehicle, a handicap accessible van, will be the only vehicle regularly at the home.

S. Gibbons questioned why the carport could not be moved away from the side and closer to the house to comply with the zoning regulations. It was explained that the roof overhang on the house would prevent it from moving closer.

J. Himmelberg commented that not many homes in the village have carports; he questioned why a garage couldn't be built instead of a carport. He also asked if the structure was being framed to be enclosed later. Mr. Minnick explained that there is no intension of enclosing the carport; a garage is substantially more expensive to build.

J. Himmelberg expressed that he would consider putting a condition on the variance, if approved, for the carport to be removed or the variance renewed as needed.

Chair Himmelberg opened comment to the public.

Scott Copp, resident at 37 Roselawn Avenue, offered an alternate to the considered condition of removing the structure or having to monitor for a renewal. He suggested that the variance be approved based on the condition that the sides remain open, never enclosed.

No one else wished to speak. The public hearing was closed.

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Checklist for consideration of Area Variances:

1. *Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance?* No, the neighborhood was described as Northeast end of Summit between Monroe and Hillsborough Street: front setback (3 members agreed -1 disagreed), side setback (all members agreed)
2. *Can the applicant achieve the desired end by some means other than a variance?* No, (3 members agreed- 1 disagreed)
3. *Is the requested variance substantial?* No, (all members agreed)
4. *Will the proposed variance have an adverse impact or effect upon physical or environmental conditions in the neighborhood or district?* No. (all members agreed)
5. *Was the need for a variance self-created?* Yes. (all members agreed)
6. *Would a decision to grant the application be inconsistent with a prior decision of the board?* No. (all members agreed)

There were no objections from neighbors.

E. Wierzbicki stated that she is not in agreement with pushing the cars toward the street but has no objection to the side setback.

Motion was made by M. Fortner, seconded by J. Himmelberg to approve the variance request as submitted, conditioned upon the structure to remain open, without walls. A roll call vote was taken, J. Himmelberg, M. Fortner, S. Gibbons voted "aye", E. Wierzbicki voted "nay". Motion passed.

APPROVED

Iron Smoke Whiskey LLC, and Andrew Wescott, lessees of premises at **111 Parce Avenue** in the M-1 Industrial District for a variance from section 550-8 (Attachment 1) to permit the construction of three grain storage bins and a feeder tube all in excess of fifteen feet, namely 30.5 feet, 21 feet, 30 feet and 45 feet, having a side yard setback of five feet instead of 15 feet, and having lot coverage of 61.58% instead of 30%.

The legal notice was read as it appeared in the Daily Record on May 8, 2014.

J. Himmelberg asked if the silos would remain if the business were to move. Mr. Hintenach stated that the concrete pad would remain but the silos would leave with the business.

Letters were received from property owners on Parce Avenue concerned about mold caused by distilleries. It was explained that articles supporting the mold issue were from a different climate and with a much larger production than what Iron Smoke Whiskey will produce.

E. Wierzbicki asked if there were any distilleries in this area with similar capacity, and if the applicant has any knowledge of black mold at any of those facilities. Mr. Brown explained that there are a few; East Rochester

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has one and there are some in the City of Rochester. All having the same allowable capacity as Iron Smoke Whiskey is proposing. The maximum production amount per year is 30 thousand gallons and Mr. Brown stated that Iron Smoke Whiskey would not produce nearly that amount; 10-15 thousand gallons is the maximum amount able to be stored on their site. He is not aware of any black mold issues.

The height of the structures was discussed. The tallest part is the feeder arm (elevator) at 45 feet tall and 18 inches around. The tallest silo is 28 feet high and within 10 feet of the top of the roof line. The Board was not concerned with the increase in lot coverage.

E. Wierzbicki asked if the silos could be placed inside the building. She felt that they were not fitting with the neighborhood. It was explained that they could not be placed inside because they are too tall and it would be hazardous to house the grain indoors.

No one else wished to speak. The public hearing was closed.

Checklist for consideration of Area Variances:

1)height & 2) lot coverage

- 1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? 1) No, the neighborhood was described as Parce Avenue and all M-1 zoned area (3 members agreed -1 disagreed) 2) No. (3 members agreed-1 disagreed)*
- 2. Can the applicant achieve the desired end by some means other than a variance? 1) No. (all members agreed) 2) No. (all members agreed)*
- 3. Is the requested variance substantial? 1) No. (3 members agreed- 1 disagreed) 2) yes. (3 members agreed- 1 disagreed)*
- 4. Will the proposed variance have an adverse impact or effect upon physical or environmental conditions in the neighborhood or district? 1) No. (all members agreed) 2) no. (all members agreed)*
- 5. Was the need for a variance self-created? 1) Yes. (all members agreed) 2) yes. (all members agreed)*
- 6. Would a decision to grant the application be inconsistent with a prior decision of the board? 1) No. (all members agreed) 2) no. (all members agreed)*

Motion was made by M. Fortner, seconded by S. Gibbons to approve the variance requests as submitted. A roll call vote was taken, J. Himmelberg, S. Gibbons, and M. Fortner voted "aye", E. Wierzbicki voted "nay". Motion passed.

APPROVED

Michael Newcomb, owner of premises at **113 West Church Street** in the R-B Residential District, for variances pursuant to sections 550-57 A&D and 550-29 B (1) (b) to permit the construction of a fifth apartment in a non-conforming four-family dwelling in a single family zone having lot area of 16,902 square feet instead of 17,500 square feet.

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J. Himmelberg disclosed that he had a previous conversation with the applicant regarding his variance requests. During that conversation he explained to Mr. Newcomb that past applications of this type were not looked favorably on. Mr. Himmelberg asked Mr. Newcomb if he would like him to recuse himself from the hearing; Mr. Newcomb stated no.

Mr. Newcomb explained that he purchased this multi-family home recently. It is a large home with four units, one larger than others at 1800 square feet. In an effort to find tenants of similar life styles and schedules, he felt that the units should be comparable in size. Smaller units tend to have one or two adults that occupy the space; this property has three small units. Larger units would accommodate a family with children. Dividing the largest unit into two seemed most logical. The property is not set up for children. The largest yard area is at the front of the home on Church Street, not well suited for children. Due to the size of this property it is not likely it would ever be returned to a single family home.

Attorney Wolf explained that this should be heard as an area variance not a use variance as applied for. The Board should consider 550-57(D) not 550-57(A).

E. Wierzbicki asked Mr. Newcomb the benefit he would like to achieve by dividing the apartment into two. She felt that by adding a unit it would increase the parking requirements. Mr. Newcomb stated that the size of the apartments is an odd mix and he hopes to achieve compatibility in his tenants. The parking requirements are able to be met.

M. Fortner agreed that the front yard is not usable for children to play; the property fronts to a busy street and commented that the needed lot area increase is less than 5%.

S. Gibbons said that a home on West Street, once a multi-family was converted back to a single family. He felt that the parking would be sufficient for a five unit building.

No one else wished to speak. The public hearing was closed.

Checklist for consideration of Area Variances:

1. *Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance?* 1) No, the neighborhood was described as the south side of W. Church Street, between Briggs and Potter Place (3 members agreed -1 undecided)
2. *Can the applicant achieve the desired end by some means other than a variance?* 1) No. (3 members agreed- 1 member disagreed)
3. *Is the requested variance substantial?* 1) Yes. (2 members agreed- 2 disagreed)
4. *Will the proposed variance have an adverse impact or effect upon physical or environmental conditions in the neighborhood or district?* 1) No. (all members agreed)
5. *Was the need for a variance self-created?* 1) Yes. (all members agreed)
6. *Would a decision to grant the application be inconsistent with a prior decision of the board?* 1) No. (all members agreed) nothing of this type on record that was treated as an area variance

Motion was made by M. Fortner, seconded by S. Gibbons to approve the variance requests as submitted. A roll call vote was taken, J. Himmelberg, S. Gibbons, and M. Fortner voted "aye", E. Wierzbicki voted "nay". Motion passed.

APPROVED

Minute Approval

It was unanimously resolved to approve the minutes of the April 28, 2014 regular meeting with changes. All voted for the motion except S. Gibbons, not at the April 28, 2014 meeting, he abstained.

There being no other business, the meeting was adjourned at 8:32 p.m.

Respectfully Submitted,

Deborah L. Fuller
Zoning Board of Appeals