



VILLAGE OF RHINEBECK

VILLAGE OF RHINEBECK ZONING BOARD OF APPEALS

MEETING MINUTES

April 19, 2018

Beginning at 7:00 PM
Village Hall, 2nd Floor
76 East Market Street
Rhinebeck, NY 12572

Present: Colton Johnson (Chair), Ward Stanley, Judy Merritt, Al DeKrey, John Fenton (Code Enforcement Officer), Ryan Dowden (Clerk).

Agenda:

Constance Bathrick

15 Chestnut Street
Rhinebeck, NY 12572

Area Variance – Side-Yard Variance – for construction to an existing structure and attached garage that does not comply with the minimum side setback (10 feet is required / proposed is 0.7 feet) (relief of 9’5”)

Chairman Colton Johnson, updated the ZBA members that this meeting was a continuation from the suspended meeting on March 15, 2018. Constance Bathrick submitted an amended variance application with specific details which were not present during the initial meeting and hearing. The ZBA has received an explanation from John Fenton, ZEO, in regards to his letter he had submitted for the record at the March 15 meeting, and his reasons for raising the non-conformity matter. A letter of support submitted to the Zoning Clerk from Ms. Bathrick’s neighbor, Jeff and Patty Strong at 11 Chestnut St, was read by the Chair, Colton Johnson into the record. The letter stated Mr. and Mrs. Strong support Ms. Bathrick’s proposal and encouraged the ZBA to do the same citing that many other properties near Ms. Bathrick’s property have fallen into disrepair and represent potential fire hazards to the Village. They believe Ms. Bathrick’s plans will only improve the house and property, and will not negatively impact Chestnut Street.

A motion was made by Al DeKrey, seconded by Judy Merritt to re-open the public hearing. All voted aye in favor.

Aye: 4 Nay: 0 Abstain: 0 The motion carried 4 to 0.

Ms. Rebecca Valk, Attorney, for Ms. Bathrick appeared before the ZBA, and presented her letter, and provided a copy for the record. She explained in her letter it addresses background information of Ms. Bathrick’s property, and an interpretation of the

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five factors the Zoning Board of Appeals considers when they are reviewing a request for variance. Ms. Valk's interpretation letter of the five factors as submitted;

“A. Character of the Neighborhood and Detriment to Nearby Properties

The Character of the neighborhood is generally defined by historic residences that avoids the block, flat-roof architectural style prominent around the 1960's. However, prior to this Property included a flat roof garage on the east side and a flat roof addition to the west side of the home, which makes the home an oddity in this neighborhood.

Ms. Bathrick's plan will remove these flat-roof features and return this home to its prior architectural glory. The renovations will be a great improvement to the appearance of the home.

The existing garage already sits 7 inches from the side lot line. It is not unusual in this neighborhood to receive variances for structures which are not in compliance with the one or more yard setbacks. Each time, this Board specifically found that an undesirable change to the neighborhood would not occur. (Various past examples of decisions by the Zoning Board of Appeals are listed.)

The variance will not be a detriment to the nearby properties. The neighboring property, 17 Chestnut Street, contains a narrow strip of yard of approximately 3 feet before reaching a retaining wall and then dropping down at least 3 feet in elevation to the driveway. Therefore, the yard located immediately next to the proposed garage is not usable yard, in that the residents of 17 Chestnut are unable to utilize that space in any meaningful way.

The garage is also shielded by trees on the neighboring property. While we acknowledge that those trees stay at the discretion of the neighboring property owner, given the narrow strip of yard is not useable, it appears likely that the trees would remain.

B. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance

The benefit sought by Ms. Bathrick is to rebuild her existing garage to allow for a two-car garage with storage.

Ms. Bathrick proposes to continue the existing east side of the garage an additional 10 feet. It is important to note that, per Section 120-53 of the Village of Rhinebeck Code, this nonconforming structure is allowed to be repaired and remain in its current location. It is important to note that an alternative that does not enable the

applicant to achieve the desired benefit is not a truly feasible alternative to obtaining an area variance.

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Removing the garage and reconstructing a new garage in a conforming location is also not feasible. Instead of rebuilding the existing garage, Ms. Bathrick would be required to remove the existing garage, construct an entirely new garage in the rear of the home in a location that is currently occupied by the septic system, and construct an extension of the existing driveway. We acknowledge that some increased cost will not render an alternative “infeasible” as a matter of law, the absolutely exorbitant cost increase that will occur from having to remove and relocate the garage is not a feasible alternative.

C. Substantiality of Variance Requested

Ms. Bathrick seeks an area variance to allow the extended garage to continue along the building line and remain 7 inches from the property line where 10 feet is required. The variance is in excess of 94% which appears substantial based upon the math. However, it is respectfully submitted, that what is “substantial” needs to be considered in the context of all facts. Ms. Bathrick seeks to add 10 feet to the rear of an existing garage to allow garage to accommodate two cars and storage. The additional 10 feet will not encroach into the side yard setback any more than the existing garage does. For these reasons, we would argue that the variance is not substantial.

D. Effect or Impact on Physical or Environmental Conditions in the Neighborhood

This factor of the balancing test addresses elements including natural environmental characteristics such as: drainage, flooding, and runoff; other topographical changes such as grading, trees, and vegetation; and traffic.

The construction of a single-family home, and any area variances needed for such construction, are generally Type II actions under the State Environmental Quality Review Act (“SEQRA”). Therefore, it can be presumed that rebuilding of and small extension to the existing garage, connected to the single-family home, will not result in any physical or environmental impacts.

E. Self-Creation of Difficulty

Generally, a hardship is considered self-created when the property is acquired subject to the restrictions from which relief is sought. However, the statute specifically provides that this will not necessarily preclude the granting of the variance and, therefore, the Board must consider this along with the other four factors. We submit that the

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improvement of the property by removing the existing garage and the construction of new garage in keeping with the architectural style of the neighborhood, outweighs any self-creation of the difficulty.

In conclusion, when balancing the five factors of the statutory balancing test for the requested variance, the benefit to the applicant outweighs any alleged detriment to the health, safety or welfare of the community. Therefore, each of the requested variance should be granted.”

Al DeKrey asked Ms. Valk what her position on increasing the non-conformity of a building. Ms. Valk stated the variance requests the increasing of the size of a non-conforming building even when the law states “the size and use of a non-conforming structure shall not be granted.” The Zoning Board of Appeals grants the relief to the applicant, and is the only governing body with the ability to do so in order for the structure to be allowable. Judy Merritt submitted a letter for the record that addresses under New State Building Code a ZBA should not grant unlimited expansion when dealing with such a large extension into the d setback, and her research of various sizes of different types of vehicles which would fit in a garage measured at 24 ft. x 24 ft. Based on the different vehicle types and their dimensions a 24 ft. x 24 ft. garage would accommodate Ms. Bathrick’s desired space for her vehicles and storage. Ms. Valk stated she could not address vehicle size having not done any research, but wanted to reiterate to the board the width of current garage is remaining, and the ZBA is not addressing width. Warren Temple Smith added as suggested the measurements of the garage one could not walk around the front or rear of the vehicle once inside the garage. The width of the garage is remaining to stay in original footprint, and the extra depth is for storage only, the skylights for natural light, and no fixed to the rafters since no finished floor will exist.

Ward Stanley asked about the necessity in having the extension extend so far back just for storage, and suggested just alter the garage so it conforms to the code and the desired need of space is met. Therefore, eliminating the request for a variance. Ms. Valk stated to conform with the zoning code solely as suggested would have significant impact to the garage, and the intended plans for the character of the house. She added the purpose of variances are there for the ZBA to relax the Zoning Code responsibly for applicants and their properties. Judy Merritt inquired if the ZBA was to grant the minimum variance allowed under New York State law is there an amount Ms. Bathrick could achieve to satisfy the desired amount of space for storage.

The Chair, Colton Johnson felt at this time the discussion proposed was better suited for after the public hearing was closed, and requested if there were any others present who wished to speak. Pat Strong, 11 Chestnut Street, agreed with Ms. Bathrick’s plans and the ZBA should approve her request, but wondered if Lou Tumolo was notified and thought he would want to weigh in again about this project being he is the beighbor on the other side. Colton Johnson confirmed all notifications had been given, and remembers Mr. Tumolo’s questions and comments from the previous meeting.

A motion was made by Ward Stanley to close the public hearing, seconded by Al DeKrey. All voted aye in favor.

Aye: 4 Nay: 0 Abstain: 0 The motion carried 4 to 0.

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Warren Temple Smith offered that the benefit sought by the applicant is to not be detriment to the neighbor, no neighbor has said it will be a detriment, and feels it is arbitrary to ask her to negotiate dimensions. Judy Merritt responded to Mr. Smith's comments as it should not be characterized that the ZBA's questions are arbitrary that the ZBA is looking for answers to aid in the consideration of detriments and benefits of the impact of the proposed plans. Warren Temple Smith responded the goal of the plan was to return the original symmetry back to the house, and at the same time provide Ms. Bathrick the storage space she needs. Referencing on the plans where original site plans had the property configured that by returning everything to be symmetrical the house and the garage the architectural character would not be lost. Judy Merritt asked about how much the neighbors could see if the garage was shortened from all sides and not just Mr. Tumolo and Ms. Strong' side. Warren Temple Smith explained some aspects Mr. Tumolo such as the one gable, but a lot of the symmetry would be seen from Ms. Strong's side.

Chairman Colton Johnson, read into the record the positive recommendation from the April 3rd Planning Board meeting with approved findings attached. He referred to David Miller, Planning Board Chair, if he had anything additional he wanted to comment. Mr. Miller explained how he felt if a neighbor to neighbor agreement was established that would have been reasonable enough, but other Planning Board members felt that has failed in the past. That is why the request for an easement be a condition of approval was present in the Planning Board's findings. Chair, Colton Johnson, referenced from the plans that from Mr. Tumolo's side it seems it would be a more aesthetically pleasing view of the gabled roof which would be featured with the created roof, and the 10 ft. extension would be more to the back of the property. Al DeKrey believes the ZBA cannot grant or make a condition of approval an easement that the action is solely a neighbor to neighbor matter. Judy Merritt added she did not agree with the easement being made part of the Planning Board's findings. Easements as very serious especially if one property is sold, and the more appropriate action is an agreement between neighbors. Al DeKrey commented he viewed the proposal as modest, and agreed it would be an improvement to how the house and property is at present. Adding the ZBA's approach may have been different if this was new construction on a vacant lot. The extension to the garage will not be visible from the street, and in the past the ZBA has approved variances for non-conforming structures being built right up to the property line.

A motion was made by Al DeKrey to approve the variance as requested, seconded by Ward Stanley.

Judy Merritt requested that before the board voted to review the previous variances the ZBA had approved in the past. Since, if approved, this variance would be the largest at 7.5 ft. Also it is needed to determine the definition of substantial, and it is unfair to the ZBA without some discussion on this topic. It is also unfair that the applicant to characterize past approvals and past practice from 2012 to the present as decisive examples when the ZBA has never had a request of this size. Al DeKrey asked Judy Merritt is those past examples consisted of new construction or existing buildings. Judy Merritt explained some of the variances she referenced were additions and some existing buildings. Ms. Valk inferred that any new facts presented need to be submitted to the applicant's counsel prior to the hearing. Judy Merritt explained these were not new these were previously approved, and located at 30 Oak Street and 62 Livingston Street. Al

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DeKrey conveyed that the board in each case judged each one by their merit, and the board had done a good job as each case had been submitted. The Village consists of big and small encroachments. Since the neighbors have no objections and support the application it is evident the board should move forward. Chairman Colton Johnson eluded to the question of precedence which has been a part of many discussions when dealing with the code. That before there ever was an approved zoning code violations frequently occurred, and this application is an attempt to correct those errors by returning the property and house to reflect the character of the neighborhood. Ward Stanley called the motion to question.

Aye: 4 Nay: 0 Abstain: 0 The motion carried 4 to 0.

Chairman Colton Johnson, Judy Merritt, Al DeKrey, Ward Stanley discussed and organized the five factors considered to grant the variance, and are as follows:

1. An undesirable change in the character of the neighborhood or detriment to nearby properties will not be created by the granting of the variance. The proposed application to restore the house to its historical appearance will be an improvement and in keeping with the other historic house on Chestnut Street, a registered historic district.
2. The benefit sought by the applicant cannot be achieved by some feasible method other than an area variance (the septic system is located in the backyard and the applicant is opposed to relocating it).
3. The requested variance is not substantial because the owner has the option to propose to use 25% of lot coverage and construct something that totals 8,000 sf. on the lot, but she is choosing to use the same footprint of the garage, but as the variance requests extending it 10' feet more to the rear.
4. The variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or district.
5. The alleged difficulty was self-created.

A motion was made by Ward Stanley, seconded by Judy Merritt to adjourn. All voted aye in favor.

Aye: 4 Nay: 0 Abstain: 0 The motion carried 4 to 0.

Respectfully Submitted; Ryan Dowden, Zoning Board of Appeals Clerk (5/25/18)

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