

ZONING BOARD OF APPEALS
TOWN OF LLOYD
Minutes

Thursday, May 26, 2020

Meeting via Webex

CALL TO ORDER TIME: 7:00 PM

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS: GENERAL, NO SMOKING, LOCATION OF FIRE EXITS, ROOM CAPACITY IS 49, PURSUANT TO NYS FIRE SAFETY REGULATIONS. PLEASE TURN OFF ALL CELL PHONES.

Chairman John Litts, Russell Gilmore, Paul Garguilo, Alan Hartman, William Brown in attendance, along with David Barton and ZBA attorney Paul Van Cott.

PUBLIC HEARING

Fanelli, John, 26 Gabriety Road, SBL# 95.4-2-26.210 in A Zone. (1.97 acres)

John Fanelli, 26 Gabriety Road, Highland NY (#95.4-2-26.210) is seeking residential area variances for: (1) an accessory building in the front yard; (2) a substandard-sized lot for an accessory apartment; (3) an accessory building within the side-yard setback; (4) a principal building within the side-yard setback; and (5) a covered porch in the side-yard setback.

Applicant's new submissions on February 27, 2020 and May 26, 2020, Planning Board memorandum to ZBA dated May 22, 2020; Comment email from Stacey Secor/Fanelli dated May 26, 2020; Comment email and photos from Paul Lahey dated May 15, 2020; Comment letter from William Meltzer dated May 5, 2020.

John L.invites the applicant to speak.

Rebecca Falk, attorney for Fanelli: Indicated a modification was submitted for side yard relief request. Applicant had reached out to neighbors concerning that side yard relief request. Valk stated that in an effort to show good faith, the applicant has withdrawn the request related to the porch which would have encroached further into the side yard setback requirements. The modification now seeks to only legalize the new home in relation to its encroachment into the side yard setback requirement. Valk reminded the Board that the new home was constructed last year, on a foundation with a basement, and incorrectly placed in relation to the maps submitted to the Building Department which showed a 35 foot setback; instead the home was placed 5 feet encroached into the setback side yard (30 feet).

Valk reminded the board of the previous submission that the encroachment would be minor, and that the property boundary in question is bordered by two flag lot driveways. Valk argued that therefore there is 50 feet before another residential type property.

Valk argues that there is no way to remedy the location of the home. Also argues that there is no or little impact on the neighborhood nor environmental elements.

John L: Asked Valk to address the existing structure.

Valk : reminded the board that the applicant requires three variances in order to proceed to the Planning Board for a Special Use Permit to use the existing structure as an accessory apartment. #1: substandard sized lot. The lot must be the minimum sized lot for the zone to apply for an accessory apartment in the A zone (2 acres zoning). The lot is slightly under that minimum 2 acres. #2 The structure is in the front yard. The code does not allow accessory structures in the front yard. #3 The total side yard setback for structures does not comply with the 100' side yard.

Valk reviewed the balance tests/impacts of the three variances above: the lot size issue was only 0.03 acres of relief requested, therefore little impact; the use as an accessory structure was an allowed use and that variances were solely in the ZBA's hands; the now accessory structure had been in existence since 1938, therefore sideyard issues moot, due to the existence of the building for such a length of time; noted that the applicant disputes that he was informed that the smaller structure would have to be demolished when the building permit was issued; reminded the Board that no indication on the Building Permit that the smaller house would have to be removed; contended that no significant impacts would result if the variances were approved; reminded Board that self-created hardship cannot preclude the issuance of a variance; noted that requested relief is small, due to age of existing structure, and no detrimental impact to the neighborhood will occur.

Paul VC: reminded Board that this is an area variance review, not a use variance. The use is relegated to the Planning Board's review for SUP.

Mr Paul Lahey, representing Mr. Cordovano, neighboring property owner: letter and photos submitted to the Board, requested that it become part of the record. Argued that he disagreed with the procedure of reviewing for area variances. Suggested instead that the application should, in fact, be a use variance, due to there being two single family homes on one parcel, which is prohibited.

(audio issues)

Paul VC responded that the Board is reviewing the application as area variances. The Planning Board will review the appropriate nature of the use during the SUP process, if it gets there.

(audio issues)

Mr. Bill Meltzer: neighbor: asked if the size of the accessory structure (max 650 sq ft) asked if the ZBA or PB had authority to say that accessory apartment is oversized.

Paul VC responded that the PB had authority over size, (audio issues) Paul stated that some of the issues brought up during public comment are precisely the types of things that the Planning Board would look at during their SUP review, if the ZBA approves the area variances.

Valk stated that the applicant would be willing to make structural changes to the accessory building to comply with the zoning code requirements for accessory structures.

Meltzer: stated that he has no issue with the 5 foot encroachment toward the shared drive/ROW/flag pole.

Kyle, 24 Gabriety Road: offered support of the accessory apartment structure and new house. Does not feel that the situation has changed the nature of the neighborhood negatively.

Meltzer: letter to become part of the record.

Al Hartman: joined meeting

Mark Reynolds: asked about PB reply to the ZBA. PB did not support the variances requested.

Chairman Litts said the Board received the letter from the PB and would take it under advisement.

Debbie Finnelli, neighbor: offered support to the application, but did not understand why the building permit was issued, suggested that they would be most impacted and they have no issues with the Fanelli application.

Mark Reynolds: asked about the building permit being issued, Anthony Giangrasso remarked that he understood that Mr Fanelli was informed that the structure would have to be removed.

John L.: will leave the public hearing open till the next meeting.

Possible resolution to be crafted for the next meeting: Board will go variance by variance :

Front yard accessory structure variance

Undesirable change:

Russell Gilmore: is an undesirable change, due to the zoning code stating that an accessory structure will not be located in a front yard. Paul Garguilo.: is too detrimental, overkill, and would not approve of the accessory structure in the front yard; William Brown.: (audio issues); Alan Hartman: house has been there for 50 years, doesn't feel it is detrimental, possible further shrubs to hide, but might be grandfathered in;

Russ G.: visited site several times: this is the only house with two structures like this. The law was written the way it is for a reason. The variance relief argument doesn't satisfy him. Would be a detriment to the neighborhood.

Paul G: no structures in the front yard. This case is too blatant, is out of character with the intent of the code and is too great a relief to allow a variance. He is a no on the project.

Bill B: (audio issues).

John L.: doesn't feel that this would set a precedent, as each case is looked at individually.

Alan H.: nature of the neighborhood: is a varied type neighborhood, multiple types of structures

Can the applicant achieve desired result without a variance?

John L. does not believe so.

Is the requested variance substantial?

John L. reiterated Board's feeling that it is substantial. Reminded of Paul G's contention that the accessory building is very much in the front yard. Therefore the ZBA is unable to find a negotiated space for structure to go, as it already exists.

Will the variance impact the neighborhood?

John L.: Environmentally no, but the physical impact is negative.

Is the difficulty self created?

John L: Yes, with the caveat that the building permit was issued in error.

Paul VC, Board must weigh the benefit to the applicant versus the impact to the health safety and welfare of the public. Does the Board feel that the balancing test, that the benefit to the applicant outweigh the detriment to the community?

Straw poll for front yard accessory structure variance: Russ G, no; Paul G, no; Bill Brown, yes; Alan H, yes; John L, no.

John L. directs Paul VanCott to craft a resolution for ZBA consideration prior to next meeting

Side yard variance relief for accessory structure: 91.5 feet, code requires 100 feet.

Russ H. asked if the Board is a "no" for the variance, why vote on the side yard relief for accessory structure? Paul VC responded that the Board should review what has been applied for. Discussion ensued concerning relief.

Russ H.: age of building important, therefore relief should be granted (would consider)

Paul G: wait until structure in front yard issue is resolved.

Bill B: (audio issues)

Alan H: 8.5 foot relief is miniscule, should be granted.

John L: not an issue in normal circumstances

Discussion on additional balance tests points, agreement that there were no detrimental points to consider.

Straw poll for 8.5 feet: Russ H yes; Paul G yes; Bill B yes; Alan H yes; John L yes

Accessory Structure on substandard sized lot 0.03 acres

No detriment per John L; Russ G agrees totally, preexisting lot;
Any other option? John L: no; board agrees
Substantial? John L: no, board agrees
Adverse effect? John L: no, board agrees
Self Created? John L: no, board agrees

Straw poll for 0.03 acres: Russ L yes, Paul G yes, Bill B, yes, Alan H yes, John L yes

Side yard variance for new structure (30 foot actual, 35 required)

Detriment? John L no, 5 feet is insubstantial, 50 foot strip to the side are driveways. Paul G has no problem with this relief. Russ G is minimal request, is ok with the request; Bill B is no problem, Alan H, miniscule relief, is ok with the relief

Detriment? None
Other option? No, structure already built?
Substantial? No
Adverse effect? No
Self Created? Yes.

John L suggested adding language about removing the existing older structure in the resolution: Paul VC: ZBA has authority to impose conditions during the granting of a variance: Paul VC suggested a reasonable time frame.

John L queried the board about the 1938 structure being removed while granting the 5 yard relief. Russ G thinks the two issues should be separated. Russ G not in favor of language. Paul G. give the 5 feet no restrictions *see below. Bill B (audio issues) should be some restrictions, 6 months to a year for removal of 1938 structure. Alan H no restrictions. Paul G. later changed his position, 6 months to a year. John L. in favor of restrictions

Straw poll for removing 1938 building within 12 months: Russ G. no, Paul G. yes, Bill B yes, Alan H no, John L yes.

Straw poll on 5 foot relief: Russ G yes, Paul G yes, Bill B yes, Alan H, yes, John L yes

Board will extend the public hearing till next meeting June 11th, 2020.

Zal, Isaac, Austin Drive, SBL# 95.2-7-7.600 in A zone (34.40 acres)

Applicant is seeking a variance for an accessory structure in the front yard. Applicant has simultaneous application for a Special Use Permit before the Planning Board. Applicant not in attendance, adjourned until next month.

Motion to adjourn. Paul G, Alan H seconded. unanimous