

Chairperson Pam Knapp called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:01 PM. Members present: Tony Laga, Gerald Champagne, Jim Hinz, Pam Knapp and Michael Bagne. Town employee present: Phil Williamson, Code Enforcement Officer and Denise Munson, Town Attorney.

Chairperson Knapp asked if there were any corrections to the minutes of the May 5, 2008 meeting. There were no corrections. Motion carried.

- 1. Application of Fred Philbrick for property located at 4583 Ontario Center Road for area variance to allow garage that encroaches 3 ft. on the side setback requirement of 15 ft. Applicant seeks relief from Walworth Town Code Section §180-10(F)(2). Property is zoned: RR-1.**

Chairperson Knapp opened the public hearing.

Fred Philbrick, owner of the property was present. Drawings were presented to the Board that showed a two-bay garage with the garage doors on the driveway entrance with a single door off the back.

Chairperson Knapp questioned, "How far is the proposed garage from the rear property line?" Mr. Philbrick responded, "approximately 50 feet."

Chairperson Knapp also questioned if the side property in question had pin markings. Mr. Philbrick responded that there were pins.

Tony Laga questioned whether he could move the garage over? Mr. Philbrick explained that if he were to move the garage over it would be behind the house and difficult to drive into the second bay of the garage. He further explained that because of the location of the pool and rock garden he would not be able to move the garage further back on the property.

Chairperson Knapp read a note from the neighbors, Edward and Rosemary Bortle, dated June 2, 2008, that stated, "We are in complete agreement that Fred & Judy Philbrick building their new garage 12 feet from our property."

Tony Laga asked if he would be extending the driveway? Mr. Philbrick said that the present driveway was in poor condition and when the new garage is built he would be putting in a new driveway from the road to the garage.

There were no comments from the public.

Chairperson Knapp closed the public hearing.

Tony Laga made the following motion, seconded by Michael Bagne to approve the application of Fred Philbrick for an area variance.

I move, after considering the benefit to the applicants and the detriment to the health, safety, and general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because there are other properties in the neighborhood with similar characteristics.
2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue because the placement of the existing house, driveway and in-ground pool does not allow for the building to be constructed in another location.
3. The area variance is not substantial because it is only 20% of the side setback requirement.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because there are other properties with similar characteristics.
5. The alleged difficulty was self-created; however, because the applicant could have opted for a single-bay garage that would not have required a variance.

And further finding the variance is the minimum variance that it deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

This Board finds that the findings it has made as set forth in factors 1, 2, 3 and 4 outweigh the finding it has made as set forth in factor 5 and that substantial emphasis be given to factors 1, 2, 3 and 4 and by reason thereof, the Board concludes that the variance be granted since the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community.

There are no conditions placed on the variance.

Roll Vote:        Tony Laga  
                      Jerry Champagne  
                      Pam Knapp  
                      Jim Hinz  
                      Michael Bagne

Motion carried.

A question was raised as to the kinds of restrictions or conditions that can be imposed upon the granting of a variance; in particular whether or not requiring a fence or buffer to shield neighboring properties from viewing wood piles or other materials stored outside of buildings a reasonable condition? Would these types of restrictions be enforceable? Discussion ensued and Denise Munson, Town Attorney stated that she would research the matter and get back to the Board.

**2. Application of Michael Macaluso for property located at 299 Jacobs Road, Lot 2 of Ratcliffe Subdivision to allow a garage that is less than the 350 square foot requirement. Applicant seeks relief from Walworth Town Code Section §180-35(G)(1). Property is zoned: RR-1.**

Chairperson Knapp opened the public hearing.

Michael Macaluso, 621 Plank Road was present and explained that he is the owner of the property at 299 Jacobs Road and intends to construct a modular home. He would like to be able to use the existing building on the property as a detached garage, in lieu of an attached garage. The existing building is 326 square feet that is less than the 350 square feet requirement for an attached garage.

Phil Williamson read from the Town Code Section §180.35 G(1) (2) and (3):

- (1) At the same time each single-family home is built, an attached garage containing a minimum of 350 square feet must be constructed.
- (2) At the same time each two family home is built, an attached garage containing a minimum of 250 square feet per living unit must be constructed. The Planning Board, at the time of approval of the site plan, may approve a detached garage in place of an attached garage.
- (3) At the same time each multifamily living unit is built, a garage or carport containing 250 square feet for each living unit must be constructed as a part of the building in which the living unit is located or adjacent thereto.

Mr. Williamson explained that this part of the code shows some inconsistencies and is in the process of being reviewed by the Town and the Town Attorney for possible revision.

The Planning Board at the April 23, 2008 worksession had no problem allowing the structure to be used as a detached garage, and referred it to the Zoning Board of Appeals for decision on the variance on the square footage.

Jerry Champagne questioned if there was a permit issued for the building? Phil Williamson stated that whether or not a permit was issued, was not pertinent to the issue before the Board. The only issue before the Board was whether or not to grant a variance for the square footage of the building.

Tony Laga questioned, "Is there vertical and horizontal clearance enough to drive a vehicle into the building?" Mr. Macaluso responded, "Yes". "What is the floor?" Mr. Macaluso answered, "at this time it is crushed stone." Phil Williamson stated that if the variance is granted, the building code requires that the garage would need to have a poured cement floor. Phil Williamson further stated that before a certificate of occupancy is granted, the garage would have to meet all state building code requirements.

Tony Laga questioned how far the structure will be from the house? Mr. Macaluso responded that it would be about 40 feet.

There were no comments from the public.

Chairperson Knapp closed the public hearing.

Tony Laga made the following motion, seconded by Michael Bagne to approve the application of Michael Macaluso for a variance to allow a garage that is less than the 350-foot requirement.

I move, after considering the benefit to the applicants and the detriment to the health, safety, and general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because there are other properties in the neighborhood with similar characteristics.
2. The benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue because the applicant could opt to build a garage that meets the size requirement or add onto the existing garage to meet the size requirement.
3. The area variance is not substantial because it is only a small percentage of the total size requirement.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because there are other properties with similar characteristics and the structure does not encroach on existing setbacks.
5. The alleged difficulty was not self-created; however, because the building is a pre-existing structure and the variance requested is for use as a detached garage with a minimum deviation from the required 350 sq. ft. for an attached garage.

And further finding the variance is the minimum variance that it deems necessary and adequate and at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

This Board finds that the findings it has made as set forth in factors 1, 3, 4 and 5 outweigh the finding it has made as set forth in factor 2 and that substantial emphasis be given to factors 1, 3, 4 and 5 and by reason thereof, the Board concludes that the variance be granted since the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community.

There are no conditions placed on the variance.

Roll Vote:        Tony Laga  
                       Jerry Champagne  
                       Pam Knapp  
                       Jim Hinz  
                       Michael Bagne

Motion carried.

**3. Application of Cory Smith for property located at 344 Haley Road for area variance to allow addition that encroaches on the side setback requirement of 15 ft. Applicant seeks relief from Walworth Town Code Section §180-10(F)(2). Property is zoned: RR-1.**

Chairperson Knapp opened the public hearing.

Cory Smith owner of the property was present to answer questions of the board. Mr. Smith explained that he would like to construct a 20 ft. x 15 ft. bedroom addition to the back of his house that encroaches 3 ft. into the 15 ft. side setback. The proposed addition would be aligned with the existing house and not visible from the road. A rough sketch of the proposed addition and its location on the property was presented to the Board.

Mr. Smith further explained that the existing house is 14 feet, 8 inches from the property line and encroaches 4 inches into the side setback. He had spoken to Norm Druschel, Building Inspector who suggested that he request a variance of 3 feet instead of the 1 foot he initially was considering because of the layout of the existing house not being parallel to the property line.

Chairperson Knapp asked if the property was pinned? Cory Smith answered, "Yes".

The public has no comment.

Chairperson Knapp closed the public hearing.

Michael Bagne made a motion, seconded by Jim Hinz to approve the application of Cory Smith for an area variance.

I move, after considering the benefit to the applicants and the detriment to the health, safety and general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3b) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because the addition is in the back of the house and aligned with the existing house, and is not visible from the road.
2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue because the proposed addition is constructed as to maintain the aesthetics of the house.
3. The 3 ft. area variance is not substantial because it is only 20% of the side setback requirement.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because the proposed addition cannot be seen from the road and does not change the physical curb appeal of the property.
5. The alleged difficulty was not self-created; however, because the existing house does not meet the side setback requirement and the house placement is not parallel to the property line.

And further finding the variance is the minimum variance that it deems necessary and adequate at the same time preserves and protects the character of the neighborhood and the health, safety and welfare of the community.

This Board finds that the findings it has made as set forth in factors 1, 2, 3, 4 and 5 outweigh all other findings and by reason thereof, the Board concludes that the variance be granted since the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community.

There are no conditions placed on the variance.

Roll Vote:        Tony Laga  
                      Jerry Champagne  
                      Pam Knapp  
                      Jim Hinz  
                      Michael Bagne

Motion carried.

Tony Laga brought up a concern about the approval of the minutes of the May 5, 2008 meeting. Discussion ensued about the conditions imposed on the granting of the area variance for property at 3755 Deer Meadow Run. The Board concurred that the conditions and the minutes should remain as written.

Chairperson Knapp adjourned the meeting at 8:40 P.M.

Respectfully submitted,

Gail Rutkowski  
Zoning Board Clerk

