

Regular Meeting of the Great Valley Planning Board
Zoning Board of Appeals
April 14, 2022
corrected May 11, 2022

Present: Chris Schena (chairperson)
Amy DeTine
Al Puszc
Jeff Ramsten
Steve Ward

Others: Dan Brown
Becky Kruszynski
Rich Rinko
Mr. Peter Sorgi
Dan Bialaszewski
LeighAnn Bialaszewski
Daniel Hart
Kelly Hart
Kathy Nerogic
Eric Hund
Don Wild

The Zoning Board of Appeals meeting was opened by Chris at 7PM.

Mr. Peter Sorgi, town attorney, stated that the board would be voting on an area variance for 3893 Ellicott St. He stated that there would be no remarks from either side, that the public hearing is closed, and that the board can question the attendees. He also told the board that they were to determine an area variance request and in doing so take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood by such grant.

Mr. Sorgi was asked about the building already being built and about the noise and disruption complaints that were brought up in the public hearing. He told the board to decide as if the building wasn't built and that noise and disruptions had no bearing on the board because there could be noise with or without the building and people can be loud on a property line.. The overall test is does the benefit outweigh the detriment.

The board went through each of the 5 criteria for granting an area variance (section 7.3B of the zoning law).

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

- the structure is 37" from property line
- if the character matches the environment where it was built does it blend into the neighborhood

- are there other properties in the neighborhood with setbacks less than 15' or non-conforming issues. It appears that the property below has setbacks that don't comply and the property above complies with the setbacks. The lots are narrow.
- the applicant's attorney stated that the non-conformity was extended
- neighbors say there is more encroachment
- a non-conforming structure can't be added onto without a variance
- setbacks are for drainage issues
- the survey shows the corners go from 5'6" to 3'1"
- can't fault the homeowner for the way the property runs
- could be a detriment because it could lead to others doing the same thing but Mr. Sorgi stated that approval or denial is not a precedent

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

- there was no other way to expand the garage but a separate building could have been located some place else in the yard
- applicant was asked if the deck could have had 2 sides and a roof added to it. Applicant responded that since they went from a single wide home to a double wide home the deck is no longer there and the septic tank was under the deck.
- applicant was asked if they could have added on to the end of the house and they responded that there isn't enough room
- applicant was asked if they could have built behind the pool and they said no because of the leach bed
- applicant was asked why they built where they did and they responded that they wanted to build off the garage and they wanted privacy so they partially enclosed it and it is next to the house
- the lot is deep and the building could have been put on the other side of the pool away from the septic and leach bed
- the back wall is still on the original garage and there is no access from the garage to the addition.
- the new area is used for privacy and storage in the winter

3. whether the requested area variance is substantial.

- the addition is 37" off the property line which is an 80% variance
- the size of the non-conforming building increased by 100%
- compared to what **was** there it is not substantial because it was already there but looking at what **is** there now it is substantial
- arguments for both substantial and non-substantial but the variance is substantial
- lots are narrow

4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district

- Type II action
- the new part is not used as a garage and the storage shed could be put someplace else on the property but it also has the benefit of privacy for the pool

- encroachment affects the surrounding property
- Daniel Hart said runoff onto his property is a concern. When fill was brought in the elevation changed.
- applicant said he brought in about 8 tons of gravel to put boards on and not fill
- there are no storm drains or eaves troughs and Daniel Hart said eaves troughs won't do any good with snow because it slides off the roof onto his property
- water in neighbor's yard that wasn't there before
- could make a condition to address drainage issues within a set period of time. If not done then it becomes null and void.
- applicant said that his yard and the neighbors on either side of him slope down from front to back and then back up so there is a low point through the 3 properties

5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

- the difficulty was self-created
- there was no building permit but applicant built anyway
- applicant should have come to the board and gone through the proper process so there could have been a better out come
- Rich stated the applicant did apply for a permit but he didn't send them to the board. He also stated that he should have gotten back to them.
- Mr. Sorgi stated that it is the obligation of the applicant to know the rules
- silence doesn't mean approval

The board summarized their findings.

1. There is no change in the character of the neighborhood. Runoff water is a detriment. The topography changed but it could possibly be addressed with conditions. A bad situation being made worse.
2. Privacy and storage could have been achieved another way. They could have done a free standing building on the other side of the pool and installed a privacy fence.
3. The existing building was non-conforming with a 4' setback. Now the the setback is 25% compared to what they started with but it is 80% compared to what the setback should be. The numbers are substantial but is it a negative impact.
4. There are drainage problems. Could be a condition to make water drain on to applicant's property but eves troughs won't be enough. Adverse effect on neighborhood because the topography changed.
5. Partially self-created because of no building permit and they didn't come to the zoning board of appeals. There could have been a different out come long ago.

Does the benefit outweigh the detriment? Mr. Sorgi stated that drainage is a concern and partying can't be addressed. The structure is used for entertainment, privacy, and storage. There is a low point thru all 3 properties which goes from front to back with bank run gravel under ground which doesn't naturally flow. There are no gutters on the metal roof and with the overhang there is less than 37" to the property line. If the overall benefits are greater then approve if benefits are not greater then deny. Drainage would have to pull water to the center

of the applicant's property and away from the neighbors. Daniel Hart stated that a ladder can't be put up to the roof without being on his property.

Steve made a motion to approve the area variance for a garage extension at 3893 Ellicott St. with the following conditions:

1. Require that the applicant attach a roof drainage system on the north side of the building that will take water away from the property line a minimum of 15' such that all drainage water will remain on the applicant's property. The plan will require approval by both the town engineer and the CEO.
2. The applicant will also be required to install snow guards on the north side of the building in a manner approved by the town engineer and the CEO.

There was a 2nd by Amy.

Roll call vote indicated:

Amy - YES

Jeff - NO

Chris - NO

Steve - YES

Al - NO

Motion **denied**.

Al made a motion to deny the area variance with a 2nd by Jeff.

Roll call vote indicated:

Amy - NO,

Jeff - YES,

Chris - YES,

Steve - NO,

Al - YES.

Motion **passed**.

Chris will do Notice of Denial.

Rich will do Notice of Violation.

A motion to close the Zoning Board of Appeals meeting at 8:40 PM was made by Amy with a 2nd by Al. All in favor.

The Planning Board meeting was opened by Chris with the Pledge of Allegiance.

Eric Hund came to the board about doing a subdivision on his property at 5965 Rt. 98 (tax map no. 65.003-2-1). The original survey showed a building was 13'4" from the property line. The survey was redone and it is now 15'3" from the property line. The property is 16.996A and will be divided into 14.521A and 2.474A. The 14.521 will be combined with a parcel owned by Don Wild so it will meet the minimum width of 80'. A motion to determine a minor subdivision was made by Jeff with a 2nd by Amy. All in favor. The SEQR was completed by the board. The board determined this to be an unlisted action. A motion to accept the SEQR with a negative declaration was made by Jeff with a 2nd by Steve. All in favor. A motion to approve the minor subdivision with a condition of combining the 2 lots was made by Amy with a 2nd by Chris. All in favor.

Chris will do Notice of Decision.

Chris stated that Pat Martin is asking the board to look into short term rentals. Mr. Sorgi said it is time to look into the zoning code but the comprehensive plan should be reviewed first. There will be a work session for the planning board, Dan Brown, and Becky Kruszynski on April 27, 2022 at 6 PM.

Kathy Nerogic asked about the state property code which states that you can't put water on another person's land. It was suggested that she look online at NYS property maintenance code. She is also questioning the coin shop/convenience store at 4269 Killbuck Rd. which was bought by Gernatts . She manages the land across the road at 4270 Killbuck Rd. She questions if there is suspicious behavior at the shop/store. The windows are soaped and there is comings and goings so she stood on the road and took pictures of the cars that were there. She was asked to leave so she called the cops. The cops asked her what was in there and she had to tell them that she didn't know. She asked if she has the right to know what it is being used for. She was told it is being used for gaming night for seniors.

Chris thanked Steve and the board for doing a great job in his absence.

Steve moved to adjourn at 9:20 PM with a 2nd by Al. All in favor.