Board of Zoning Appeals Public Hearing
May 4, 2020

Chairman Stanard called the Board of Zoning Appeals Meeting to order at 6:00 pm. He said that, although this will be a virtual meeting, all attempts will be made to replicate as much as possible a regular meeting. Mr. Stanard made several suggestions about meeting protocol and noted that Law Director Hunt would individually administer the oath to anyone wishing to speak at each of this evening's public hearings.

ROLL CALL:

PRESENT: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-Vanderhart, Mr. Stanard
ABSENT: None

Others present: R Todd Hunt, Legal Counsel; Jeff Filarski, Village Engineer; Paul Kowalczyk, Building Official; Theresa Dean, Assistant Clerk

Mrs. Cooper made a motion seconded by Mrs. Kozminski-VanderHart to approve the minutes from the March 2, 2020 Board of Zoning Appeals Meeting.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: NONE
MOTION CARRIED

Nasseri Residence - Area Variance, Attached Garage (tabled March 2, 2020)
3829 Ellendale Road

Mr. Bolek made a motion seconded by Mayor Fritz to remove this variance request from the table.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: None
MOTION CARRIED

Mr. Stanard reminded the Board that additional evidence in support of the variance was requested at the March meeting. This included photographs, other possible design considerations, and evidence that a variance of this size and scope was not exceptionally unusual in this neighborhood.

Mr. Stanard opened the Public Hearing at 6:05 pm.

Nicole Davis, the architect for the project, was in attendance. Mr. Hunt confirmed with Ms. Davis that she was placed under oath at the March meeting and reminded her that she is still under oath.

Ms. Davis said her clients reviewed the design as previously submitted and also looked at a suggested layouts for a straight-across set up with a front-facing garage and a variation that would have angled the addition at about twenty degrees. They decided that those options would not satisfy the design intent they wanted. Making the home more lineal would require significantly more concrete to connect to the new garage, which the owners do not want.

Ms. Davis said they also did a study on Ellendale and Wiltshire to identify other homes that do not satisfy the 70-foot front setback requirement and highlighted those having a greater encroachment than what the applicant is requesting. Mr. Kowalczyk displayed the GIS study and aerial photos as well as the two alternate elevations that were considered. Ms. Davis said that 11 out of 34 homes on Ellendale do not satisfy the 70-foot setback requirement; four of those are closer to the road that the requested setback for the garage addition. On Wiltshire, nine out of 40 homes do not meet the 70-foot setback, with six being closer than the requested variance.

Because Mr. Nasseri had difficulties unmuting his microphone for the meeting, Ms. Davis called him to see if he wished to offer additional comment. She said he just wished to reiterate they do not want to increase the amount of concrete that a linear addition would require, as they already have a large circular drive. Mr. Stanard confirmed that this had to do with the square footage of concrete, not the cost.

As there was no one else was present who wished to comment. Mr. Stanard closed the Public Hearing at 6:19 pm.

Mrs. Kozminski-VanderHart asked to review the original elevation, showing the garage addition turned 90-degrees to the main house. Ms. Davis confirmed that no changes had been made to that elevation since the March meeting.

Mr. Bolek thanked the applicants for doing the additional research. He noted that there is a significant amount of property to the north that raised questions as to why the addition could not be located to the rear. The additional information provided is helpful in determining context for the design and the variance request. He asked if any consideration had been given to removing the existing driveway to allow for a rear addition and whether the existing garage to the right on the front elevation would remain. Ms. Davis said that there are future plans to incorporate the existing garage as part of the living quarters, which will result in the new addition being the only garage for the house.

Mr. Bolek said that even though a change to the far-right garage is a future plan, it would be nice to see that incorporated into the house itself. He said it is nice to not have garages face the street and, given that there is precedent in this neighborhood for structures not meeting the 70-foot front setback, this variance request is not unreasonable. He feels he now has enough background now to consider the variance.

Mr. Stanard echoed Mr. Bolek's sentiments.

Mrs. Cooper said she likes the original design best of the three considered. In looking at the layout of the other houses on Ellendale, she noted that surrounding houses are all set further forward than the applicant's house. She does not feel the addition would be as invasive as originally thought.

Mayor Fritz and Mr. Janke concurred.

Mr. Stanard asked Mr. Hunt to review the Findings of Fact. Mr. Hunt first commented that it was likely that at least some of the surrounding homes are legal non-conforming homes, in that they would be old enough to have been built before the 70-foot front setback was established in the Code and therefore would not have required variances.

Mr. Hunt went on to review the eleven factors to be considered with respect to area variances. He noted that some factors do not a support a variance while others do:

1. There are no special conditions and circumstances existing which are peculiar to the land or structures involved which would not be generally applicable to other lands or structures in the same zoning district. As has been shown, there are other properties with the same situation. The only special condition is the size of the property, as it includes two parcels.

2. The property in question will yield a reasonable return and there can be a beneficial use of the property without the variance, as it is being used for a viable and productive use currently.

3. The variance is not substantial and is probably the minimum necessary to make possible the reasonable use of this particular land based on the adjoining properties that have setbacks less than 70 feet; some of those will still have setbacks less than what will result after this garage is built.

4. The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer substantial detriment as a result of the variance since many of the properties in the neighborhood have front-yard setbacks of less than seventy feet. Mr. Hunt said he counted 20 having setbacks less than 70 feet. There are ten homes in the neighborhood with setbacks less than the 36-feet being requested, four on Ellendale alone out of 11 that have non-conforming setbacks.

5. The variance will not adversely affect the delivery of governmental services such as water, sewer, or trash pickup.

6. The property owner purchased the property with knowledge of the zoning restrictions because the Board needs to take into consideration constructive knowledge.

7. Special conditions or circumstances do not necessarily exist as a result of the actions of the owner. There are considerations for the layout of the current home inside and how that relates to adding a garage; there is also a greenhouse to the north of the property that would require the garage to be placed somewhere other than the back of the property.

8. It is not feasible or practical to add the garage behind the home based on factors discussed.

9. The spirit and intent behind the zoning requirement will be observed and substantial justice done by granting the variances based on the other non-conforming setbacks in the neighborhood.

10. The granting of the variance would not confer on the applicant any special privilege that is denied by this regulation to other lands or structures in this neighborhood, as has been shown. Approximately twenty-percent of the homes on Ellendale are non-conforming.

11. Enforcement of the provision of this code would deprive the applicant of rights commonly enjoyed by other properties in the same neighborhood, as has been shown by the evidence provided.

Mr. Hunt would add that consolidation of the two parcels should be placed as a condition of the variance if that has not already been accomplished and recorded with the County.

Mr. Stanard noted that the lot consolidation was approved at the March Planning Commission meeting.

Mr. Bolek made a motion seconded by Mr. Janke to approve the Findings of Fact.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: None
MOTION CARRIED

Mr. Bolek made a motion seconded by Mrs. Kozminski-VanderHart to approve a variance of 33 feet 1 inch at 3829 Ellendale for the construction of a garage addition, contingent upon consolidation of the two parcels.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: None
MOTION CARRIED

Valent Residence - Area Variance, Detached Garage
145 Mill Creek Lane

Mr. Stanard opened the Public Hearing at 6:40 pm.

Mr. Hunt administered the oath to homeowner David Valent and Diane Bija of New Creation Builders.

Mr. Valent thanked the members of the Board for their suggestions when this project was originally discussed at the March Planning Commission meeting. He reminded members that this project is proposed because the he wishes to convert the existing two-car garage to an in-law suite for his mother-in-law. As a result, he needs to construct a new detached garage large enough for their existing cars as well as to create storage for his mother-in-law's car and possessions. Mr. Valent hired an additional architect to incorporate suggestions such as the addition of dormers to make the new structure more closely match the house. The resulting revised plans are now being presented for review.

Mr. Stanard asked if there was something specific the applicant wanted to add about the need for the 200-foot variance request. Mr. Stanard said he recalls the applicant currently has two cars, will be adding another car immediately, and has children who will be driving in the future, so the request for a four-car garage is understandable. Mr. Valent said that is correct. He feels that building a smaller structure will set them up for failure in the future. In addition to the cars, they also have a yard tractor

and personal items that will be housed in the garage. The larger size allows them to create an attic space for storage of his mother-in-law's possessions.

As there was no one else who wished to comment, Mr. Stanard closed the public hearing at 6:50 pm.

Mr. Fritz confirmed with Mr. Kowalczyk that Village Architect Richard Kawalek was happier with this design than the original. Mr. Kowalczyk added that Mr. Kawalek still felt the garage was large at 30 by 40 feet but that the addition of the new dormers brings this design more in line with the existing house.

Neither Mr. Kowalczyk nor Mr. Filarski had any concerns about the proposed variance request.

Mrs. Cooper asked what the normal depth of a garage would be. Mr. Kowalczyk said a typical car space is 10 x 20. Mr. Bolek said that a two-car garage is generally 24 by 24 feet, which would be 576 square feet. Doubling that to create a four-car garage approaches the 1,200 square feet being requested, so this request makes sense mathematically.

Mr. Stanard said this is still a 20-percent increase in the square footage allowance for detached structures, but Mr. Bolek's point is well taken. Mr. Bolek added that having storage for yard equipment and personal items makes for a tidier yard.

Mr. Bolek asked if there was any feedback from neighbors in response to the Public Hearing notices sent out for this variance request. The Assistant Clerk replied that the Building Department did not receive any comments or requests to view the plans. Mr. Valent added anecdotally that he had spoken with neighbors on either side and both were overwhelmingly supportive. He said they were appreciative of the applicant's goal in creating the in-law as well as how this will help keep the yard tidy and all items stored behind closed doors.

At this time, Mr. Stanard asked Mr. Hunt to review the relevant Findings of Fact. Mr. Hunt reminded the Board that, as a general rule in zoning, one does not look at the personal practical difficulties an owner may have but rather the practical difficulties of the neighborhood as a whole.

1. Special conditions and circumstances do not exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district. However, an in-law suite is part of modern life at this time, so it is a legitimate consideration, if not one to rely on totally.

2. The property in question will yield a reasonable return and there can be a beneficial use of the property without a variance.

3. The variance is not substantial. It is a 20-percent increase in the allowable square footage but this two-acre lot, and this is the minimum necessary to make possible the reasonable use of the land or structures based on the applicant's predicament and situation.

4. The essential character of the neighborhood would not be substantially altered, and adjoining properties would not suffer substantial detriment as a result of the variance. Mr. Hunt feels it is telling that there was no opposition to this variance, and the applicant has testified that the neighbors are supportive of this garage.

5. The variance would not adversely affect the delivery of governmental services such as water, sewer or trash pickup.

6. The property owner purchased the property with at least constructive knowledge of the zoning restrictions.

7. Special conditions or circumstances do not necessarily exist as a result of the actions of the owner.

8. The property owner's predicament could be feasibly be obviated through some method other than a variance.

9. Based on the foregoing findings, the spirit and intent behind the zoning requirement will be observed and substantial justice done by granting a variance.

Mr. Hunt commented that the remaining factors were not applicable to this request.

Mr. Bolek made a motion seconded by Mr. Janke to approve the Findings of Fact.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: None
MOTION CARRIED

Mr. Bolek made a motion seconded by Mr. Janke to approve the 200 square foot variance for a detached garage at 145 Mill Creek Lane.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: None
MOTION CARRIED

As there were no other items for discussion, Mayor Fritz made a motion seconded by Mr. Bolek to adjourn the Board of Zoning Appeals meeting at 7:02 pm.

AYES: Mr. Bolek, Mrs. Cooper, Mayor Fritz, Mr. Janke, Mrs. Kozminski-VanderHart, Mr. Stanard
NAYES: None
MOTION CARRIED

Respectfully submitted,

Theresa Dean

Theresa Dean, Assistant Clerk