

ZBA MEETING – JULY 25, 2013 (Time Noted – 7:05 PM)

BRIAN AGNEW

7 FAIRVIEW LANE, NBGH
(83-2-10.2) R-1 ZONE

Applicant is seeking area variances for the maximum building coverage, maximum lot surface coverage and for increasing the degree of non-conformity of the front yard setback and rear yard setback to build an enclosed screened in porch on the residence.

Chairperson Cardone: Our next applicant Brian Agnew.

Ms. Gennarelli: This applicant sent out forty-one letters. All the mailings, publications and postings are in order.

Mr. Agnew: I'm accompanied tonight by my architect, Stephen Whelan.

Chairperson Cardone: And just for the record you have to identify yourself.

Mr. Agnew: Oh yes, I am Brian Agnew the property owner and I have brought my architect Steve Whelan and my builder Mike Brooks to answer technical questions. Before I start I want to point out that I was cautioned that I had an outstanding Violation and that might complicate the decision tonight so I have removed the shed that was on my property in violation of I can't remember which requirement. So I know Grace when you were there you saw that the shed had been removed...

Chairperson Cardone: Right.

Mr. Agnew: ...I'm not sure if everyone else knows that it was removed so I just wanted to point that out.

Chairperson Cardone: Okay, thank you.

Mr. Agnew: Sure.

Chairperson Cardone: Okay, someone should just state the request and...

Mr. Whelan: We're looking for four variances, one is for maximum building coverage, one is for maximum lot surface coverage and we are looking for increasing the degree of the non-conformity the front yard and the rear yard setback and this is all to enlarge an existing screened in porch.

Ms. Gennarelli: Excuse me could you just identify yourself to me for the record so I could...?

Mr. Whelan: Steve Whelan I am the architect.

Ms. Gennarelli: Whelan, okay thank you.

Chairperson Cardone: Do we have questions from the Board?

Mr. McKelvey: You're pretty well on the end of the street there, right? Your house is near the end of the street?

Mr. Agnew: Yes it's private road.

Mr. McKelvey: Yeah that's what I...

Mr. Agnew: There are two rows of trees that border the road and I own both of them and so if anything am planning to bolster the barrier that already exists. It's really, if you saw it...

Chairperson Cardone: Yes, yes.

Mr. Agnew: It's really neat.

Ms. Smith: Vegetation. So you're basically increasing by six...seven feet is it? The width?

Mr. Whelan: Yes give or take 7 feet we have...there's also going to be a fireplace on there...

Ms. Smith: I saw, yeah.

Mr. Whelan: ...so we're still working out the details of the fireplace but it'll all be...we're trying to get like the maximum that we can and we're probably going to end up backing it off just a little bit.

Ms. Smith: So the construction of the fireplace will be within the porch that you going to make 7 feet wider per se?

Mr. Whelan: It will be within...

Ms. Smith: It won't be another four or 5 feet outside of the a...the framing of the...the a porch?

Mr. Whelan: We are going to be using that 50 foot I believe it's either a front yard or a side yard setback that's going to be that's what's going to govern how far out we are going to go.

Ms. Smith: Okay.

Chairperson Cardone: And obviously this house was built before they had the Zoning regulations.

Mr. Agnew: Yes, because each and every room violates some...

Chairperson Cardone: It is in violation...that's right...

Mr. Agnew: But I love the house and a...

Chairperson Cardone: It's a nice location.

Mr. McKelvey: It is a nice location. Yes.

Ms. Smith: I was having a hard time finding the shed then I realized it was gone.

Mr. Agnew: I have Betty to thank for walking me through the process and for encouraging me to solve that problem before tonight's meeting, so thank you, Betty.

Chairperson Cardone: Do we have any other questions from the Board? Any questions or comments from the public? Do I have a motion to close the Public Hearing?

Mr. Masten: I'll make a motion.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:11PM)

ZBA MEETING – JULY 25, 2013 (Resumption for decision: 7:43 PM)

BRIAN AGNEW

7 FAIRVIEW LANE, NBGH
(83-2-10.2) R-1 ZONE

Applicant is seeking area variances for the maximum building coverage, maximum lot surface coverage and for increasing the degree of non-conformity of the front yard setback and rear yard setback to build an enclosed screened in porch on the residence.

Chairperson Cardone: On the application of Brian Agnew seeking area variances for the maximum building coverage, maximum lot surface coverage and for increasing the degree of non-conformity of the front yard setback and the rear yard setback to build an enclosed screened porch on the residence. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Smith: The applicant did remove the existing shed. That is such an older neighborhood where the lots are very unique in themselves. It's certainly going to look beautiful.

Mr. McKelvey: It is a nice piece of property.

Ms. Smith: Very pretty, yes.

Mr. McKelvey: It will improve the property.

Chairperson Cardone: Do I have a motion for approval?

Ms. Gennarelli: Did you want to make a comment? Did you have a question?

Mr. Whelan: A question.

Mr. Donovan: Be careful. Don't screw it up now.

Mr. Whelan: I'll tread lightly. On the zoning analysis chart now with the removal of that shed some of those percentages for the lot coverage and the surface lot coverage everything changed. Should that be revised when we submit for the Building Permit?

Chairperson Cardone: It should be. It should be actually before we write the Decision.

Mr. Donovan: Well in actuality...yeah correct. So if you could submit that to the Building Department within the next few days. Okay?

Mr. Whelan: Tomorrow.

Mr. Donovan: Tomorrow is good.

Chairperson Cardone: Good.

Mr. Whelan: Okay.

Mr. Donovan: Betty could you forward it on to me because that will ultimately change...you are absolutely right, it will ultimately change the percentages of the lot coverage.

Ms. Gennarelli: Okay, okay.

Mr. Donovan: Then we can write the Decision accordingly.

Mr. Maher: Well, what I'm thinking is there a possible need in the future for a shed of some size to be added to the property?

Mr. Agnew: When I looked in that shed there was one thing in it and I decided I probably could live without it especially given that there is going to be a bench built within the new enclosed porch so no, no shed in the future.

Mr. Maher: I just don't want to have it not get it now and come back in a year if you want a shed there.

Mr. Agnew: No I will come back here for something completely different I'm sure because I can't do anything without your approval.

Chairperson Cardone: Do we have a motion for approval?

Ms. Smith: So moved.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ABSENT:

BRENDA DRAKE
CODE COMPLIANCE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 7:45 PM)

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

BRIAN AGNEW

For area variances as follows:

DECISION

- *Grant of a variance allowing an increase in the degree of nonconformity of the front yard setback;*
- *Grant of a variance allowing an increase in the degree of nonconformity of the rear yard setback*
- *Grant of a variance allowing a building coverage of 14.7% where 10% is the maximum coverage allowed;*
- *Grant of a variance allowing a lot surface coverage of 32.4% where 20% is the maximum coverage allowed.*

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Introduction

Brian Agnew seeks approval to permit construction of an enclosed screen porch. In order to accomplish this objective, area variances as follows are required: (1) An area variance allowing an increase in the degree of nonconformity of the front yard setback; (2) An area variance allowing an increase in the degree of nonconformity of the rear yard setback; (3) An area variance allowing a lot building coverage of 14.7% where 10% is the maximum allowed; and (4) and

area variance allowing a lot surface coverage of 32.4% where 20% is the maximum allowed.¹

The property is located on 7 Fairview Lane in the R-1 Zoning District and is identified on the Town of Newburgh tax maps as Section 83, Block 2, Lot 10.2.

A public hearing was held on July 25, 2013, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

The bulk tables for the R-1 District limit lot building coverage for a single-family home use to 10% of the lot and the lot surface coverage to 20% of the lot.

These schedules also require, for this single-family dwelling in the R-1 Zoning District, a front yard setback of 50 feet and a rear setback of 50 feet. The lands of the applicant are currently nonconforming as to the front and rear yard setbacks.

This board has determined in the past that renovations and enlargements of existing non-complying buildings that increase the mass or volume of the existing building are events that cause the protection of Section 185-19 to be lost unless the renovation or enlargement decreases the degree of nonconformity.

The residential renovation proposed by the applicant will not decrease the

¹ The original application submitted by Mr. Agnew sought slightly larger variances for building coverage and lot surface coverage. However, after submitting his application, and before the public hearing, Mr. Agnew removed a shed from his premises thereby reducing the building coverage and lot surface variances as reflected herein.

degree of front and rear yard nonconformities (they will remain at the same). Therefore, the trigger of Section 185-19 (B)(1) is met and, as a result, the protection granted under Section 185-19 is lost, thereby requiring the applicant to apply for an area variance for the existing front and rear yard nonconformities.

Background

After receiving all the materials presented by the applicant and hearing the testimony of Steve Whelan, Architect, Michael Brooks, builder as well the testimony of Mr. Agnew at the public hearing held before the Zoning Board of Appeals on July 25, 2013, the Board makes the following findings of fact:

1. The applicant is the owner of a 9,017 +/- square foot (tax parcel 83-2-10.2) located on 7 Fairview Lane.
2. The lot is improved by a single family residential dwelling. The applicant now proposes to construct an enclosed screen porch that will be attached to the easterly side of the single family dwelling.
3. The applicant's proposal is set forth on a series of plans prepared by Whalen Architects, PLLC dated June 3, 2013. Those plans and photographs, as modified, are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
4. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Lot Building Coverage	10%		14.7%	4.7%	
Lot Surface Coverage	20%		32.4%	12.4%	

5. No members of the public were heard during the hearing.
6. The Building Inspector denied a building permit application by letter dated June 13, 2013.

The applicant has appealed the Building Inspector's determination seeking variances to construct the enclosed porch.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an area variance(s) for a single-family, two-family or three-family residence [6 NYCRR §617.5(c)(13)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

GML 239 Referral

This application is not required to be referred to the Orange County Planning Department for review.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each

factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the Hearing that the proposed porch would be in harmony with this existing neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

No contrary evidence or testimony was submitted to Public Hearing.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from the construction of the porch.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the area variances will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

Based upon the testimony and evidence submitted at the Hearing the Board finds that it is not feasible for the applicant to build the porch in a way that would have any meaningful use and benefit to the applicant without the requested area variances.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot be achieved by any other method other than the issuance of the requested variances. Based upon the testimony and evidence received by the

Board, it appears that the relief sought by the applicant may only be obtained by the variances sought herein.

(3) Substantial Nature of Variances Requested

The variances requested are relatively insubstantial as to lot surface coverage and lot building coverage. The Board further notes that the lot in question is a pre-existing nonconforming lot as the minimum lot size required is 40,000 square feet whereas the lot in question is only 9,017+/- square feet.

Because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the insubstantial nature of the variances requested does not prohibit us from granting the application.

With regard to the front and rear yard variances, the Board notes that noncompliance with the minimum setbacks exists already. Therefore, the request for these variances must be viewed in the context of (a) the existing nonconformity of the residence on the lot and (b) the extent of the *variation* from that existing condition. Because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the substantial nature of the side yard variances requested do not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variances would result in any adverse physical and/or environmental effects. The applicant testified that no such effect would occur.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variances will not adversely impact the physical and environmental conditions in this neighborhood.

(5) Self-Created Difficulty

The need for these variances is clearly self-created in the sense that the applicants purchased this property charged with the knowledge of the existing Zoning Code and while aware of the need to obtain a variance or variances in order to build on the property.

However, given that no complaints were received from any neighbors and given that the porch will improve the appearance of the house, the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of these variances.

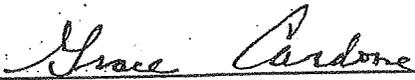
Decision

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the requested variances conditioned upon the following:

1. The variances hereby granted are granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.

2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

Dated: July 25, 2013



Grace Cardone, Chairperson
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
Member John McKelvey
Member Michael Maher
Member James Manley
Member John Masten
Member Roseanne Smith

NAYES: None

ABSENT: Member Brenda Drake

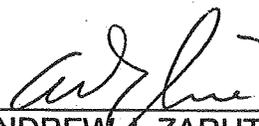
STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on July 25, 2013.


BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on AUG 26 2013.


ANDREW J. ZARUTSKIE, CLERK
TOWN OF NEWBURGH