

**Town of Erwin
Zoning Board of Appeals Meeting
And
Public Hearing**

January 22, 2013

Present: Frank Thiel, Jay McKendrick, Susan Fontaine, Gerry Yost, Kris West

Absent: Ruth Fisher McCarthy

Guests: Brian McCarthy, Rita McCarthy

Call to Order:

At 7:00 PM, Chairman Frank Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY 14870. As is their usual practice, the Zoning Board of Appeals will consider applications up until 9:00 PM, and will continue any unfinished business to the next regular scheduled meeting.

Prior Minutes:

The minutes of the August 28, 2012 meeting were approved as corrected by unanimous consent.

- 1. Request from Brian McCarthy to allow an accessory structure to be located in the front yard and setbacks of 5 ft front and 5 ft side where 25 ft front and 8 ft side setbacks are required at 3834 West Hill Road. Variance of §§130-57.A.1 and 130-99.A.3 is requested. With Public Hearing.**

Notification of this action was sent to 12 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, The Leader, and in the Star Gazette on January 13, 2013.

This is a Type II action under the State Environmental Quality Review Act. ***No SEQR action is required.***

The property is located in R-D Rural District.

The applicant seeks to construct an accessory structure, a detached garage, on his residential property. The property is located in an RD Rural District, which requires a lot size of 2 acres. This is a pre-existing, non-conforming lot of .996 acres.

The proposed garage is an Accessory Structure since it is "detached from and subordinate to a principal building on the same lot used for purposes customarily incidental to those of the principal building". Section 130-57.A.1 states, "Accessory buildings not attached to principal buildings shall be located in the rear or side yard in accordance with the Density Control Schedule". Therefore, a variance of this section is sought by the applicant to allow the garage to be constructed in the front yard.

The Density Control Schedule is modified by §130-99, which specifies the minimum dimensions for an existing, undersized lot, to wit: front setback 25 feet, side setback 8 feet. The applicant is seeking to

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construct the garage 5 ft from the front lot line, a variance of 20 feet; and within 5 feet of the side-lot line, a variance of 3 feet.

There is a letter of agency on file designating Brian McCarthy to represent the application.

Mr. McCarthy explained that the side that has enough room would still need a variance and is rendered unusable due to the placement of the septic system and drainage infrastructure. The well is located in the back of the property, and Mr. McCarthy stated he needed to leave room in case he ever needed to get a drilling rig back to the well. The applicant stated his preference was for a 34' X 40' garage, but given the property constraints and the need for a variance, he is only seeking to construct a 30' X 30' garage.

The applicant pointed out that the property is not square so that the distance to the property line varies as the garage is placed to be square with the house. There is a 12% grade from the front of the property to the back and the soil is shale and clay. Drainage runs left to right then out to the road. The expense to re-grade the property is prohibitive.

The applicant was asked if he could purchase property from the neighbor. His reply was that the neighbor had just bought that property.

The applicant was asked what would be involved to mitigate the drainage, i.e. remove the ditch that prevents construction of the garage in the back or side. The applicant stated the cost was \$8500-\$11000 to pipe the drainage away.

There would be small, LED, antique looking lights on the sides of the garage. A question was raised regarding sight distance to the right. The applicant explained that there currently is no sight distance due to existing trees.

The Chairman opened the public hearing at 7:20 PM.

The Town had received a call from neighbor Phoebe Boyle who expressed a concern as to how the garage would affect her right of way, and objected to the garage being that close to the road in light of the character of the neighborhood and how it would look.

With no more members of the public wishing to be heard, the Chairman closed the public hearing at 7:23 PM.

The Board observed that with the slant roof, two overhead doors and a people door, the building would look like a storage barn. The applicant was asked about aesthetic features. The applicant stated that the garage would be sided to match the house, the door would match the house, and that he did not want to include windows due to safety concerns.

There was discussion of mitigating the drainage with a rain garden.

The applicant was asked if there would be power to the garage. The applicant stated not initially, but that he would run underground conduit to allow for power in the future.

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There was a discussion of whether the setback distance would include any overhang or gutter on the garage. The applicant stated that the entire structure including any overhang would fit within the setback relief requested.

The Zoning Board of Appeals considered whether the benefit to the applicant if the area variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals also considered whether:

- (1). The requested variance will not produce an undesirable change in the character of the neighborhood:

A majority of the Board finds that the requested variance will produce an undesirable change in the character of the neighborhood, such neighborhood being defined as above Seneca Trace. It is not in keeping with such neighborhood and would look out of place. Two Board members find that it will not produce an undesirable change in the character of the neighborhood

- (2). The requested variance will not create a detriment to nearby properties.

The Board unanimously finds that the requested variance will not create a detriment to nearby properties. The adjacent properties are far enough away and therefore this variance will not be a detriment to those properties.

- (3). There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

The Board finds unanimously that there is no other feasible method available for the Applicant to achieve the benefit of constructing a garage to house the number of vehicles and equipment he owns. There was lengthy and detailed discussion of specific alternatives. The placement of the existing septic system and well preclude two locations; the grade, bank and drainage preclude the other alternatives. For any other alternative, the financial burden would far outweigh the benefit.

- (4). The requested area variance is not substantial.

The Board unanimously finds that the requested variance is substantial. An accessory building is not allowed in a front yard, and relief of 20 feet where 25 feet is required is significant.

- (5). The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The Board finds unanimously that as long as the drainage from the new structure is substantially mitigated, then the variance will not have an adverse effect on the environmental conditions. The drainage must not be piped directly into the roadside swale. The drainage can be mitigated with a rain garden type treatment.

- (6). The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance).

The Board unanimously finds that the difficulty was self-created.

This variance is conditioned upon:
mitigation of the drainage to reduce the flow rate.

RESOLUTION TO APPROVE APPLICATION 2013-01 FOR A VARIANCE TO ALLOW A 5 FOOT SET BACK FROM THE FRONT LOT LINE AND A 5 FOOT SIDE SET BACK FOR AN ACCESSORY BUILDING IN THE FRONT YARD WITH THE CONDITION THAT THE SETBACK IS MEASURED FROM THE FURTHEST PROJECTION OF THE BUILDING AND ON THE FURTHER CONDITION THAT THE DRAINAGE FROM THE NEW STRUCTURE BE MITIGATED TO REDUCE THE FLOW RATE.

MOVED BY: FRANK THIEL SECONDED BY: KRIS WEST

JAY MCKENDRICK AMENDED THE RESOLUTION THAT THE VARIANCE IS GRANTED BASED ON THE UNIQUE CHARACTERISTICS OF THE PROPERTY, SPECIFICALLY THE SIZE, GRADE, SOIL CONDITIONS OF SHALE AND CLAY, SEPTIC AND WELL LOCATIONS.

AMENDMENT ACCEPTED INTO THE ORIGINAL RESOLUTION BY FRANK THIEL AND KRIS WEST.

MOTION AS AMENDED APPROVED BY VOTE OF 5-0.

Meeting was adjourned by unanimous consent at 7:50 pm.

Minutes Submitted by Acting Zoning Board Secretary

Rita Y. McCarthy