

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

May 28, 2013

Present: Frank Thiel, Ruth Fisher McCarthy, Jay McKendrick, Susan Fontaine, Kris West, Jody Allen (alt)

Absent:

Guests: Michael and Anne Foster, 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 April 23, 2013 meeting were approved as corrected by unanimous consent.

- 1. Request from Michael & Anne Foster to allow an Accessory Building in the front yard where it is allowed in the side or rear yard at 550 Victory Highway. Variance of §130-57.A.1 is requested. With Public Hearing.**

Notification of this action was sent to 31 adjacent property owners. A legal notice of this action printed in the Town's official newspaper, The Leader, and in the Star Gazette on May 19, 2013.

The variance is a Type II action under the State Environmental Quality Review Act. ***No SEQRA action is required.***

The property is located in R-12.5 Residential District.

The Chairman noted that there are two cases, but if the first one is denied, the second case becomes moot.

The applicant seeks to construct a new garage to allow for storage, and then to add a bathroom and bedroom where the old garage is. The garage would be a preconstructed building at the end of the proposed, new parking area.

The Code Enforcement Officer had recommended that the garage be built 35 ft off the road, and that there was room to do so.

The applicant stated that such location would require removal of two large trees that shade the house. The view from the window in the house currently consists of the street, yard and trees. If the garage were placed at the 35 ft line, all that would be visible from that window would be the garage. In the proposed location, the garage doors face the house. At the 35 ft line, the doors must face the road and the driveway must be expanded, or the curb cut changed, which would increase the cost. The back of the existing addition has a deck on it and cherry trees behind it. The side of the house is 2 ft from the neighbor's property line.

The Chairman opened the Public Hearing at 7:15 pm.

All persons wishing to be heard, the Chairman closed the hearing at 7:16 pm.

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. There are no residences in that stretch of road which have an accessory structure in the front yard.

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

A majority of the Board finds that the requested variance will produce an undesirable change in the character of the neighborhood due to the proximity to other properties. Also allowing an accessory structure in the front yard is a major change. It sets a precedent for the neighborhood for any structure in the front yard as close as 12 feet to the road.

(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.

Having defined the benefit to the applicant as being able to remove the existing garage, extend the house and build a new garage that does not block the window and protects the existing trees, the Board unanimously finds that there is a feasible method available to achieve this benefit. The applicant can move the garage into the side yard and still achieve the benefit sought. There is room on the property to support alternative methods.

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

The Board finds unanimously that the requested variance is substantial since it seeks to sanction a prohibited action by allowing an accessory structure in the front yard where no such structure is permitted.

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

The Board unanimously finds that the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

(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 finds unanimously that the difficulty was self-created.

RESOLUTION TO DENY APPLICATION 2013-05 TO ALLOW AN ACCESSORY STRUCTURE IN THE FRONT YARD WHERE NO SUCH STRUCTURE IS ALLOWED ON THE BASIS OF THE FINDINGS; AND THAT THE REQUEST FAILS THE TEST OF BALANCING THE BENEFIT TO APPLICANT VERSUS THE DETRIMENT TO THE PUBLIC OF VIOLATING THE CODE SINCE THE BENEFIT SOUGHT CAN BE ACHIEVED WITHOUT VIOLATING THE CODE.

MOVED BY: FRANK THIEL SECONDED BY: KRIS WEST
DISPOSITION: 4-1 (McCARTHY)

The Chairman noted that since this application was denied the second application is moot. The applicants were advised of their appeal rights.

Meeting was adjourned by unanimous consent at 7:30 pm.

Minutes Submitted by Acting Zoning Board Secretary

Rita Y. McCarthy