

Town of Gardiner
Zoning Board of Appeals
September 22, 2022 Minutes

Members Present: Richard Cerruto (Chairman), David Sterman (Vice Chairman), Michael MacElhiney, Lisa Lindsley

The meeting was called to order at 7:00 pm.

Petrocitto 1061 Bruynswick Road, Gardiner, NY SBL: 93.1-4-39 Application for Area Variance, Public Hearing

R. Cerruto summarized the intent of the application as tearing down a garage and replacing it with a new building containing a garage on the first floor and an accessory apartment on the second floor.

The board began reviewing the application for an area variance from the standpoint of §220-12 (C) of the municipal code:

Accessory apartments and accessory residential structures. One accessory apartment per single-family dwelling may be located in an accessory structure or a principal building as provided in the Use Table. The lot containing the accessory apartment must contain the minimum acreage required by the Dimensional Table, unless it is located in an approved open space development. For nonconforming lots in all districts and small-scale developments in the RA District that are conforming under § **220-24**, an accessory apartment may be allowed by special permit. The accessory apartment shall not be counted as a residential unit for purposes of determining density. No approval shall be granted for an accessory apartment without approval or certification from the Ulster County Department of Health of the adequacy of the septic system.

The board considered the proposed garage with accessory apartment to be newly constructed on a non-conforming lot. Hence, the variance requested prior to qualifying conditions for future review by the planning board for special permit, is relief from one side setback distance requirement.

The existing structure is located approximately 11' from the left side of the property when viewed from the front. The requirement for which variance is requested is a side setback of 11' 8" vs. 20% of width of lot or approximately 20'.

R. Cerruto asks the board for comments.

M. MacElhiney asked about the size of the newly proposed septic system. A 1000 gallon tank is generous for an accessory apartment.

S. Petrocitto responded that the large tank was proposed in order to be used in the future to service the home on the property.

R. Cerruto asked for any other comments. Hearing none he asked if the board was ready to consider the five question balancing test.

The test follows:

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.

Rich	No
David	No
Lisa	No
Michael	No

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.

Rich	Yes
David	Yes
Lisa	Yes
Michael	Yes

3. Whether the requested area variance is substantial.

Rich	Yes
David	Yes
Lisa	No
Michael	No

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

Rich	No
David	No
Lisa	No
Michael	No

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.

Rich	No
David	No
Lisa	Yes
Michael	Yes The new structure could be placed closed to the existing home.

The ZBA, after taking into consideration the above five factors, finds that the benefit to the applicant outweighs the detriment to the neighborhood or community. The board voted unanimously to approve the variance and allow one side setback of 11' 8".

There were no letters received from the community. There were no comments made by the public at the hearing.

Dunwoody 143 Aumick Road, Gardiner, NY SBL: 92.4-1-57.112 Application for Area Variance, Public Hearing

William Dunwoody introduced the project. He restated material from submission letters included with the application. He asked for input from the board.

R. Cerruto summarized minutes from a previous denial of a similar application on the same property dated February 28, 2019.

In essence, the decision was based on § 220-23 where, Flag lots are not permitted in the SP District.

R. Cerruto speaking in the present continued, that the issue is not a setback variance but that of creating a flag lot. This request would create a flag lot and be less dimensionally conforming than the request made in 2019.

R. Cerruto identified three dimensional issues with the application requiring a variance. Referencing §220-11, the issues include; front setback of house, lot size requested being less than 5 acres, and prohibition of the creation of flag lots in the SP district.

D. Sterman stated that it is unusual that a prospective buyer would present this application to the board.

D. Sterman stated that this is a multi-parcel fix. The proposed parcel is not alone in a vacuum.

M. MacElhiney summarized, this is essentially the same application that was presented in 2019; the creation of a new non-conforming lot being added to an already non-conforming lot.

R. Cerruto stopped the discussion. He asked if the board is ready to consider the five question balancing test.

D. Sterman asked that before this is done, should the board ask the owner of the property, Michael Dorf to present this application to the board.

The board discussed the possibility of a site visit.

R. Cerruto stated that it would inevitably be a problem if the parcel ended up as a flag lot.

R. Cerruto asked the applicant if he wanted to withdraw the application.

W. Dunwoody asked that the board continue to apply the balancing test.

D. Sterman explained that the balancing test is a guide and cannot be used against the municipal code.

R. Cerruto stated that the flag lot is the key issue. He asked the applicant if he wanted to withdraw the application.

W. Dunwoody asked the board how to proceed for a better application.

D. Sterman explained that some buildings may not be feasible.

M. MacElhiney: What about a 99 year lease from the property owner?

W. Dunwoody restated his plea.

R. Cerruto didn't see a quick solution.

R. Cerruto asked the applicant for the third time if he wanted to withdraw the application. The board is open to revisions.

The board suggested contacting the Chairman of the Planning Board to recommend alternatives.

W. Dunwoody withdraws the application at 7:50 pm.

There were no letters from the community or other public comments made at the hearing.

D. Sterman recused himself before the start of the next public hearing on the agenda.

Salone 22 Glen Circle Drive, Gardiner, NY SBL: 94.1-1-28.120 Application for Area Variance, Public Hearing

The board verified what they are reviewing with the applicant.

P. Salone required a variance in order to obtain a building permit. She wanted to increase the height of an existing structure and change the pitch of the roof.

R. Cerruto reviewed the setbacks on the sketch plan. He identified that the front setback does not meet requirements in §220-11.

R. Cerruto asked the board for comments.

M. MacElhiney cited §220-27 (D)(1)...A nonconforming structure or use may be rebuilt in the event of it's total or partial destruction to occupy the same or lesser amount of footprint, but may not exceed the original height of the totally or partially destroyed structure. Such rebuilding shall require site plan review by the planning board. And, §220-27 (D)(2) A nonconforming structure may be repaired or restored to a safe condition.

R. Cerruto identified this as the restoration of a building §220-27 (D)

R. Cerruto asked for the roof pitch.

P. Salone answered that the roof pitch will be 9:12.

M. MacElhiney confirmed that the garage roof will be lower than that of the home.

The board reviewed the five question balancing test.

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.

Rich No

Lisa No

Michael No It improves the character of the neighborhood.

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.

Rich No

Lisa No

Michael No

3. Whether the requested area variance is substantial.

Rich Yes

Lisa No

Michael Yes

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

Rich No

Lisa No

Michael No

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.

Rich No

Lisa Yes

Michael Yes

The ZBA, after taking consideration the above five factors, found that the benefit to the applicant outweighs the detriment to the neighborhood or community. **The board voted unanimously to approve the variance to increase the height of the garage by five feet with a 9:12 roof pitch.**

There were no letters from the community or public comments made at the hearing.

Admin:

R. Cerruto discussed annual continuing education requirements and mandatory NYS harassment training. The continuing education spreadsheet is updated.

R. Cerruto discussed consideration of a resolution by the board to attend and vote via zoom. Review of this topic will be placed on the agenda at the next zoning board of appeals meeting.

The meeting adjourned at 9:12 pm

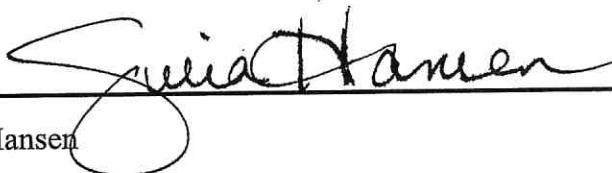
Submitted By:



12 OCT 22

Michael Makely

Filed:



10/12/22

Julia Hansen

Deputy Town Clerk / Town of Gardiner

