

ZBA MEETING – MAY 26, 2016

(Time Noted – 7:16 PM)

WENDY AFFRON

14 WINDING LANE, NBGH
(80-2-10) R-1 ZONE

Applicant is requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence.

Mr. Manley: The next application before the Board this evening is Wendy Affron, 14 Winding Lane, Newburgh seeking requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence. This is also a Type II Action under SEQ. Ms. Gennarelli the mailings?

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

Mr. Manley: Thank you.

Ms. Gennarelli: Thank you.

Mr. Manley: Good evening could you identify yourself for the record please?

Mr. Cella: Good evening I'm Jonathan Cella. I'm representing the applicant. The subject property is located in R-1 district at the corner of Winding Lane and it's a...we're requesting an area variance for front yard setback due to increasing the degree of nonconformity. Apparently the property line lies in the middle of Winding Lane and we have a 50 foot front...front yard setback from the exist...from the property line from the street line we only have 42 feet so we're requesting a...or require the additional 8 feet. The a...the proposed addition is 310 sq. ft. and it's a...the addition will be totally under the existing roofline. It will be a...enclosing the breezeway between the house and the garage and coming out several feet in the front but that will also be under the roofline all...all a...areas that we're proposing for the addition are currently impervious.

Mr. Manley: Do any of the Board Members have any questions for the applicant's representative?

Mr. Levin: Are you going to make the breezeway any wider? Is it going to be any...?

Mr. Cella: We are not moving the garage.

Mr. Levin: No, no to...

Mr. Cella: I'm only kidding. I'm kidding. The a...the breezeway is right here in between and we're just...we're just going to finish it. We're going to make it deeper. We're not making it wider...

Mr. Levin: So you're making it deeper both ways?

Mr. Cella: Yeah, slightly deeper both ways but in the front where we're requesting the variance it will remain under the current roofline. We'll be behind...you see the covered front porch? We'll be underneath all of that so we're actually going to the column line and that's where we're stopping.

Mr. McKelvey: The setback is over here then?

Mr. Cella: What's that?

Mr. McKelvey: The setback is all on the other side then.

Mr. Cella: Yeah, we said on the application since we're a corner lot we get to choose the a...front and the rear. I'm sorry, the rear and the side so a...

Ms. Gennarelli: Jonathan you could go and put up board there, so that way everybody could see. Thank you.

Mr. Cella: So we meet the a...we meet all the setback requirements just the front yard from Winding Lane. The front yard from Sunset Drive will not be increasing and we feel that it's minor since it's under...under the current roofline.

Mr. Manley: Are there any other questions from the Board?

No response.

Mr. Manley: At this time, I will ask the public do you have any questions regarding this application? Or any comments regarding this application tonight?

No response.

Mr. Manley: Hearing none, I'll go back to the Board. Does the Board have any final comments? If not, I would look for a motion to close the Public Hearing.

Mr. McKelvey: I'll make a motion we close the Hearing.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed.

(Time Noted - 7:20 PM)

ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:11 PM)

WENDY AFFRON

14 WINDING LANE, NBGH
(80-2-10) R-1 ZONE

Applicant is requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence.

Mr. Manley: The next application is Wendy Affron, 14 Winding Lane, Newburgh requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence. Type II Action under SEQR. Going through the balancing test with the Board, does the Board feel that the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Maher: No.

Mr. Scalzo: No.

Mr. Levin: No.

Mr. Manley: Does the granting of the variance create an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: I don't feel so.

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Scalzo: No.

Mr. Manley: Is the applicant's request substantial?

Mr. Maher: No, I don't believe so.

Mr. McKelvey: No.

Mr. Manley: I would just add it already exists it's just closing up what's already there. Will the request have any adverse physical or environmental effects?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Levin: No.

Mr. Manley: And is the difficulty self-created?

Mr. Levin: In a way yes.

Mr. Manley: Again most of them are self-created but again when the Board makes their decision they have to balance out all of them. Do we have a motion in regard to this application?

Mr. Scalzo: I'll make a motion for approval.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Cella: Thank you.

Ms. Affron: Thank you.

Mr. Scalzo: I really liked your dog. It sitting out front chewing on something.

Ms. Affron: Okay, thanks again.

Mr. Manley: Good night.

PRESENT ARE:

RICHARD LEVIN
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

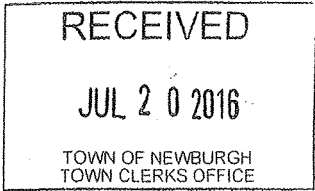
ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:12 PM)



Section 80, Block 2, Lot 10

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

WENDY AFFRON

DECISION

For area variances as follows:

- *Grant of a variance allowing an increase in the degree of non-conformity of the existing front yard setback as the result of enlargement and conversion of an existing breezeway into part of the main dwelling.*

-----X

Introduction

Wendy Affron seeks an area variance as follows: (1) An area variance allowing an increase in the degree of non-conformity of the front yard setback to permit the enlargement and conversion of an existing breezeway into part of the main dwelling.

The property is located at 14 Winding Lane, is in the R-1 Zoning District and is identified on the Town of Newburgh tax map as Section 80, Block 2, Lot 10.

A public hearing was held on May 26, 2016, 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.

These schedules also require, for this building in the R-1 Zoning District, a front yard setback of 50 feet. The lands of the applicant are presently improved by a single family residential dwelling. It presently has a front yard setback of 42 feet.

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 renovation proposed by the applicant will not decrease the degree of the front yard nonconformity. 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 yard nonconformity.

Background

After receiving all the materials presented by the applicant and the testimony of Jonathan Cella, P.E. at the public hearing held before the Zoning Board of Appeals on May 26, 2016, the Board makes the following findings of fact:

1. The applicant is the owner of a 24,918 +/- square foot lot (tax parcel 80-2-10) located at 14 Winding Lane.

2. The lot is improved by an existing single family dwelling. The applicants now proposes to enlarge the breezeway and convert it into part of the main dwelling
3. Presently, the existing front yard setback is noncompliant. The minimum front yard setback is 50 feet and the home is setback 42 feet. The front yard setback of the house will remain the same after the enlargement and conversion of the breezeway.
4. The applicant's proposal is set forth on series of photographs, architectural drawings and a plot plan prepared by Jonathan Cella, P.E. dated November 16, 2015. Those photographs, plot plan and drawings are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
5. The applicant has appealed the building inspectors determination dated December 7, 2015.
6. No members of the public spoke during the hearing.

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 in as much 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 and report.

Findings

In reviewing the facts presented for the requested area variance, the Board considered the five standards for determining whether the applicants have sustained their 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 variance.

(1) Undesirable Change—Detriment to Nearby Properties

The property is located in the R-1 Zoning District and single family homes are uses that are specifically permitted in this Zoning District. Absent special or unique circumstances, therefore, the use of the premises as a single family home is generally consistent with the character of the neighborhood and will not result in any detriment to that neighborhood.

Further, the applicant testified at the hearing that the home is in harmony with this existing, mature, neighborhood and the proposed breezeway enlargement would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties. Based upon the Board's own personal observations, the requested variance would not cause any detriment to the neighborhood and, if the variance were granted, the house would

remain consistent with the existing neighborhood.

No contrary evidence or testimony was submitted at 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 allowing the applicant to enlargement the breezeway.

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

(2) Need for Variance

Because of the existing front yard nonconformity, if the applicant is to be permitted to make changes to the existing single family dwelling at all, a variance will be required.

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 variance.

(3) Substantial Nature of Variances Requested

The front yard variance requested is fairly insubstantial, bearing in mind, of course, that noncompliance with the minimum front yard setback exists already. Moreover, the request for this variance must be viewed in the context of (a) the existing non-conformity of the residence 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 extent and nature

of the front yard variance requested does 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 variance would result in any adverse physical and/or environmental effects. The applicant testified that no such effect would occur.

Absent any testimony or evidence indicating such, the Board cannot conclude that any adverse physical or environmental effects will result from the enlargement of the breezeway.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the existing non-conformity and while aware of the need to obtain a variance in order to enlarge or alter the existing building in any dimension.

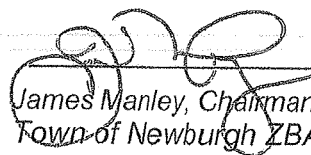
However, because of the existing nonconformity and because it is not feasible to make any additions or alterations to front of the home without a variance of some kind, the board believes, under the circumstances presented, that the self-created nature of the need for the variance requested does not 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 the variance.

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 variance as requested upon the following conditions:

1. The variance hereby granted is 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: May 26, 2016


James Manley, Chairman
Town of Newburgh ZBA

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

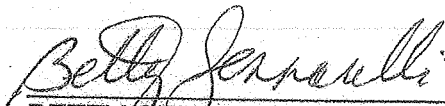
AYES: Chair James Manley
Member Michael Maher
Member John McKelvey
Member John Masten
Member Richard Levin
Member Darrin Scalzo

NAYS: None

ABSENT: Member Darrell Bell

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

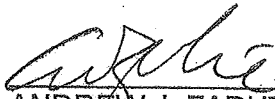
I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on May 26, 2016.



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 JUL 20 2016.



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH