

Meeting of the Village of Brockport Zoning Board of Appeals was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Thursday, September 4, 2014, 7:00pm.

PRESENT: Chair John Bush, Vice Chair Robert Duff, Member Douglas Wolcott, Member Laurence Vaughan, Member Sal Sciremammano, Building/Zoning Officer David J. Miller, Clerk Pamela Krahe.

ALSO PRESENT: Brian Thomas

CALL TO ORDER: Chair Bush called the meeting to order and led the Pledge of Allegiance. A moment of silence was observed to remember fallen Rochester Police Officer Daryl Pierson.

REVIEW OF MEETING MINUTES: Chair Bush called for a motion to approve minutes.

➔ Member Vaughan moved, Member Sciremammano seconded, unanimously carried to approve the minutes of the meeting held August 7, 2014 as written.

CORRESPONDENCE: The Chair noted a letter was received from the applicant regarding his fee.

NEXT MEETING: Thursday, October 2, 2014 at 7:00pm if needed

Public Hearings:

NEW BUSINESS:

1. Name: Brian Thomas
Address: 26 Kimberlin Drive
Tax Map #: 068.43-2-14
Property Code: 210
Zoning: O-Residential
Lot size: 85' x 146' deep
Purpose: Area variances to (1) allow a setback of less than 4' for camper trailer, (2) use > 50% of side yard for parking, and (3) not pave the existing parking area
Provision of Zoning Ordinance: (1) 51-5 B (5); (2) 58-22 B (i); and (3) 58-22 B (2) (k)

Applicant Presentation:

Mr. Thomas explained he has previously appeared before the Planning Board for a driveway expansion. They referred him to the Zoning Board of Appeals for appropriate variances. He apologized for coming in after the fact; he didn't know he had to have a permit. He brought photos for members to review. He purchased a 28' trailer in May; had Tim Rombaut install 4x4s, put fabric down, put down 10 tons of 5/8 crusher run. The 4x4s are on the property line. The camper sits away from the garage so they can get in and out of the door. The house sits off center of the property. Chapter 51 says he should park in the backyard. The yard slopes down about 4' so he can't park there. If he parked on the north side of the house, he'd have to cut down two trees. By parking on the south side, the camper is near the main entrance of the garage. Has spoken to neighbor next door who doesn't have a problem with it, but Mr. Thomas didn't ask the neighbor for a letter. Paving it is not within his budget. As far as "dustproof material," he doesn't feel dust is an issue as he is not going at a high enough rate of speed to raise dust.

Public Comment:

➔ Member Wolcott moved, Member Duff seconded, unanimously carried that the regular meeting be closed and the public hearing be opened at 7:08 pm.

There was no one in the audience so no comments were taken.

➔ Member Wolcott moved, Member Sciremammano seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened at 7:09 pm.

Continued Board discussion on application:

The board asked about the side yard where the camper sits. The applicant stated it is 11' wide, the trailer is 8' wide and sits about 2.5' from the garage to allow the door to open. There is nothing in the neighbor's side yard so if firefighters needed to get in, they could use the neighbor's yard.

The board asked when he became aware of an issue. Thomas said about a month after the gravel pad was put in, CEO Miller left his business card tucked in a box on the front porch. He assumed that meant he should call the Codes office. It cost about \$500 to put in the gravel. Rombaut simply scraped the sod off and put down gravel. Thomas, his wife, and nine-year old son have camped numerous times this month.

The applicant indicated that about 6 years ago he got a notice not to park on the grass from then Assistant Codes Officer Vaughan; that's when he widened the driveway. He claimed to have asked then Codes Officer Zarnstorff, who said it was okay to widen the driveway. He didn't think he would

ZONING BOARD OF APPEALS MEETING OF September 4, 2014

need a permit for stone – maybe for permanent blacktop – but not stone. Chair Bush clarified this application is for the side yard, not the driveway.

Member Wolcott asked why Thomas didn't he think he needed to check with the village. Member Vaughan noted signs at the entrance of the village state building permits are required, but most folks think permits are for "building" only.

Chair Bush read from Village Code:

- Chapter 51-5 B (5) No trailer shall be parked or stored closer than four feet from any lot line.
- Chapter 58-22 B (2) (i) For residential use, such off-street parking shall not occupy any part of any required front yard except that portion of the front yard which may be construed as the logical extension of the side yard, being in particular that area running perpendicular from the extreme or side of a structure on the premises or garage thereon to a street or alleyway. No more than 50% of any side yard, or 25% of any rear yard other than the required driveway, shall be permitted for a parking area. Such off-street parking space may be included as part of a required open space for side or rear yards.
- Chapter 58-22 B (2) (k). All parking spaces and access driveways, when used in compliance with this section, shall be paved or otherwise surfaced with an all-weather, dustproof material, to be graded and drained as to dispose of surface water conditions.

Chair Bush also read the NYS area variance test:

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

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;
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;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
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.

The ZBA, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Member Vaughan reasoned if the board requires the trailer be moved, there will have to be a curb cut and a new driveway installed which will be costly. Member Sciremammano stated there would be tire tracks if you leave the camper on the lawn. Member Vaughan said it would have to be a hard surface to drive on and the distance will be probably triple. Chair Bush asked if the driveway would be widened. Member Vaughan said if the board denies, the applicant would need to relocate the trailer to the north. Member Wolcott asked for clarification; the board stated a second driveway would have to be put in.

CEO Miller noted his department is trying to get a handle on boats, campers, etc. parked on the grass. He wondered if the board could issue a special permit instead because a variance stays with the property, so the next buyer could do the same thing. Member Sciremammano asked if they could vote to approve it as a special use permit; Member Vaughan suggested making it renewable. CEO Miller looked in the code to see if they could grant a special use permit. They discussed raising dust and Miller explained there is not just dust created by driving on it, but from wind kicking it up and it going into neighbor's windows.

When asked if the camper is there all year, the applicant affirmed and said it has a cover. Member Wolcott said it's bothersome that the applicant just went ahead and put the pad in without inquiring. It was noted the code is revised from time to time so when the driveway was expanded years ago, the "paved with an all-weather dustproof material" section perhaps wasn't there. It was asked if the stone could be oiled.

Chair Bush said if the yard was level and there was no tree, the camper could be put in the backyard. Member Vaughan offered that if the board grants a variance, they can't set conditions, but maybe they could send it back to the Planning Board for conditions such as it must be paved in one year. CEO Miller opined if the variance is granted, the applicant does not have to go back to Planning because the board is giving him permission to vary from the code.

ZONING BOARD OF APPEALS MEETING OF September 4, 2014

They briefly discussed waiving the fee; Thomas said he misread the code and the waiving of the fee was for a trailer permit. Chair Bush explained the costs that go into processing an application.

Chair Bush suggested the compromise of granting the variance for both the setback and the 50%, but that the pad must be paved. Chair Bush said the board is there to help residents. He asked CEO Miller's opinion. Miller replied that his job is to follow the code.

Member Duff cited Chapter 58-26 regarding the board having the power to issue special permits. CEO Miller noted Ch. 58-9 A (5) (b) which states those in O-Residential districts who wish to have a home occupation must obtain a special conditional use permit. He also referenced Ch. 58-26 B (3) which allows the board to power to grant variances "...in the case of exceptionally irregular, narrow, shallow or steep lots or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case."

Member Duff asked about the requirements for the ZBA to issue a special permit. CEO Miller was researching the code and found a home occupation requires a special conditional use permit. Chair Bush recalled the old Hale Monument which was a business run out of a home. Thomas wondered if there is special area permit like a special use permit. Member Duff indicated they would have to research that. It was stated that if the board grants a variance for the setback and the 50%, but not from paving, then the applicant would have to pave. Member Wolcott suggested the board think of the codes department and any additional burden placed on them as others place similar requests. He also wondered how it is handled when the board gets to a spot where they have to do research, as he is new. Member Sciremammano opined this is not a different use. Chair Bush asked if the applicant had an estimate for paving; Thomas replied no. Concrete was suggested but it was pointed out there would be a blacktop drive, a stone extension, and then a concrete pad. Member Wolcott asked Mr. Thomas if he ever intends to pave it; he would prefer not to and might consider putting a "for sale" sign in the yard. He contended that he is not driving at speeds to create dust and that stone gets compacted and is dustproof. He also countered that dirt and dust will land on blacktop and be blown around just the same as on stone. CEO Miller noted the applicant is in the right place for an interpretation of what a dustproof material is and whether or not stone is dustproof. He added construction sites must have dust abatement measures.

Member Vaughan said he would feel more comfortable with the submission of a different application with just the two variances and leaving out the paving part. CEO Miller countered that just spelling it out in the motion should be adequate.

CEO Miller reiterated that Chapter 58-22 B (2) (k) is the applicable section that speaks to paving, and the motion should spell out granting the variance for the 4' setback and of the request for the 50%, and state it is denying the variance for not paving.

Member Duff suggested the applicant look for case law supporting that stone is considered dustproof. Thomas insisted stone is dustproof. CEO Miller offered that the board can table the application so both sides can do further research. The board can research a special use permit and the meaning of pave, dustproof, etc.

- ➔ Member Sciremammano moved, Member Duff seconded, unanimously carried to table the application until the October 2 meeting.
 - Roll call vote: Member Duff- aye
 - Member Sciremammano – aye
 - Chair Bush – aye
 - Member Wolcott – aye
 - Member Vaughan – aye

Adjournment:

- ➔ Member Sciremammano moved, Member Duff seconded, unanimously carried that the meeting be adjourned at 8:27pm.

Pamela W. Krahe, Clerk