

## **ZONING BOARD OF REVIEW MINUTES**

**Tuesday, July 28, 2020 Meeting 7:00 pm**

**VIRTUAL – Convened at 7:00 PM via the ZOOM Remote Meeting Platform**

Present: Richard Land, Chairman; Christopher Mulhearn, Vice-Chairman; Melody Alger, Ashley Cullion, Jody Sceery (arrived 7:15 pm), Barry Golden (Alternate) and David Collier (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner, Carole Malaga, stenographer, and Michael Ursillo, Legal Counsel.

Mr. Land, Chair of the Board, called the meeting to order at 7:05 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept any new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

**Zoning Board of Review Hearings – 7:00 PM**

1. **ROBERT P. NEMITZ of ADVANCED DEVELOPMENT SOLUTIONS** for property owned by **MARK & PATRICIA MURTAGH** and located at 45 Spring Street; Map 85 A.P. 1 Lot 303 (Zoned Residential – R-10). The Applicant seeks Dimensional Variances from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone which sets forth the side yard setbacks and maximum allowable lot coverage for structures. Additionally, the Applicant seeks relief from Article V, Section 260-14 Nonconforming by Dimension. The Applicant seeks to construct an addition on the northwest side of the existing structure which will not meet the 15' side yard setback, will exceed the allowable lot coverage and is an intensification to the legal nonconforming property.

Mr. Robert P. Nemitz of Advanced Development Solutions represented Mark and Patricia Murtagh, the property owners of 45 Spring Street. Mr. Nemitz explained the Murtagh Family recently purchased the c.1840 Greek Revival style house and would like to improve the overall functionality of the interior floor plan while increasing the square footage in an efficient way. He noted the proposed rear two-story addition, to be located in the northwest corner of the existing structure will include a first floor master bedroom suite along with an improved second floor layout. The historic home has existing nonconforming encroachments in which the front southwest corner of the home sits 7.36' from the west side property line where there is a 15' side setback and sits only 8.15' from the front property line where a 30' setback exists. The new rear addition will sit flush with the main house and be between 8.05'-8.74' from the west side property line; it will not extend any closer to the west property line than the existing house already sits. The new/relocated 10'x24' deck will also sit within the western setback by 6.26' and will place the deck at 8.74' from the western side property line.

Additionally, Mr. Nemitz explained the Applicant will require relief from the maximum allowable lot coverage for structures. The existing lot coverage is

1,258.91 s.f. (21%) and is not allowed to exceed 25 percent. With the proposed 540 s.f. addition and 240 s.f. deck the total lot coverage will equal 30.93 percent; therefore 5.94 percent of relief is required.

Mr. Nemitz asserted he and his client put their best effort forth in the design of the addition in order to maintain the historic significance of the structure as well as follow the aesthetic standards of the neighborhood. He added of most relevant importance was locating the addition that would have the least impact on the neighbors and the front façade.

Mr. Land opened the hearing for public comments. No public comments for or against the application.

Mr. Land was of the opinion the submitted application was extremely thorough and the presentation touched upon important points of how the application meets the Zoning Board standards.

Mr. Land called for a motion.

Mr. Mulhearn motioned to approve the application as presented. Seconded by Ms. Cullion.

Mr. Land commented with the property being located in the Historic District the Applicant has already received a conceptual approval from the Historic District Commission. He finds the application to be reasonable and pointed out there were no neighbors objecting which suggests the fact the application should be granted. Mr. Land noted the application meets the relevant Zoning Board standards, those being:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Roll Call Vote: Ms. Alger: Yes, Ms. Cullion: Yes, Mr. Golden: Yes, Mr. Mulhearn: Yes, Mr. Land: Yes (**VOTE 5 – 0**) to approve the application as submitted.

2. **JENNIFER SPENCER** for property located at 5555 Post Road; Map 55 A.P. 7 Lot 101 (Zoned Residential – R-10). The Applicant seeks a Dimensional Variance from Article V, Nonconforming Development, Section 260-15 Nonconforming by Use. The Applicant seeks to construct an 18'x24' detached garage along the western side of the existing mixed-use property. Although the proposed structure will meet setback requirements for a corner lot, the R-10 zone does not contemplate a mixed use by right; any expansion of the use, either commercial or residential requires relief.

Mr. Michael Spencer and Ms. Jennifer Spencer, owners of the property, represented the application. Mr. Spencer stated the request is to construct a 24'L x 18'W x 15'H detached garage to fit in between the rear of the existing building and the side property line. The proposed garage will sit 34.2' from the front of the existing driveway/curb cut off of Victory Street and 5' from the west/side property line. Due to the parcel being a corner lot the accessory detached garage is permitted to be sited within the side setback and therefore meets all setback requirements.

Mr. Spencer disclosed the detached garage is for the storage of a classic car he owns and will have nothing to do with his Spencer's Plumbing business.

Mr. Spencer said he found no issues with the application and did not understand the reason for having to go to the Zoning Board. Mr. Land explained even though the use is permissible in the zone it is essentially grandfathered. Due to the expansion of the use it is not permissible without receiving approval from the Zoning Board.

Mr. Land pointed out there were two letters of support from abutting neighbors attached to the application.

Mr. Land requested clarification regarding the detached garage's proposed height as the original plans call for an eighteen foot height. Mr. Spencer testified the garage will have 12' sides and a peak of 15,' noting the garage will not exceed the 15' accessory structure requirement and will amend the application to reflect that change.

Considering the Applicant stated the garage will be specific for vehicle storage, Mr. Land queried if Mr. Spencer was acceptable with an approved decision conditioning that the garage be for vehicle storage only. Mr. Spencer agreed the garage can be for vehicle storage only.

Mr. Land opened the public hearing for public comments. No public comments in favor or against the application.

Mr. Land asked for a motion.

Mr. Mulhearn motioned to approve the application as amended during the course of the hearing. Seconded by Ms. Alger.

Mr. Land commented the application provides sufficient details regarding the proposed plans which was a well put together package and meets all of the Zoning Board standards, those being,

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Mr. Land again pointed out there were no neighbors objecting to the application and he believes the request is consistent with the general area and the garage will blend in with the surrounding neighborhood.

Mr. Land reiterated the motion is to approve the application with two modifications, those alterations being:

1. The detached garage will be 15' in height at its peak as to not require additional height relief; and
2. The Applicant's use of the garage will only be for the storage of nonbusiness vehicles.

Roll Call Vote: Ms. Alger: Yes, Ms. Cullion: Yes, Ms. Sceery: Yes, Mr. Mulhearn: Yes, Mr. Land: Yes (**VOTE 5 – 0**) in favor of the motion.

### **Zoning Board of Review Business**

1. Minutes: Review/action on the following set of minutes:
  - a. April 28, 2020 meeting
  - b. May 26, 2020 meeting
  - c. June 23, 2020 meeting

Minutes tabled to the following meeting.

Motion to adjourn by Ms. Cullion. Seconded by Mr. Mulhearn Approved 5 –0.

Zoning Board of Review meeting adjourned at 7:30 pm.

Minutes respectfully submitted by:

Lea Anthony Hitchen,  
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.