

LIVONIA JOINT ZONING BOARD OF APPEALS

MEETING MINUTES- November 3, 2014

Present: Chair P. Nilsson, C. Rider, M. Sharman, G. Cole,
Code Enforcement Officer A. Backus, Recording Secretary J. Brown
Absent: B. Weber (was present for last hearing)

Excused- J. Campbell-Town Attorney

- AGENDA:
- (1) Accept and approve the meeting minutes of October 20, 2014
 - (2) ***Steve Berghash***
Area variance requested for an unenclosed stairway, providing access to the first story of a building at ***5126 East Lake Rd., Livonia, NY 14487***
 - (3) ***Marinus Hamer***
Area variance for a replacement garage with a second story accessory dwelling unit at ***4762 East Lake Rd., Livonia, NY 14487***
 - (4) ***Terry McCarron***
Area variance for a storage shed at ***92 Big Tree St., Livonia NY 14487***

Chair P. Nilsson opened the meeting at 7:00p.m.

M/2/C (M. Sharman/ C. Rider) to approve the October 20, 2014 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.

Motion carried: 4-0

Code Enforcement Officer A. Backus read aloud the legal notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday November 3, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Steve Berghash for an area variances pursuant to Section 150-17C of the Zoning Code Of Livonia. The area variance is requested for an unenclosed stairway, providing access to the first story of a building. The proposal violates the requirements according to Section 150-42 B which states the setback requirements for unenclosed steps, stairways and landings. The property is located at 5126 East Lake Road, Livonia, New York and is zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Code Enforcement Officer A. Backus asked to have the board members polled on a site visit:

Chair Nilsson- YES

C. Rider-YES

M. Sharman- YES

G. Cole-YES

Chair Nilsson invited Steve Berghash to come forward to explain his request. Steve explained that he purchased the property in April and the existing retaining wall was crumbling and in bad disrepair as it was tipping toward the house. With the guidance of the County Highway Department, he constructed a retaining wall and a small parking space. Steve said that the old retaining wall there was an old staircase, but with the new retaining wall, there needs to be a 5'x5' landing while moving the steps a few feet to the south. Steve stated that the property to the north also has a home with steps on the property line and the property to the south has no home on it.

Chair Nilsson asked for clarification for whose steps are to the south. Steve answered that they provide right of way access to the residents of the trailer park across the road.

G. Cole said she likes the design of the stairs and feels that the proposed landing will be safer than the old stairway.

Chair Nilsson opened the meeting to the gallery.

Seeing and hearing no further comment from the gallery, Chair Nilsson closed the public hearing portion of this case.

Chair Nilsson asked the board members to review the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? No- it would be an improvement
2. Can the benefit be sought by the applicant be achieved by some feasible method other than a variance? NO
3. Is the variance substantial? NO
4. Will the proposed variance have an adverse effect of impact on the physical or environmental conditions in the neighborhood? NO
5. Is the alleged difficulty self-created? NO

Chair Nilsson asked if there were any further concerns and hearing and seeing none, called for a motion on the application.

Motion: (C. Rider/ M. Sharman) to accept the application as submitted.

Motion carried: 4-0

Code Enforcement Officer A. Backus read aloud the second legal notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday November 3, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Marinus Hamer for an area variance pursuant to Section 150-17C of the Zoning Code Of Livonia. The area variance is requested for a replacement garage with a second story accessory dwelling unit. The proposed garage will violate the requirements according to Section 150-31G (1) which state the minimum front setback requirements, and Section 150-31D (1) which states conditional use permit requirements for such use, and Section 150-60D which states the area for an accessory dwelling unit shall not exceed 40% of the area of the principal dwelling unit. The property is located at 4762 East Lake Road, Livonia, New York and is zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Code Enforcement Officer A. Backus asked to have the board members polled on a site visit:

Chair Nilsson- YES

C. Rider- YES

M. Sharman- YES

G. Cole- YES

Scott Marshall, contractor for Marinus Hamer, came forward to explain and clarify the proposal. Chair Nilsson stated that he understands some changes have been made to the proposal and invited Scott to explain. Scott said that the original plan was to put in a second story accessory dwelling unit, but after discovering that it would cost \$15,000 just to have the water and sewer utilities put in place, they have abandoned that plan and would like the second story to be just for storage. Scott said that if possible, they are open to still asking for the accessory dwelling variance just in case in the future they choose to take on that expense and finishing off the second story.

Chair Nilsson asked CEO A. Backus, if the variance is given, does it have to be completed within a year? A. Backus explained that the variance would carry with the property.

M. Sharman said that it might not be in the Town of Livonia's best interest to let the variance sit out there indefinitely. M. Sharman continued that he does not feel comfortable with granting the conditional use.

G. Cole stated then, that we are amending this proposal to just a replacement garage with the dimensions of 28' x32' with a second story storage space.

Chair Nilsson opened the meeting to the gallery. Seeing and hearing no comments, he closed the public hearing portion of the meeting.

Chair Nilsson asked the board members to review the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? No- it would be an improvement
2. Can the benefit be sought by the applicant be achieved by some feasible method other than a variance? YES
3. Is the variance substantial? NO
4. Will the proposed variance have an adverse effect of impact on the physical or environmental conditions in the neighborhood? NO
5. Is the alleged difficulty self-created? YES

Chair Nilsson asked if there were any further concerns and hearing and seeing none, called for a motion on the application.

Motion: (M. Sharman/ G. Cole) to accept the application as submitted. B. Weber arrived at meeting halfway through this case so he abstained from voting.

Motion carried: 4-0

Code Enforcement Officer A. Backus read aloud the third legal notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday November 3, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street,

Livonia, New York to consider the application of Terry McCarron for an area variance pursuant to Section 150-17C of the Zoning Code Of Livonia. The area variance is requested for a storage shed. The proposed shed will violate the requirements according to Section 150-31G (2) which describes minimum required side setbacks. The property is located at 92 Big Tree Street, Livonia, New York and is zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Code Enforcement Officer A. Backus asked to have the board members polled on a site visit:

Chair Nilsson- YES

C. Rider-YES

B. Weber- YES

M. Sharman- YES

G. Cole-YES

Chair Nilsson invited Terry McCarron forward to explain his request. Terry said that he is looking for a 5' variance to place a 20'x30' shed on his property between his home and the east side property line. Terry stated that he feels the required 15' side setback is excessive and he wants to place the structure off the end of his blacktop driveway. If he conformed to the 15' side setback, he feels that it would be too close to his house. Terry said that Dave Schubert will be taking down the shed from its current location at his brother's house on Conesus Lake and will reconstruct it at his home if this variance is granted. Terry said that in the Spring, he plans to then paint it to match his home.

There is discussion between the board members and CEO A. Backus that this will not be considered a shed, but rather a garage because it has a garage door and at its current location at Tim McCarron's house, it was issued a Certificate of Completion originally classified as a 'one car garage'.

G. Cole asked if A. Backus would be able to guarantee the setbacks rather than just estimating. A. Backus said that Terry would have to verify where the survey stakes are. A. Backus said that he leaves the responsibility of meeting the variance up to the applicant.

G. Cole asked Terry what will happen with the well located on his lot between his home and the east property line. Terry said that the well may or may not be in the way of the garage and they will take care of it accordingly. Terry said that Dave Gilbert would do the grading work and Dave Schubert will reconstruct the structure.

Chair Nilsson asked Adam to read aloud the letter they received from Patricia Mintschenko, Terry's neighbor to the east at 94 Big Tree Street:

Dear Zoning Board Member:

My name is Patricia Mintschenko, I reside at 94 Big Tree Street in the Village of Livonia. My property is next to the home of Terri and Sharon McCarron at 92 Big Tree Street. A variance application has been submitted to the Zoning Board by the McCarron's to put a 20'x30' garage on our property line. I am strongly opposed to this variance being granted for the following reasons:

1. The placement of this garage will be a detriment to my property-decreasing the value by blocking the views and natural lighting from my dining room windows, living room windows and the view from my front porch.
2. The placement of this garage will change the esthetics of our quaint Village of Livonia and especially Big Tree Street. On my side of Big Tree Street (the south side), all of the homes have garages behind the house from Rick Wilkins house at 78 Big Tree, where the backyard is a small ravine, to Bulldog Blvd. On the opposite side of the street, all garages are behind the houses from

Spring Street to East Avenue except for two newer houses which have attached garages as part of the home structure.

3. The McCarron's property is approximately 300' deep and their garage could be placed back further on their property by extending their driveway back. On the opposite side of their house there is 60' between the house structure and the property line and there is already a small garage on that side of the house which possibly could be expanded or where the 'new' reassembled garage could be placed.
4. The beauty of the Village of Livonia is its quaintness with the beauty of the older homes, which have stood here for close to 100 years of more, as well as the streets of newer "Victory" homes built after WWII and the even newer homes on Sunset Drive and Summer Street. I believe we need to protect and preserve the esthetic value of our neighborhoods. I am surprised that Terri, being a local realtor, and both Terri and Sharon having lived in Livonia all their lives do not appreciate that fact.

In September, while outside, Sharon McCarron told me they (the McCarron's) wanted to put a small portable shed on the property line and asked if I had any objection, She assured me it would be a small shed. Immediately after this conversation, when I went into my house, I realized the impact even a small shed would have on my property. The next time I saw Sharon I told her I did have a problem with the location of the shed and offered to bring her into my home to show her my concern. That never occurred and a week ago a variance hearing sign was posted on their property.

On Monday, October 27, 2014, I came down to the Zoning Office to ask about the variance. No one was in the office at the time. I waited 20 minutes, then left. On Tuesday morning I returned to get the information about the variance request and was surprised and disappointed to find the variance was for a 20'x30' garage. I welcome anyone on the Zoning Board to come into home to see its integrity on the inside and see first-hand my concerns regarding the placement of this garage.

I hope that the Zoning Board will deny the application for a variance by the McCarron's for the garage at 92 Big Tree Street in the Village of Livonia.

G. Cole said that there is a lot of land on Terry's property and asked Terry if the problem is that he doesn't want to have the expense of extending the driveway?

Terry said that he would like to save his backyard. C. Rider asked if he doesn't plan to use the structure as a garage, then he wouldn't need to extend the driveway. G. Cole asked Terry why he would not want to put the structure on the other side of his house and had he considered that.

Terry said that he does not have any doors on the west side of his house and it would not be practical for his purposes.

Chair Nilsson opened the meeting to the gallery for public comment.

Patricia Mintschenko stood up and identified herself. She stated that in August of 2003 she purchased her house and that she loves her home and living in Livonia. Patricia then stated that she understands why Terry would not want to place the garage on the west side of his home as it is inconvenient to them. She said that she does not understand why they can't push it back further into the property toward the rear property line.

Patricia went on to state the following:

She disagrees with the survey map and measured just today and feels that the map is not accurate. Furthermore-if a variance is granted-surveyed property lines need to be confirmed. She said that she feels this proposed structure would span the entire length of the living side of her house. She said that this

would change her home and her property. She also said that the trees running along the east property line between her home and Terry's, belong to her and she thinks the tops would have to be trimmed.

B. Weber asked Patricia how far her house is from the property line- Patricia stated that it is 32' from the property line in question. B. Weber then asked Patricia what exactly the garage would be blocking a view of.

M. Sharman asked Patricia to look at what he sees on the map because he feels the garage would only block Patricia's view of Terry's house.

B. Weber asked Patricia if her opinion on the devaluation of her home with the construction of this garage is just her opinion or has she had it appraised. Patricia stated that she has not had an appraisal done.

M. Sharman said that he owns property nearby and his neighbor has several sheds on the property. Mike pointed out that if the shed is 120 sq. feet or less, it only has to be 4' from the property line and there could be multiple sheds.

Chair Nilsson asked the gallery if there is anyone else that would like to address this application. Hearing no one he closed the public hearing portion of the meeting.

G. Cole said that because the requested size is so large, 20' x30' is so large, she wishes that it could be pushed back further into the property. G. Cole stated that she is hearing from Terry that the issue is the driveway and the trees in the backyard being prohibitive to placing it in a conforming location.

M. Sharman stated for the record that he works with Terry in the same office so he will abstain from voting- but would like to make his opinion known. M. Sharman said that he appreciated what Mrs. Mintschenko is saying but he does not feel that Terry is asking for much in his variance especially considering the location of his house and location of trees and everything else there. M. Sharman also said he does not feel that the proposal will affect the character of the neighborhood.

Patricia asked if she can say something now or not. Chair Nilsson said that he has closed the public hearing portion but does not think anyone will object.

Patricia said that she feels the zoning ordinances are for the protection of the property owners-if it's a matter of 15, then it should be followed. Patricia said that as a taxpayer, there's no need to grant a variance.

Chair Nilsson said he wants to address her first point- the Zoning Board is here for an area variance. They have to balance protecting the neighbors and helping the applicant.

Terry said that if he wanted to avoid the well he would have to be even tighter to Pat's property line. Terry said that he is asking for a 5' variance and does not feel that it is a big deal.

B. Weber asked CEO A. Backus that should the variance be granted, would he ensure that the approved 10' setback be followed. A. Backus said that he would.

Chair Nilsson closed the public hearing portion of the meeting for a second time and asked the board members to review the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? YES- to some extent.
2. Can the benefit be sought by the applicant be achieved by some feasible method other than a variance? YES
3. Is the variance substantial? NO

4. Will the proposed variance have an adverse effect of impact on the physical or environmental conditions in the neighborhood? NO
5. Is the alleged difficulty self-created? YES

Chair Nilsson said that he is ready to entertain a motion on this variance request.

B. Weber said he makes a motion to accept the application as presented for a variance to place the garage no closer than 10' to the property line and that it be verified by a licensed surveyor.

Chair Nilsson asked if there is a second motion on the proposal- hearing none he stated that he will second the proposal.

Motion carried: 3-1 (Aye: C. Rider/ B. Weber/ P. Nilsson

Nay: G. Cole

Abstained: M. Sharman)

Chair Nilsson asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 8:00pm.

M/2/C (C. Rider, G. Cole)

Motion carried: 5-0

Respectfully submitted,

Jeanne Brown

Recording Secretary