



Georgetown Zoning Board of Appeals
Memorial Town Hall ♦ One Library Street ♦ Georgetown, MA 01833
Phone (978) 352-5742 ♦ Fax (978) 352-5725

MINUTES OF A PUBLIC HEARING
55A Bailey Lane, Georgetown MA
Jonroy A. Connell & Roda Somera Connell
ZBA File #16-07
Petition for Variance & Modification of Variance

Board Members Present:

Jeff Moore Chairman, regular member
Paul Shilhan, regular member
Gina Thibeault, regular member
Dave Kapnis, regular member
Shawn Deane, regular member
Sharon Freeman, associate member – Not voting
David Twiss, associate member – absent until 7:49pm – Not voting

Applicant present: Jonroy A. Connell

JM opened the Hearing at 7:35pm. GT read legal ad; A Petition has been filed by Jonroy A. Connell & Roda Somera Connell of 55A Bailey Lane, Georgetown MA, for a Modification of a previous Variance ZBA File #86-1 for an addition that will encroach on the required front/side setbacks and a Variance for an existing deck that encroaches on the required setbacks in the RC zone. Pursuant to M.G. L. Chapter 40A, Section 10 and the Georgetown Zoning bylaws, Chapter 165 Article 2, Sections 9 and 84. The premises affected is 55A Bailey Lane, Georgetown, MA, and identified on the Assessor's Map 6A, Lot 15. The Petition will be heard by the Georgetown Zoning Board of Appeals; at the Georgetown Town Hall 3rd Floor Meeting Room on July 12, 2016 at 7:30 PM. ZBA File #16-07

JM introduced the Board members.

Petitioner's Presentation:

Jonroy- We have been residents since 2012, we are looking to do a second floor addition, and found out we had a previous variance we didn't realize we had. He explains the floor plans for the second floor addition to the existing home on the existing footprint. On the elevations he shows the addition on 2nd floor, and explains there will be a bump out of a bay window, off the front of the garage facing Bailey Lane. I have 160 ft. on Bailey Lane.

Brief discussion on a cantilever.

PS – Noted the cantilever is on other side of building meeting setbacks and DK noted the corner of it is on the side that does not meet the setback.

Jonroy Connell, owner - Shows on plot plan, I met with building inspector, the home was built in 1983, and the garage variance was in 1986, I found out that back then the minimum requirement was 1 acre not 2 acre zoning. He explains his neighbors Tracy Lotz on Heritage Way, the previous owners only had 40 ft. of frontage, and their driveway ended up becoming a private way in order to give them the frontage to build that residence,

which changed my setback my 40 ft. side set back to a 50 ft. front setback, which encroached on the garage. He explains the setbacks from the garage and the deck.

JM – There is a variance on the property to build the garage with the side setback, the variances goes with the property, so this was variance was for the side setback, the house was already built.

Discussion followed on the setbacks back in the 1980's and now, and the impact that Heritage Way had when approved by the Planning Board.

PS read the Building Inspector's Denial, which stated " *Building Department records indicate that the house was built in 1983. A variance was granted by the Town of Georgetown Zoning Board of Appeals in 1986 in order for the applicant to construct an addition within the required side yard setback. Heritage Way was approved by the Georgetown Planning Board in 1984 and constructed along the former side property line of the lot causing the lot to become a corner lot in which a 50 foot front yard setback is required.*" PS stated so Heritage way going in, both setbacks are 50 ft., when Heritage way went in, now 55A is a corner lot. It seems the previous board gave the variance for the setback.

Audience

Norman Marquis, 64 Bailey Lane – I have lived here since 1975, I am excited about the people living there, it's a small house, I can't find anything wrong with the expansion of the house, I am in favor of it as well as my wife.

Gene Hummer, 55 Bailey – I am confused about the setbacks, I thought it was all grandfather years ago it on 30 ft. setbacks.

Patty read a piece of old minutes from 1986, and it stated an abutter Mr. Murphy at the February 1986 Hearing for the variance, that due to zoning amendments that took place in the RC district back in 1981, the setback requirements for side are not 40 ft. and no longer 20 ft.

JM explained a lot of these lots were undersized compared to today's zoning code, so once the zoning, was revised, any new construction will be under the new zoning, and preexisting would be considered preexisting, but if you wanted to expand in any way, you would need from this board a special permit or variance. In this case stated the variance was granted in 1986, for the addition not the home.

Discussion on Cantilever from multiple board members ultimately DK asked;

DK – No cantilever on the garage correct, and everything is staying the same except your building up.

Jonroy stated yes and the bump out is 12inches deep and 8 ft. long facing Bailey Lane.

Discussion on the bump out for bay window, and the setbacks for the bump out that is not going down to the ground, which it is not.

DT and DK discuss the elevation and bump out being 4 ft. from center, so that's they decided it's not an issue.

JM explains because it's a corner lot now, it's the 50 ft. setback, when this was done the requirement was 40 ft., that gets to the existing nonconforming part, but the garage never met the original zoning to begin with, which is why the previous variance was required. So the garage itself regardless of what happened with the driveway, was legally built with this variance, so the question is can you go up, and what DK was getting at is there a potential that your and building something outside the footprint which may be within the 50 ft. that is required under current zoning. If that bump out is within 7 ft. of the corner, then he is right and your actually increasing the footprint, but there is no footprint rule really, if you change, it requires modifying the variance, and the nonconformity can be determined by the board. It does not seem to be a detriment, the neighbor's seem fine with the addition, because it's not preexisting non-conforming, is there something about the lot that necessitates

this, so with the decision from 1986 already written, it carries forward as far as meeting this, so at this point we need justification to modify the variance, the hardship was justified from the previous board. Other board members agreed.

Deck discussion with D. Twiss and applicant, the applicant show some pictures of it, and the board and applicant was not sure when it was built, but abutters believe it was done with previous owner someone name Marsha, between 1987 and 2012. The applicant stated he could not find anything in building file on the deck.

GT pointed out the bump out on the plans, is incorrect in that is shown on existing and proposed plans. It was noted that the bump out is shown on both the existing plan and proposed plan (that was an error).

Discussion followed on deck and it being grandfathered, and that it would have required a variance back then, how the codes have changed over the years. DK stated he didn't have an issue with the deck, but if it's expanded he would need to come back to the board. Discussion followed on non-conformity and the bump out and deck.

PS stated it's clear it's not detrimental we are just modifying the previous decision of variance.

SD ask JM; you said 10 years it would be grandfathered, can the board make a finding, with the limited testimony from the audience that is 10 years.

JM in this case it's already all nonconforming, there is nothing that said you have to stay within the footprint, that's just an interpretation, you can't intensity the nonconforming nature with a special permit, or if you're asking for a variance, desirable relief may be granted, without substantially derogating from the intent and purpose of the zoning bylaw, so by going up you can easily say or my understanding was you can't go up either, a setback encroachment would trigger a variance, but he is already here for that, and already has one on the whole thing. JM so this being an interpretation, so what he wants to do now; is that more detrimental or does it substantially derogate from the intent of the bylaw, more so than what is already there that he has a variance for.

DK stated I don't think he is increasing the non-conformity. JM disagreed because he is almost doubling the sq. ft., but it doesn't mean I am not in favor or that's bad, I think it's a nice upgrade. Board agreed they like the project. Discussion followed with DK, GT and JM, and PS on bump out bay window and the nonconformity issue.

Further Discussion on Deck

SD could the board make a finding about what the abutters said and that's its 10 years?

JM stated we need to grant a modification to this variance, we will do a new decision to include the statement "per the plans submitted" and the deck is shown on the plans submitted, the original variance stays with the land, we need to make the findings for that in granting the modification, that there are unique circumstances relative to shape, soil, etc.... 40A section 10, this application does argue it, PS stated it was already found in the previous variance. Discussion followed on this topic.

JM so now a corner lot, so 50 ft. is required, doesn't meet it, so it needs to be cleaned up, it's always been a conforming lot, we have to do this correctly and legally, include in the decision.

Discussion followed on the Inspectors interpretation is it's a corner lot, so now it's a 50 ft. setback.

The Board discusses the deck in depth. In summary it was discussed when it was there via the abutters statements, and it should be included in the decision as on the plans, and be part of the construction review with the Inspector, and if the applicant wishes to remove it, he can, and if he takes it down, it would need to go by

current code, if it's that old, the Inspector will handle that. Discussion on conditions or not.

There was some discussion on modifying the plans. It was decided not to.

The applicant stated we have discussed making it a patio and make it smaller.

GT stated I think we just address the deck let him decide if he wants to take it down. It would have to be on the other side, I feel like we approve what's on the plan. We approve what he's got, and if you build a different deck you come back. DK agreed.

JM read into the record - Plans – marked as Exhibits A-H

Exhibit A - Plot Plan dated 5/14/16 stamped by Curtis M. Johnson, PLS, of Express Surveying, Andover MA

Exhibit B - Sheet A1- Existing Floor Plan dated 5/24/16 drawn by John's Drafting & Design, Phillip Karitokos, architect, 14 Symphony Rd, Peabody MA 01960

Exhibit C - Sheet A2 – Proposed Second Floor addition dated 5/24/16 drawn by John's Drafting & Design

Exhibit D -Sheet A3 – Front elevation existing and proposed new structure dated 5/24/16 drawn by John's Drafting & Design

Exhibit E - Sheet A4 – Rear Elevation existing and proposed dated 5/24/16 drawn by John's Drafting & Design

Exhibit F- Sheet A5 – Side Elevations (left and right) dated 5/24/16 drawn by John's Drafting & Design

Also included in application was

Exhibit G Plan book 143, plan 58 (Plan of land, Owner by Bartlett Realty Trust dated March 1977) and recorded on 6/8/1977(shows bailey lane lots).

Exhibit H - Definitive Plan of Land by John Decoulos of Peabody MA, dated Feb. 1984, signed by Planning Board 6/6/84, Plan book 194, plan 67 recorded 2/12/85, that shows Heritage Way, applicant was Heritage Estates.

Audience

Tim Doherty, 57 Bailey Lane – I am in support of the application it will fit in very well with the street.

Tracy Lotz – 1 Heritage way, I am in favor of the application.

Gene Hummer 55 Bailey – My wife and myself are in favor of the application.

Board Discussion on how to write decision, with finding that desirable relief may be granted, without substantially derogating from the intent and purpose of the zoning bylaw.

JM – This requires a supermajority. *The Board took a recess at 9:12 and returned to regular session at 9:21pm.*

Motion

PS - I make a motion that pursuant to MGL 40A Section 10, and the Georgetown Zoning Bylaws Chapter 165, Article 2, sections 9 and 84, the Petitioners Jonroy A. Connell & Roda Somera Connell owners of 55A Bailey Lane, Georgetown MA, 01833 in the RC zone, Map 6A, lot 15, I move that the Board grant a Modification to a previous Variance ZBA File #86-1 for a second floor addition and an existing deck, per plans submitted. The previous Zoning Board found on February 4, 1986 that; that owing to circumstances relating to the soil conditions, shape or topography of such land or structures especially affecting such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner. I further move that based on plans submitted the Board find that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Seconded by SD. No further discussion.

JM – We will take a roll call vote. This needs a supermajority vote.

Vote – SD – Yes, PS – Yes, DK – Yes, GT – Yes, JM - Yes

Variance was granted unanimously 5-0.

JM reads - Lapse of Permit - Per M.G.L. c. 40A §10, if the rights authorized by a Variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the Zoning Board of Appeals in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with the Zoning Board of Appeals prior to the expiration of such one year period. If the Zoning Board of Appeals does not grant such extension within thirty days of the date of application therefor, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the Georgetown Zoning Bylaws and M.G.L. c. 40A.

JM - The Zoning clerk has 14 days to file a decision any appeal of this decision shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17, within 20 days after the date the notice of decision was filed with the Town Clerk. An applicant may file this decision before the 20 days but does so at their own risk.

GT to close the hearing DK at 9:25pm, all in favor, motion carried 5-0.

Patty Pitari
Zoning Administrative Assistant

Approved at 9-6-16 Business meeting