

**Town of Fishkill
Zoning Board of Appeals
January 19, 2010**

Minutes

Members Present

Barry Silverstein-Chairman
MaryAnn Leenig
Marc Breimer-Alternate
Al Campanaro-Alternate

Members Absent

Maureen Kangas-Vice Chairman
Ronald Critelli
Lynne Raver

Other Officials Present

Audrey Friedrichsen-Scott, Esq. – ZBA Attorney

Notice of Appeal Hearing has been published in the Poughkeepsie Journal,
The Southern Dutchess News and The Beacon Free Press.

Notified of the variance request were the Town Board, Town Planning Board, Dutchess
County Department of Planning, Dutchess County Department of Public Works, NYS
Department of Transportation, The Building Inspector and the surrounding property
owners.

The meeting of the Zoning Board of Appeals was called to order at 7:02 p.m. by the
Chairman. He made announcements regarding the no smoking policy and the emergency
exits and fire procedures. The Chairman informed those present of the procedures
regarding the ZBA.

The Chairman announced that Alternate Members Marc Breimer and Al Campanaro were
on the Board for this meeting with full voting rights.

Minutes

Chairman Silverstein called for comments or corrections to the minutes of the September 2009 meeting. Hearing none, he called for a motion to accept the minutes as written.

Marc Breimer made the motion to accept the minutes as written from the September 15, 2009 meeting.

MaryAnn Leenig seconded.

Motion Carried

Barry Silverstein - Aye

MaryAnn Leenig - Aye

Marc Breimer - Aye

Al Campanaro - Aye

New Business

Grid Number: 6055-15-735416 Address: 10 Red Schoolhouse Rd

Application Number ZB10-001, submitted by Patrick O'Dell, requesting (1) a 17ft 3in variance creating a 17ft 9in front yard setback, (2) a 6ft 7in variance creating an 8ft 5in left side yard setback and (3) a 22ft variance creating an 8ft rear setback. These setbacks will be created when a roof is constructed to connect the main structure to an outbuilding for the purpose of creating a legal accessory apartment. Said request is a violation of Chapter 150-23 and 150-14 of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

The DC Department of Planning citing this as a matter of local concern.

DC Department of Public Works citing no objection to this project.

The Town of Fishkill Planning Board requesting an analysis of the site and parking be completed prior to the granting of any variances.

The Chairman advised that notification was sent to the NYS Department of Transportation but no response was received.

The Chairman called for the representative. Patrick O'Dell presented to the Board. Mr. O'Dell advised that when he purchased the property he was advised by the previous owner and real estate agent that there was a legal rental apartment. He advised that his decision to purchase the property was based on the rental of the unit.

Mr. O'Dell stated that his lawyer missed the notice in the title search regarding the unit not being legal. Once he purchased the house he contacted Joel Petrus in the Building Department because the rental unit had issues with the electrical system, a leak in the roof and needed new sheetrock. Mr. O'Dell stated that it was at this time that he was advised the unit was not a legal rental nor had it ever been legal.

Mr. O'Dell addressed the parking issue. He stated that since purchasing the house a new driveway has been installed, along with septic and site work. The driveway can now accommodate six vehicles, all off street.

Chairman Silverstein asked what would happen if the variances did not get approved. Mr. O'Dell stated that it would be a serious financial problem. Mr. O'Dell commented that he is a police officer and lives alone. He purchased the property with the intention of renting the unit. He would have to sell the house.

Mr. O'Dell advised the Board that during negotiations the previous owner and real estate agent allowed him to bring perspective renters to see the rental unit. He commented that both the owners and real estate agent were present when he was showing the unit.

Chairman Silverstein asked for verification that without the variances, it would create a financial hardship. Mr. O'Dell confirmed this and commented that it already has. He had hoped to have the unit rented already.

Marc Breimer commented regarding the Planning Boarding request for the parking. He asked if the new driveway was constructed within the confines of the original driveway footprint or was it expanded. Mr. O'Dell stated that the new driveway was installed because the original one was poorly installed after septic work had been done. He redid the septic and expanded it to double the required capacity of the house and then resurfaced the existing driveway. He reminded the Board that there is no street parking allowed. Mr. Breimer asked if the total lot coverage on the application was based solely on the original driveway or the new one. The maximum coverage is 22% and the application is at 20%. Chairman Silverstein commented that the Planning Board did not comment on the lot coverage. Their concern was adequate parking for the house and unit.

Al Campanaro asked who advised him to connect the house to the unit to legalize the apartment. Mr. O'Dell stated that Joel Petrus advised him. He also consulted his contractor. Mr. O'Dell stated that it was originally a garage that had been converted and had been added on to.

Mr. O'Dell stated that he later found out that the real estate agent was related to the owners and had a new house in contract for them. He was looking into legal action but was not sure he would have the finances for it. He commented that he would not have purchased the property if he had known that it wasn't legal. He commented that he based his mortgage and insurance on the rental income.

Audrey Scott summarized a conversation that she had with Joel Petrus regarding the legalization requirements for the unit as found within the town code. The interpretation of the code requires the house to be connected to the unit. She reviewed the memo she created for the Board citing the requirements as found in §150-23 and 14. She reminded the Board that they have the authority and jurisdiction to interpret the code. The threshold inquiry is whether they apply. The second level of inquiry is whether the area variance standards apply for each variance request.

Chairman Silverstein asked if the vote at the next meeting will be three separate resolutions or combined into one. Ms. Scott stated that it can be either way. The Board needs to determine if it wants all three on one or if they need to be listed separately. She reminded the Board that the Planning Board recommended a site and parking analysis be conducted. The Board has the right to request the applicant have the analysis done prior to voting. Chairman Silverstein asked Mr. O'Dell if he was presently in front of the Planning Board. Mr. O'Dell stated that he was not and was not aware that the application was referred to them. Ms. Scott advised that Mr. Petrus referred this to the Planning Board because of the section of the code that requires it and it is the responsibility of the Zoning Board to interpret whether the code applies.

The Chairman called for a motion to Close this Public Hearing
Al Campanaro made the motion to Close the Public Hearing
Marc Breimer seconded
Motion Carried

Barry Silverstein - Aye
MaryAnn Leenig - Aye
Marc Breimer - Aye
Al Campanaro - Aye

Deliberations

Al Campanaro stated that he did a site visit and the variance won't affect the site. It will only be a small section of roof that will connect to a patio roof to create one dwelling. The driveway and rear section of the property won't be a problem. He noted that he has no problem with the variances.

Marc Breimer stated his only concern was the lot coverage and that any modifications that had been made with the driveway didn't exceed the lot coverage. He commented that he also did a site visit and not being an engineer surmised that there is suitable parking for at least four vehicles. He is satisfied with the parking but if other Board Members request a full parking analysis be conducted, he wouldn't object.

Al Campanaro commented that when he pulled into the driveway he may have been the sixth vehicle and he had no problems parking. He also commented that he owns a large truck.

Chairman Silverstein commented that a perspective renter will also look at the parking and if it isn't adequate would probably not rent it. Since the applicant is looking at the rental income, he addressed that issue. The Chairman stated that he also does not have a problem with the parking. He commented that nothing further needed to be done regarding the parking.

MaryAnn Leenig also agreed that the parking would not be a problem. Marc Breimer reiterated that he has no problem with the parking. He noted that there have been situations where the attachments of various structural components, such as roofs have been used to make structures legal from a zoning stand point. He commented that the current patio is very close to the house and the addition of a connecting roof would not create any significant detracting to the property. Mr. Breimer also commented that the nature of the neighborhood appeared to be congested looking older homes. This roof will not cause any detriment to the area.

MaryAnn Leenig reiterated that the parking was her only concern and it seems to be ok.

The Chairman called for any additional comments. Hearing none he called for a motion to Adjourn the ZBA Meeting.

Al Campanaro made the motion to Adjourn the ZBA Meeting
MaryAnn Leenig seconded
Motion Carried

Meeting Adjourned at 7:33 p.m.

Respectfully Submitted
Nancy Fitzgerald-Lecker
ZBA Clerk