Zoning Board of Appeals
Minutes
August 18, 2016

Present

Chairman Dole
Michael Flavin
Dale Kellerson
Diana Powell Keery

Absent

Mark Unvericht

Also Present

Zoning Board Attorney Eric Stowe
Zoning Board Secretary Pam Gilbert
Building Inspector Patrick Smith
George & Gloria Rice
Mike Cunningham
Carol Nellis Ewell
Nancy Klein
William Dunn
Dominic Agostini

Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of George and Gloria Rice, for property located at 49 Upton Ave, Spencerport, NY 14559 for an area variance. Such requested variance is for a proposed rear setback of zero (0) feet, whereas, the minimum rear setback is 5% of the depth of the lot which for this lot is 4.13 feet pursuant to Chapter 340-12 B-(1) and an area variance for lot occupancy of approximately 35% whereas the percentage of lot occupancy (including residential and accessory structures) in a residential district lot shall not exceed 25% of the area of such lot pursuant to 340-11. This is in a Residential R-2 District.

George Rice: We need a garage and a family room in the back. The house is very small. We really didn't know how close we are going to be to the lot line with the two porches and they are more for shade then sun. I have talked to Owen regarding the electric pole guy wire. Tom was there and marked the sidewalk for the driveway. We have pretty much done our homework. So we are here to see if we can do it.

Chairman Dole: Your relationship to the property owner?

George Rice: I am buying the house from Nancy.

Joan Quigley: What side you are going on?

George Rice: The garage will go to the east and the family room will go to the back side of the house. We are not touching our property line but within a foot of it.

Chairman Dole stated that Owen McIntee, Superintendent of Electric gave us a letter regards to the work that has to be done with the guy wire that will need to be moved.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole then asked Building Inspector Smith, Attorney Stowe and the board if they have any comments.

Building Inspector state that he would suggest changing the zero foot rear set-back to nine tenths of a foot per the instrument survey map done by Schultz.

Attorney Stowe: Any approvals would be condition on compliance with Owen's letter and his requirements.

Dale Kellerson stated that when he first looked at the first map we received I was worried how close it was going to be the footpath. But going out there and it shows the concrete pad where there was a garage years ago. You see how far that pad is to the actual blacktop of the path there is quite a distance compared to what I thought. I thought that the corners of the patios were going to be almost right to the pavement. Not sure if you could make the patios smaller.

George Rice: No we cut them down as small as we could.

Michael Flavin: Are you going to do anything to the rest of the house?

George Rice: Just siding it and making it look nice.

Diana Powell Keery: My question was how close it is to the Canal Authority but obviously it doesn't come into play and there is more room than you think.

RESOLUTION
311/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from George and Gloria Rice for two area variances to allow a rear setback of nine tenths (.9) feet and for the occupancy of the lot to be thirty-five percent (35%), on property located at 49 Upton Avenue, Spencerport, New York 14559; and

WHEREAS, an application for an area variance is a Type II Action pursuant to the New York State Environmental Quality Review Act (SEQRA), and is subject to no further review; and,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of George and Gloria Rice for two area variances to allow a rear setback of nine tenths (.9) feet and for the occupancy of the lot to be thirty-five percent (35%), on property located at 49 Upton Avenue, Spencerport, New York 14559 is a Type II Action and is therefore subject to no further review; and

Motion: Chairman Dole
Second: Diana Powell- Keery

Vote of the Board:

Ayes: Dole, Flavin, Kellerson, Powell-Keery
Nays: None

RESOLUTION
312/2016

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of George and Gloria Rice, for area variances at 49 Upton Avenue in the Village of Spencerport, to allow a rear setback of nine tenths (.9) feet, whereas the minimum rear setback is five percent (5%) of the depth of the lot, and whereas the setback allowable is 4.13 feet, and whereas a variance is required to allow lot occupancy in excess of twenty-five percent (25%) of the area of such lot, having considered, among other things:

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 variances;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variances;
3. Whether the requested area variances are substantial;
4. Whether the proposed variances 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

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variances because:
    i. _____
    ii. _____
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variances because:
    i. _____
    ii. _____
3. The area variances are not substantial because:
    i. _____
    ii. _____
4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
    i. _____
    ii. _____
5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny these variances.

The Zoning Board of Appeals further determines that the variances requested are the minimum variances necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variances:

i. Compliance with the requirements of Owen McIntee, Electric Superintendent's letter dated August 18, 2016.

ii. _____

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variances may have on the neighborhood or community.

The application for the area variances is hereby GRANTED.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:
Ayes: Dole, Flavin, Kellerson, Powell-Keery
Nays: None

Unfinished Business

Dominic Agostini of AEA Properties, LLC

Chairman Dole asked if there were any changes to the application.

Dominic Agostini stated that he has provided the additional information that was requested from the last meeting; which was that an instrument survey would be beneficial and that I needed to talk to Tom West and Owen McIntee regarding utility easements. Survey obviously doesn't show any easements so I talked to Tom West and he said that there is no utility easements back there. Owen McIntee came out and we talked about the fact that as it sits right now would be underneath an electric line. You should have a copy of that memo from him. The only other thing would be the parking spots. Specific to the parking spots in the Code Book 340-29 A(5) I think it is fair to call that retail space with a total amount of retail space in that building 4,850 square foot. According to that code we are looking at one spot per 250 square foot of retail space which puts us at about 20 spaces I am currently at 40 spaces. So the loss of 7 would not be an issue.

Attorney Stowe – You have 40 and you are losing 9. I would call it bank and office space so it is one for every 200 so I would say 21 spaces that there is still plenty of spots.

Dominic Agostini: So going back to Owen's letter he just owes me some numbers for moving that pole so we are no longer underneath the lines. That would need to be remedied before the structure gets built.

Chairman Dole: Yes, and like the other resolution before you would need to comply with Owen's request.

Joan Quigley: How long is that building going to be as I still think it is excessive in size?

Dominic Agostini: It is 60 feet long.

Joan Quigley: So you are determining that each car needs 15 feet and a car and a half garage is approximately 16 and half feet. You don't need it that long.

Dominic Agostini: There is an additional 8 feet that will be used for storage; 52 feet would be more for the parking garages.

Chairman Dole: 60 feet is what the other building is right now. So it will mirror the front building.

Chairman Dole then asked Building Inspector Smith, Attorney Stowe and the board if they have any comments.

Attorney Stowe stated just compliance with Owen McIntee's letter.

Dale Kellerson: Looking at it again it looks like that building is about 15 feet high so it would seem that some of the houses looking at will be looking over the roof it won't be blocking. Do you know who owns fence that is along the property line?

Dominic Agostini: I would have to look at the map but I believe the fence on the west side is owned by the Apartment complex. The fence on the south side of the building belong s to me.

Dale Kellerson: I was just wondering because if someone took that out or cleaned up back there it would be a direct view for the apartments. Right now it is almost hidden with the trees and fence. It is almost a natural barrier.

Dominic Agostini: There is a retaining wall there with a part of it that needs some repair but that is all.

Diana Powell- Keery: Well I still have any issue with it. I went back there and you are butting up against a residential housing area. With it being a garage you are going to have cars going in and out. He stated that he is going to rent out spaces to clients. You can't control the time of day that people are going in and out. I know from experience that it can get really loud at all different times of day. First thing in the morning it can be really annoying and really late at night also. It can really interfere with quality of life. So I still have an issue that has not been addressed. It is big and renting those spaces to client we have no idea. So when we talk about it being self-created, is it the right place for a garage. That is why we have what we have in front of us to consider all things. But for me because it is next to residential I do have a problem with it.

Chairman Dole asked what we could do to assure that it doesn't. You are not going to let any mechanical work being on property.

Diana Powell Keery: I don't think you can. How can you control what people are going to do in there.

Dominic Agostini: They are all great questions, I would say that first of all the group of people I would be targeting for this really are the people that have the 57 Chevy that is just going to be storing it for the winter months. I don't see it as a spot where they would be doing any work on the vehicle. I would be

Dominic Agostini continued: willing to put in parameters in a lease agreement. I don't want them coming in at 2 am either. They are there during the day time and not living at my building.

Diana Powell Keery: Do we have the authority to do this.

Attorney Stowe: You have the authority to put reasonable conditions that are related to the variance. You can say hours of operation, stuff for protection of the neighbors, like no mechanical work to be conducted.

Diana Powell-Keery: Who is going to enforce it? Yes as the landlord you have to enforce it but it is also up to us.

Attorney Stowe: It falls under Code Enforcement. It will not only be for you currently but for anyone who owns this in the future. You can set the hours of operation because it is related to the variance and minimizing the impact on it. We can't say that it is only as he owns the building.

Diane Powell Keery: I still have a problem but we can still put these in at least to be able to enforce it. The reality is how big it is and next to residential it is truly self-created there is no emergency need for this structure. But I think if you are going to do it then put in conditions.

Michael Flavin: You are not going to put up lighting? We ran into that with Tim Horton's regarding the down lighting. You are just going to have what the Building Inspector is going to want for building codes like a bulb at every entrance.

Dominic Agostini: I do have a security light there now that lights up that whole area back parking lot.

Building Inspector Smith commented I think it is important to say that you are a five member board and if Mr. Agostini would rather ask to have this tabled until there is a full board present if he thinks he would get a better vote.

Diana Powell Keery: He has to get three regardless if Mark is here or not he has to get three, because it has to be majority so it doesn't matter. I am looking at three probably.

Building Inspector Smith: Just in case someone changed their vote and Dominic miss counted he does have the ability to wait until he has a full board.

Dominic Agostini: I think I'm good with this board.

RESOLUTION
313/2016

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from AEA Properties, LLC for an area variance to allow a rear setback of seven (7) for a storage structure, to be located at 409 South Union Street, Spencerport, New York 14559; and

WHEREAS, an application for this type of area variance is a Type II Action pursuant to the New York State Environmental Quality Review Act (SEQRA), and is subject to no further review; and,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of AEA Properties, LLC to allow a rear setback of seven (7) feet for a storage structure, to be located at 409 South Union Street, Spencerport, New York 14559 is a Type II Action and is therefore subject to no further review; and

Motion: Chairman Dole
Second: Dale Kellerson

Vote of the Board:

Ayes: Dole, Flavin, Kellerson
Nays: None
Abstain: Powell-Keery

RESOLUTION
314/2016

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of AEA Properties, LLC, for an area variance at 409 South Union Street in the Village of Spencerport, to allow a rear setback of seven (7) feet, whereas said variance is required to construct the proposed storage structure, having considered, among other things:

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

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variance because:
   i. _____
   ii. _____
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variance because:
   i. _____
   ii. _____
3. The area variance is not substantial because:
   i. _____
   ii. _____
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
   i. _____
   ii. _____
5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny the variance.

The Zoning Board of Appeals further determines that the variance requested are the minimum variance necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variance:

i. Compliance with the requirements of Owen McIntee, Electric Superintendent's letter dated August 18, 2016.
ii. Garage to be used for **Storage Only**, no mechanical or repair work to be conducted at the garage.
iii. Hours of access to garage will be 7 a.m. to 11 p.m.

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variance may have on the neighborhood or community.

The application for the area variance is hereby GRANTED.

Motion: Chairman Dole
Second: Michael Flavin

Vote of the Board:
Ayes: Dole, Flavin, Kellerson
Nays: Powell-Keery

New Business

Nothing requiring Board action

Approval of Minutes

Motion made by Michael Flavin seconded by Diana Powell Keery and carried unanimously to approve the July 21, 2016 minutes.

Adjournment

Motion made by Michael Flavin seconded by Dale Kellerson and carried unanimously to adjourn the meeting at 7:33 pm.