

MEETING MINUTES
Zoning Board of Appeals
April 18, 2019

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2019 JUN 10 P 1:10
TOWN OF LUDLOW

Members Present: Paul Zielinski; Joseph Wlodyka; Manuel Lopes; Alan Aubin

Members absent: Anthony Jarvis, Kathleen Bernardo; Nicole Parker

Vice-Chairman Paul Zielinski called the meeting to order at 7:00 p.m.

First Order of Business: Pledge of Allegiance

The Board held a public hearing on the application of Terri Jurkowski, for the property located at 30 Brunelle Street, Ludlow, MA (Assessors Map 27B, Parcel 88, Zoning: Residential A). The subject of the hearing is a variance to construct an attached garage to the home providing only a 17 ft. 3-inch front yard setback where a 30-foot front yard setback is required by varying Ludlow Zoning Bylaw, Table 2 – Table of Dimensional Regulations.

Mr. Kevin Jurkowski and Mrs. Terri Jurkowski were present for the hearing.

Mr. Zielinski: go ahead and tell us what you want to do.

Mr. Jurkowski: basically attached, 22 x 28, doesn't meet the setback as you just said, what is it, 17.3 so that's what we're asking for the variance. It's pretty straight forward, I mean,

Mrs. Jurkowski: it meets the side and the back

Mr. Jurkowski: yeah the side, the back, the rear is fine, I think it fits pretty well, I saw a couple of the guys drive down the street today, I think it fits pretty well into the neighborhood as far as I don't think it would take anything away from the neighborhood. You can see the house is kind of, it's a little cock-eyed on the property so.

Mr. Zielinski: are there any other homes on the street on either side of you that have similar garages?

Mr. Jurkowski: well I think the people next to us to the left, if you're facing the house, they've got a two-car garage, their house is a little bit closer to the street but the garage is probably a little bit further back than the house. Their house is similar, but it's slightly different, it's got an upstairs.

Mrs. Jurkowski: I mean none of the houses on our street really make

Mr. Jurkowski: yeah, on that side seem to make the setbacks,

Mr Lopes: yeah I noticed that.

Mr. Jurkowski: the other side is fine, the other side there's plenty of room on the setbacks I think.

Mr. Lopes: it's a short street.

Mrs. Jurkowski: it's a very short street.

Mr. Lopes: most of the houses on your side of the street are very close.

Mr. Jurkowski: I mean it's gonna tie in pretty nicely with the house, I mean, the roof line is gonna stay the same, there's not gonna be anything, you know, it's not gonna stand above the house or anything.

Mr. Zielinski: just gonna take a look at a satellite photo of it.

Mr. Jurkowski: the trees might still be in the satellite photo.

Mrs. Jurkowski: I have pictures on my phone if you need to see updated pictures.

Mr. Aubin: if you are facing your house, the house next door that has a garage, would be to the left or the right if you were facing

Mrs. Jurkowski: to the left.

Mr. Jurkowski: to the left.

Mr. Zielinski: yeah I see it.

Mr. Jurkowski: which would be number 40.

Mr. Aubin: I'm trying to bring it up here too.

Mr. Lopes: so you're keeping it just slightly back from the front of the house

Mr. Jurkowski: correct.

Mr. Lopes: your house is a little bit tilted there on the lot

Mr. Jurkowski: you see that little square, yeah it's a little cock-eyed, so you see that little pad that's in the front, that would come up too because it's so close to where it would attach.

Mr. Lopes: what do you mean it would come up?

Mr. Jurkowski: that's like a little landing pad so we were gonna tear that up and just put a smaller one there.

Mr. Aubin: do you know, you may or may not, what's the size of the garage of your neighbors to the left?

Mr. Jurkowski: that I don't know,

Mr. Aubin: yeah I don't expect you to know it

Mr. Jurkowski: if I had to guess I'd say a 24 x 24. If I had to guess.

Mr. Lopes: (looking at Mr. Aubin's cell phone) and that's number 40?

Mrs. Jurkowski: I can take a look and tell you.

Mr. Aubin: I'm pretty sure it is.

Mrs. Jurkowski: yes

Mr. Jurkowski: yeah that's 40.

Mr. Lopes: and that house is actually closer to the road than their house.

Mr. Aubin: not by much though.

Mr. Jurkowski: no, not by much at all.

Mrs. Jurkowski: no not by much at all, maybe a couple feet, I'm guessing.

Mr. Jurkowski: if that.

Mr. Zielinski: actually I'm just looking at a 3D satellite photo of it and it looks like actually the neighbor to your left, their house is actually more forward than yours is.

Mrs. Jurkowski: yes that's what we were just saying.

Mr. Jurkowski: just a tiny bit, but not much.

Mrs. Jurkowski: yeah all the houses on that side are close.

Mr. Zielinski: by about 2 feet I think.

Mr. Wlodyka: it's a dead end too, it ends right there.

Mr. Zielinski: it is a dead end, yup. Mr. Lopes did you want to see the 3D on it? The one with the white roof is the petitioners.

Mr. Wlodyka: so there is a little drop off from the back towards the

Mr. Jurkowski: there is. There will be a slightly higher wall in the back because it's gonna have to go four feet in for the footing and then the wall would have to come up from that point, you know what I mean, so it will be a little bit higher in the back.

Mr. Wlodyka: sure. Now, so that 10 ft. 2 on the side there, that would remain sloped because it looks like or do you have access from the other side as well? To get down into your backyard.

Mr. Jurkowski: no there would be access.

Mr. Wlodyka: okay.

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Mr. Aubin: are you gonna widen the driveway at all?

Mr. Jurkowski: yes.

Mr. Aubin: looks like there's a tree right there, is that coming down?

Mr. Jurkowski: no, there's actually

Mr. Aubin: this might be an old picture

Mr. Jurkowski: let me see, what do you got? Oh there's no trees in the yard, they're all gone.

Mr. Aubin: alright, this is an old picture.

Mr. Jurkowski: yeah it's an old picture, there's zero trees in the yard now.

Mr. Zielinski: it looks like all your neighbors have the trees.

Mrs. Jurkowski: yeah, we got the leaves though.

Mr. Zielinski: it does appear that, like I said, the neighbor to your left does have a garage attached, it looks like the frontage on theirs sits just a tad bit forward of where your home and your proposed garage would be and then the neighbor to the right does not appear to have an attached garage.

Mr. Jurkowski: well they have an underneath, yeah.

Mr. Zielinski: it's an under-car garage, okay.

Mr. Jurkowski: and then the next house is actually on,

Mrs. Jurkowski: East Street

Mr. Jurkowski: would be the one that hits East Street.

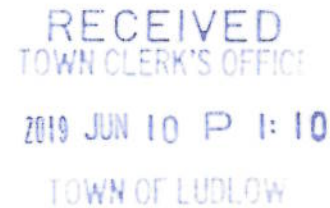
Mr. Zielinski: okay. Yeah normally what we do in cases like this we'll look at homes on directly either side of you or within 500 feet, whichever is closer so in this particular case we're looking at the house directly to the left of you which would be the nearest one for comparison.

Mr. Jurkowski: and I think the lot size is pretty darn close to the same.

Mr. Zielinski: right. Would anyone here from the public that wishes to make any comments? If you could just state your name and address for the record.

My name is Joe Tumidajewicz, I have property at 39 Brunelle Street, I've known Kevin over, since he's been there for about four years and all I've known about him is he's constantly fixing up his place, doing this and doing that. As you can see here, it's only gonna be a plus, only a plus.

Mr. Zielinski: okay, thank you. Any other comments, questions from the Board?



Mr. Aubin: this is a variance correct?

Mr. Zielinski: yup. That's how it was filed.

Mr. Wlodyka: do you want to go through this?

Mr. Zielinski: yeah, go ahead.

Mr. Wlodyka: did they, when you got your paperwork back from the Building Department, did they give you a leaflet like that?

Mr. Jurkowski: they did, but I didn't do anything with that because I, you know, the process, I spoke to Ann a few times, this process isn't the clearest, I mean, and she said they were in the process of revising it, probably a wise thing to do because I had a lot of questions that she can't actually give me the answers, you know, because she puts herself on the spot.

Mr. Wlodyka: right

Mr. Jurkowski: so I didn't even know what to begin to do with those.

Mr. Wlodyka: did you look through it, did you read it because

Mr. Jurkowski: well I did pan through it a little bit and then I had to come back down because I didn't include enough information and to be honest with you I wasn't sure what to do.

Mr. Wlodyka: okay. Well because you applied as a variance, we have to go through this bit by bit here.

Mr. Jurkowski: okay.

Mr. Wlodyka: so it starts off with the definition of a variance and there are three requirements that you have to have in order to get a grant of a variance and they are all conjunctive not disjunctive, in other words, you need all three. And the first one would be #1 soil, shape and topography, owing to circumstances relating to the soil conditions, shape or topography of the land or structure and especially affecting such land or structure but not generally affecting the zoning district in which it is located. A key requirement of the variance law is the determination that there is something wrong or unusual about the parcel's soil, shape or topography. The Board must also find that the peculiarity is unique to the zoning district where the parcel is located.

Mr. Jurkowski: so what does that mean? Should I have not done a variance? I mean that was one of the questions I originally had, was what should it be done as and once again, going back to Ann, I mean, she couldn't tell me because, and I don't blame you, I understand that, I get that.

Mr. Wlodyka: yeah that's it, they can't make any legal

Mr. Jurkowski: yeah I understand that 100%.

Mr. Wlodyka: assumptions or any kind of thing like that but that's where, you know, when this goes out you should read it and try and understand it and ask questions if there are any.

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Mr. Zielinski: but that's the first of the three findings that we have to do.

Mr. Wlodyka: that's the first of the three

Mr. Zielinski: and you have to meet all three so why don't you go ahead and read the other two.

Mr. Wlodyka: the other two, the next one is a hardship, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise. Hardship must be caused by the unique soil, shape or topography condition. Personal hardships do not justify the grant of a variance. Hardships that arise because of the acts of an applicant do not justify the grant of a variance (self-inflicted hardships). Economic or competitive hardships are not sufficient due to their inability to be linked to the unique condition of the land. A landowner's desire to maximize his profit does not constitute a substantial hardship. *Perez v. Board of Appeals Norwood*, 54 Mass. App. Ct. 139 (2002). Hardship created by an act of public authority (eminent domain) that are beyond the control of the petitioner may be sufficient. *Adams v. Brolly*, 46 MAC (1998). In other words if the Town took some land in the front and didn't leave you with enough backset that would qualify for that possibly. So that's number two, that's hardship. And number three for the Public Good. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance or bylaw. This is the easiest of the three findings. The deviation must be substantial and must significantly detract from the zoning plan. *Cavanaugh v. DiFlumera*, 9 MAC 396 (1980). The effect of a variance on the intent and purpose of the bylaw must be determined by appraising the effect on the entire neighborhood affected. This finding is of limited use without meeting the other two statutorily mandated findings. Tougher finding to make when Zoning Board is considering a use variance. So with that said, going back to the first one, is there anything about the soil, shape, or topography that would make it unique in its own right?

Mr. Jurkowski: I don't think so. Do you?

Mrs. Jurkowski: what? Topography meaning the way that, I mean, the yard slopes, I mean

Mr. Jurkowski: it's got a hill on it

Mrs. Jurkowski: I mean, to put it, to push the garage back to the thirty feet would make a huge wall in the back which, and then the neighbors can look at, I mean, so that to me is a reason for the variance right there, to bring it up to where it meets with the house, you're gonna have a four foot wall, if we bring it back to the thirty feet, it's probably gonna be

Mr. Jurkowski: I'm not sure it would make the setback on the rear.

Mrs. Jurkowski: there's gonna be a lot of concrete that the next people behind us are gonna be staring at.

Mr. Jurkowski: because what's the setback on the rear, 30, is it 30 or 50? I know it's one of those, I thought.

Mr. Zielinski: I think it's twenty. I believe it's ten feet on either side for Residential

Mr. Aubin: it's twenty.

Mr. Zielinski: it's twenty on the back, yeah.

Mr. Lopes: ten on the side, twenty on the back.

Mr. Jurkowski: geez, I don't know if it would make it on the back

Mrs. Jurkowski: yeah it would, we got 100 feet, so I mean, if you got a garage that's 30 foot back and 28

Mr. Wlodyka: so then I guess the question to the Board would be, that, pushing it back that far, would that be enough to have a positive finding in their favor for the soil, shape and topography of the land.

Mr. Aubin: I was more concerned with number 2 but I think it will satisfy number two.

Mr. Jurkowski: you would have a giant wall in the back if you pushed it back that far.

Mr. Lopes: I think the topography definitely, you know, qualifies there because a drop-off like that building a big wall like that would be

Mrs. Jurkowski: ugly

Mr. Lopes: yeah

Mr. Jurkowski: to be honest with you, if you look at, I mean, I know a couple of you drove by but if you look at where it's gonna, you know, where we want to put it now, that wall won't be very tall at all, I mean, but if we push it back like she said

Mr. Wlodyka: yeah I saw the slope when I took a ride down this evening.

Mr. Jurkowski: yeah we'd have a giant impact on the neighbors.

Mrs. Jurkowski: you've seen our yard and how it's landscaped, that wall in the back would be landscaped because nobody wants to see, you know what I mean, now so even with the four foot I will have shrubs.

Mr. Zielinski: how much of a drop-off is there from where the proposed wall would be to the lowest section of your yard?

Mrs. Jurkowski: well we have a walk-out basement so you have, I mean, it's at least eight feet

Mr. Jurkowski: it's eight feet.

Mrs. Jurkowski: it's at least that.

Mr. Zielinski: okay.

Mr. Aubin: but I think also if you pushed it back then you're gonna be encroaching

Mr. Lopes handed Mr. Zielinski his phone showing a photograph.

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Mr. Zielinski: oh wow, okay I see the house in the back of you.

Mr. Lopes: I drove by there and snapped a couple pictures.

Mr. Zielinski: is there a brook or something that runs in the back?

Mr. Jurkowski: no.

Mr. Lopes: I could see there was a drop-off in the back.

Mr. Zielinski: wow.

Mr. Aubin: just for, I think if you pushed it back you'd be encroaching on the side setback as well.

Mr. Lopes: right.

Mr. Aubin: because they're at 10.2 now, on the proposed plan so if you pushed it back you're actually creating another situation by encroaching on the side setback.

Mr. Wlodyka: yeah. So I think I would tend to agree with Manny that, I think the shape of that, the topography would be finding in favor of the land owner here.

Mr. Zielinski: it's only the one finding.

Mr. Wlodyka: that's one.

Mr. Lopes: let's go through each of them.

Mr. Wlodyka: okay, one by one. So we go to number 2, a hardship, hardship must be caused by the unique soil, shape, or topography condition, personal hardships, we're not looking at a personal hardship I don't believe and the hardships that arise because of acts of the applicant doesn't seem to fit here, there's no economic or competitive hardship that I can see there and he's not trying to maximize his profit so I think that, in my opinion, the hardship seems to be caused by the unique shape of the land with the slope in the back there, which would cause a very tall wall to be met.

Mr. Aubin: potentially financially.

Mr. Wlodyka: so yes.

Mr. Aubin: I'm agreeing with you so I think it would, potential financial impact.

Mr. Wlodyka: there would be but reverting back to the first part of the finding on number 2 is that the hardship must be caused by the unique soil, shape, or topography so that's, to me, that's meeting that criteria.

Mr. Lopes: I agree.

Mr. Zielinski: okay, and the third one.

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Mr. Wlodyka: and number 3, for the public good, desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or the purpose of the ordinance or bylaw. The effect of the variance on the intent and purpose of the bylaw must be determined by appraising the effect on the entire neighborhood affected. Finding of limited use without meeting the other two statutory mandate or findings, we met the other two so basically we're looking at is it gonna be a, have an affect on the rest of the neighborhood there. Is there any discussion on that?

Mr. Lopes: personally I think that building it where they proposed keeping it in line with the house and also with the neighbor's house I think is for the public good because if they move it back, again, you're creating a wall there and it's gonna, not gonna look that good to the neighbors, to the neighborhood and keeping it, keep in mind this is an older street, these houses, this is a Residential A neighborhood and back then they could build closer to the street, all the houses are closer to the street and by pushing it back with the big wall and kind of making it an eyesore back there, setting it in the location that they are proposing is, in my opinion, for the public good of the neighborhood, so I would venture to say that, in my opinion, they meet number 3 as well.

Mr. Aubin: I agree with Manny because there is a building next door that has a similar shaped garage and so it's really not gonna make the neighborhood more detrimental.

Mr. Wlodyka: and I also agree with Manny, I think that, you know, it's gonna be an asset to the neighborhood rather than a detriment.

Mr. Zielinski: so who found that they met number 2 for hardship?

Mr. Aubin: yeah I mean I, just interpreting it, it says without having cause, you'd be building a bigger wall, they're in a little bit of a conundrum but the same, building a bigger wall would be more cost.

Mr. Lopes: I think the hardship is the topography also met the hardship.

Mr. Zielinski: that would be finding 1, soil, shape, topography

Mr. Lopes: isn't topography also included in number 2?

Mr. Wlodyka: yeah, it is, the first line of it says the hardship must be caused by the unique soil, shape, or topography condition.

Mr. Jurkowski: because we did toy with the idea of doing a detached and then we came to the conclusion it would look ridiculous so we opted out of that.

Mr. Zielinski: you'd either have to build up or down in the valley.

Mr. Jurkowski: So we just thought it wouldn't look right.

Mrs. Jurkowski: and we want it to look like as seamless as.

Mr. Jurkowski: I care what the neighbors think but I also want to, you know, I care what I think when I look at it, I don't want it to look ridiculous, and I think it would.

Mrs. Jurkowski: and if you guys could see what the house looked like when we bought it and what it looks like now.

Mr. Jurkowski: yeah I mean it's totally different.

Mr. Lopes: the topography also creates hardship in moving it back further, number 1 and number 2, it fits them both.

Mr. Aubin: in moving it back also you going, you got to be against, you don't have much, you can't move it back,back 13 feet because the side setbackopposed to 10.2 so you may gain, I don't have a calculator in front of me but maybe a foot or two.

Mr. Lopes: so you're gonna be less than 10 feet, you'll have less than 10 foot of a side yard if you move it back

Mr. Aubin: right, so then you're back in the same position that you are now. And then you're encroaching on the neighbor on the left where currently where it's proposed it will meet with the front of the house.

Mr. Zielinski: do the other neighbors have a big drop-off like that in their yards?

Mr. Jurkowski: the one, if you're facing to the left, their yard is a little bit different, they have a flat, half of their lot is up and then they have a drop-off to the side in the rear, instead of behind the house, it's to the side of the house.

Mrs. Jurkowski: and then the guy to the right of us has the same, he has a walk-out basement, he has a drop-off too.

Mr. Zielinski: okay. Any other questions or concerns? I'll entertain a motion then.

Mr. Wlodyka: I make a motion that the Board, considering that we've met the three criteria set forth in the variance handout, approve the application of 30 Brunelle Street for the 22 x 28-foot garage, not to exceed 616 square feet as proposed, provided it meets all building code requirements. And the 17.9-foot frontage, backset

Mr. Lopes: the new setback is 17 foot 3 inches

Mr. Wlodyka: 17 foot 3-inch, okay, front setback is 17.3 and the side set minimum of 10.2 feet.

Mr. Zielinski: okay. Why does the plan say 17.9?

Mr. Aubin: I think the 17.3 is to the house and the 17.9 is to the garage.

Mr. Jurkowski: correct.

Mrs. Jurkowski: correct because the house sits a little, it doesn't sit perfectly straight.

Mr. Zielinski: that's existing isn't it?

Mr. Wlodyka: yeah

Mr. Zielinski: so you want 17.9 then

Mr. Lopes: 17.9 yes you're right.

Mr. Zielinski: So you want to amend that to 17.9?

Mr. Wlodyka: okay so I'll amend that to 17.9-foot front setback.

Mr. Zielinski: okay, so we have a motion, do I have a second?

Mr. Lopes: second.

Mr. Zielinski: all those in favor?

Mr. Aubin: discussion?

Mr. Zielinski: sure.

Mr. Aubin: can we add single-story garage not the exceed the height of the current house, roofline as the applicant stated because we don't have a plan?

Mr. Wlodyka: I think that would be

Mr. Zielinski: do you know if the roofline as constructed would meet the

Mr. Jurkowski: it's gonna meet the thing, the difference might be, if you look at the plan, but if you look at this, the breezeway sits a little, it's an enclosed breezeway, we enclosed it last year, sits a little bit lower than the house so the garage would meet the house not the breezeway.

Mr. Zielinski: so it won't exceed the height of the roof.

Mrs. Jurkowski: no, it's just gonna be a single, it's not gonna be, no, it would look ridiculous, I mean, it would be bigger than my house.

Mr. Zielinski: so they'll be no second story, no bonus room,

Mrs. Jurkowski: no, no, we're trying to get rid of the kids.

Mr. Zielinski: you know you are being recorded right?

Laughter

Mr. Wlodyka: that amendment would be satisfactory.

Mr. Aubin: yeah I'm good with that, I just, I don't want to see a two-story garage because that would not be, that would out of the character of the house.

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Mr. Jurkowski: yeah, no it's not, it's gonna be a single story.

Mr. Zielinski: okay so we have a motion that was seconded and amended and do I have another second, I'm sorry, with the amendment?

Mr. Lopes: I'll second with the amendment.

Mr. Zielinski: okay, thank you. All those in favor? I'm gonna do as a roll-call.

Ms. Converse: you don't have to.

Mr. Zielinski: but I will anyway.

Mr. Wlodyka, yes; Mr. Lopes, yes; Mr. Aubin, yes; Mr. Zielinski, yes. Vote 4-0 all in favor.

Mrs. Jurkowski: Thank you very much. What's the next, do we

Mr. Zielinski: you have to wait five years, no,

Laughter

Mr. Zielinski: you've got a 20-day waiting period on it in case anyone appeals the decision.

Mr. Jurkowski: because we weren't going to do it until the fall.

Mr. Zielinski: that's fine. And then after that the decision would be recorded with the Registry of Deeds once you file it. You do have a bill by the way for Turley Publications.

Mr. Lopes: and the variance is good for a year?

Mr. Zielinski: yeah, you've got one year to build.

Mr. Jurkowski: okay that's fine.

Mr. Wlodyka: if you're coming to that year and you haven't started yet, you have to come back to us and ask for an extension.

Mr. Jurkowski: it'll be done before that, I just want to wait until summer, you know, I don't want the yard a mess all summer.

Mr. Lopes: just some information for you so you have all the info.

Mr. Zielinski: we'll close out the hearing at 7:35 for 30 Brunelle Street.

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Mr. Wlodyka made a motion, seconded by Mr. Aubin, to adjourn at 7:38 pm.

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Chairman

Joseph W. Bylog
[Signature]
[Signature]

Board of Appeals

Transcribed by:

Ann M. Converse
Ann M. Converse, Administrative Assistant

