

DRAFT

Wallingford Zoning Board of Appeals

Tuesday, February 16, 2021

7:00 p.m.

Meeting Conducted Remotely through GoToMeetings

Minutes

Present: Acting Chair Raymond Rys; Secretary Louis Czerwinski; Commissioners Thomas Wolfer; Samuel Carmody; Alternate: Karen Harris; and Amy Torre, Zoning Enforcement Officer.

Acting Chair Rys called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited. Acting Chair Rys explained how the meeting was to be run.

Acting Chair Rys noted that tonight's decisions will be published in the Record-Journal on Friday, February 19, 2021. The effective date of your variance will be Friday, February 19, 2021; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, March 7, 2021. If you commence operations and/or construction during the appeal period, you do so at your own risk.

Voting members are Carmody, Czerwinski, Wolfer, Harris (for Rusczyk), and Acting Chair Rys.

PUBLIC HEARINGS

1. **#20-033 – Variance Requests/Hare/side yard of 6.9 ft. (20 ft. required) to construct an attached garage at 5 Gaye Lane in an R-18 District.**

Mr. Czerwinski read the staff notes into the record for the application. The applicant requested a side yard setback of 6.9 ft. where 36.7 ft. exists and 20 ft. is required to construct an addition and attached two-car garage at 5 Gaye Lane in an R-18 District. The applicant has submitted a modification to the proposal reducing the side yard variance requested to 10 ft. in order to construct an attached garage and addition. In addition, there is a letter dated February 6, 2021, to the Planning and Zoning Commission from Jason and Karla Quigley of 18 Lori Lane, Wallingford.

Brendan and Hillary Hare of 5 Gaye Lane explained their resubmitted proposal to trim the garage and the entry portion of the addition. Mr. Hare noted that they considered building a detached garage farther back but chose not to due to the proximity of dense woods and the risk of falling branches during storms.

Mr. Czerwinski asked for clarification that the original proposal was 6.9 ft from the side yard and now it is 10 ft. Mr. Hare confirmed that.

Ms. Harris asked if there was a stream in the back part of the yard. Mr. Hare clarified that there is a wet area in the very back in the dense woods. Ms. Harris noted that this is another reason why the structure can't be moved back near the woods. Mr. Hare agreed.

Hearing no public comment, Acting Chair Rys closed the public hearing and called for a motion or more discussion.

Mr. Wolfer: Motion to approve application #20-033, 5 Gaye Lane, Variance Requests for side yard of 20 ft. where 36.7 ft exists and 20 ft. is required to construct an addition and attached garage as shown

on submitted plans received January 29, 2021, and Limited Property/Boundary Survey Map, Land of Brendan Hare & Hilary Hare #5 Gaye Lane dated September 17, 2020, revision dated January 28, 2021.

Mr. Carmody: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Czerwinski – yes to approve; Harris – yes to approve and Acting Chair Rys – yes to approve.

The variance is approved

2. **#20-034 – Special Exception Request (child daycare center), enrollment of 117 and area of 7,825 sq. ft. to allow 2nd-floor single residential dwelling unit/Pumpkin Patch Properties, LLC at 4 Circle Drive in an R-18 District.**

Mr. Czerwinski read the staff notes into the record for application. The applicant is requesting Child daycare center with an enrollment of 117 and an area of 7,825 sq. ft. to allow a 2nd-floor single residential dwelling unit at 4 Circle Drive in an R-18 District. Property has an existing Special Exception approval for enrollment of 100 at same site for entire 2 story building of 9,572 sq. ft. The added residential unit requires detailed building and potential site plan elements as residential use that requires alternate building and fire code compliance. The Board should consider the logistics of parking, access, use of grounds, and daycare operations at the ground level of a residential unit. The applicant should clearly demonstrate the use of all space within the building and access to a residential unit other than via daycare operation/ space. The proposal does not accurately or clearly define the interconnection of the two uses and spaces. In addition, there is an Interoffice Memorandum dated February 8, 2021, from Erik Krueger, Water & Sewer to Amy Torre, Zoning Enforcement Officer; correspondence from the Fire Marshal dated February 2, 2021; and correspondence from the Building Department dated February 2, 2021.

Matthew Niski, of Giuliano Associates, 405 Main Street Wallingford, announced that the builder is not available for the meeting tonight but he was prepared to discuss the outside of the building. The presentation of the inside would have to wait until next month.

Acting Chair Rys recommended the meeting be tabled to allow the full presentation at one time. Mr. Niski requested the application be tabled for next month's meeting.

Mr. Wolfer: Motion to table application #20-034 Pumpkin Patch Properties to the March 15th meeting.

Mr. Carmody: Second

Vote: Unanimous to table.

The application is tabled.

3. **#20-035 – Variance Requests/Baker/side yard of 1 ft (6 ft. required), front yard of 6 ft. (12 ft. required), and building coverage of 34.5% (maximum 33.5% permitted) to construct an accessory building at 4 Union Street in an R-6 District.**

Mr. Czerwinski read the staff notes into the record for application. The application is for side yard and front yard setbacks as well as building coverage in order to locate an accessory structure erected in violation. This office was advised of the violation as a result of a "Stop Work Order" issued by the Building Official which was a result of a complaint from a neighbor that a two-story structure was being erected too close to the property boundary without any permits. The structure was in violation for height as well as location within the side and front setbacks. The applicant was advised to reduce the height to 10 ft. maximum and relocate the structure to a compliant location. The applicant did remove

the structure's excessive height but did not relocate said structure. The applicant was advised an A-2 survey is required to determine compliance with zoning requirements or to pursue relief from the ZBA. Instead, the applicant sought a Survey Waiver for setback distance and lot area. Survey Waiver was granted for setback only. Lot area cannot be based on anything other than Survey or Deed and therefore Waiver of lot area was not approved. Based on the site visit evaluating the Survey Waiver request, the site was found to also exceed maximum building coverage, requiring an additional Variance, due to another structure not originally depicted on the application. There is no hardship concerning this application. The hardship is self-created and a result of choosing to remedy the violation by seeking three Variances for relief rather than choosing the option to simply comply. Also, there are drawings dated January 22, 2021, and December 16, 2020.

Jeffery and Jillian Baker, 4 Union Street, read a prepared statement explaining that he and his daughter designed the playscape to replace an old ailing playscape. He built it himself. He noted that the lot is 4,750 sq. ft and per zoning regulation section 5.1A, the minimum for the R-6 district is 6,250 sq. ft. So his lot is 24% under the minimum. He stated that strictly enforcing the regulations on a lot that does not meet the lot area presents a hardship. He stated they are requesting a coverage variance of 1% above the allowed maximum. He noted the undersized lot should also be considered for the variances for setbacks. The front setback regulations require 12 ft from the property boundary and they are requesting 6 ft. He noted that Section 5.2 F states that the setback is measured from the center of the road. The total required is 25 ft plus the 10 ft required in an R-6 district. They are requesting a variance of 6 ft less than the required distance which is nonconformity of only 17% based on the definitions in the regulations. He stated that they have 2 front yards, compounded with the undersized lot is another hardship. He stated that the only usable outdoor area of the lot is 47.5 ft wider per the property deed. A strict application of the regulation requires a setback of 12 ft to the west-facing front yard and 6 ft to the east-facing side yard. This would leave only 29.5 ft available. The 18 ft of setbacks comprises 38% of the total width of the property. Mr. Baker stated that the area in question is not a typical front yard. The Entirety of yard is enclosed with a privacy fence and is elevated by a retaining wall along the west side. The location of the playscape is the same location as the previous playscape that was there for three years. They thought the location was suitable based on the example set by most other properties in this neighborhood. The standard around the neighborhood is to place sheds, garages, and other accessory structures close to the property boundary to minimize the effect on the available yard. He noted that the majority of the properties in the neighborhood don't comply. Enforcing the regulations selectively creates a hardship. The current location is the flattest part of the yard. Leveling the opposite side would cause a hardship due to the debris from an old garage that is still there. Moving the playscape would compromise the playscape and incur costs of reconstruction.

Mr. Wolfer asked if they had this structure before moving to Union Street. Mr. Baker replied yes they had a playscape. Mr. Wolfer asked if they see enough space for the playscape when they moved. Mr. Baker clarified that the playscape from their prior property has now been removed and replaced with the new structure. He noted that it is a new design but in the same footprint as the previous playscape.

Mr. Czerwinski asked for clarification of the changes in the versions of the drawings. Mr. Baker explained that the gazebo that was missing from the first drawing was added and the measurements from the Property Deed were used in the last revision. Mr. Czerwinski asked if the new structure is closer to the back fence than the old swingset. Mr. Baker said that the footprint is identical.

Ms. Torre noted that this is not a playscape but an accessory structure. They are not replacing a playscape with a playscape, despite how it's being used. She noted that Playscapes don't follow the

same setback regulation as a structure does. A swingset could be where it was because it is not considered permanent. This is an accessory building. She also noted that if the structure was placed a few feet different it would have been compliant, except for the existence of other accessory buildings.

Ms. Harris asked for clarification of the disagreement on the size of the lot. Mr. Baker stated that he was informed that the measurement on the original drawing didn't match what's on the deed. He stated that he is not here to argue that, though he disagrees. It's relevant because by his measurements the variance for coverage would not be needed. Mr. Baker replied that his measurements were slightly larger than the deed in width along the front of the property. Ms. Harris suggested getting a survey and correcting the deed.

Acting Chair Rys stated that the definition of playscape is not what he sees in the photos. He asked if the buildings were to be used for storage. Mr. Baker replied that the structures have a roof but doesn't disagree that it is different from the old playscape, but noted that the old playscape also had a roof. He asked that they just follow the same rules for all things. The zoning permit he received is for a playscape in the rear yard. The purpose of the structure is a playscape, not storage. They intend to add a slide. He understands that there is technically no definition of a playscape. Acting Chair Rys read the definition of a building. He stated that he understands the circumstances. He indicated that they should have done a playscape similar to the old one, not two buildings. Mrs. Miller added that the previous playscape was also over 10 ft and there were no complaints. It also had walls, columns, and a roof but was damaged by the tornado. The new one is built to be more sustainable.

Hearing no public comment, Acting Chair Rys closed the public hearing and called for a motion or more discussion.

Mr. Carmody noted that they reduced the height to be compliant and asked about the survey waiver that they got for the setback. Ms. Torre reminded the Board that another regulation requires an A2 survey for a variance. She stated that at the site visit it was determined that the setback was adequate. Nothing can determine the lot area other than an A-2 survey or the deed. The Survey Waiver is not adequate to support the variance request. Mr. Carmody asked how far away they were on the lot area. Ms. Torre replied the original claim was 300 sq. ft more than the lot actually is and an additional structure that wasn't noted initially. She noted that the Board can grant one variance and not the others. Mr. Carmody asked for clarification that there is no alternative location, based on the undersized lot. Ms. Torre stated that this was not the case. Mr. Carmody stated that the lot size is significantly smaller than the lot size in the R-6 zone. Ms. Torre agreed.

Mr. Wolfer asked if the playscape was under construction when they visited. Ms. Torre replied that the Building department did a Stop Work order because of construction going on with no permit. She noted for an accessory structure under 200 feet, a permit would not be required. But a neighbor complained about the proximity and the height. The recommendation was to take the height down and move it. Mr. Wolfer noted that there is no hardship, but recommended an A2 survey to be fair to the applicant.

Mr. Czerwinski asked if the structure would comply if it was relocated. Ms. Torre stated that there is a 12 ft. front yard setback and a 6 ft. side yard setback which could be done by moving the structure 6 feet in one direction and away from the neighbor by 5 ft. She agreed this may be in a less desirable area of the yard. She reminded the Board that the hardship has to do with the property. The use of the accessory structure doesn't matter. Mr. Czerwinski stated that the neighborhood looks like structures are close to property lines. He asked if we had information on the neighboring properties. Ms. Torre

replied that she would need to look up the records for individual properties to see if there were variances, structures that predate zoning, or other conditions. She agreed that there are varying size lots in the neighborhood.

Acting Chair Rys suggested that the homeowner needs to reassess and that he is not in favor of the application.

Ms. Harris asked what the easiest route to compliance would be. Ms. Torre replied that there are three variances requested: front yard, side yard, and building coverage. With the information presented which is only the deed there is a building coverage issue, so moving something would not be enough. They could do the survey to see that maybe they are not over on coverage. The Board could approve the building coverage but not the set back which would mean they could keep it but have to move it. Or approve the setbacks but not the coverage which means it can be located there but something else would have to be removed. It does not have to be all or nothing. Ms. Harris asked if the gazebo is a permanent structure and could be removed to bring them into compliance. Ms. Torre replied that yes it or the small shed could be removed, though making up the building coverage doesn't have to come from those structures. The Board can stipulate a condition that something be removed. She noted that the gazebo counts as a building. Ms. Harris asked about the complaint about the closeness of the structure to the side. Ms. Torre replied that it appeared to be on the boundary but is actually 1 foot off. The houses are close together in that neighborhood. Ms. Harris asked if the height was lowered. Ms. Torre confirmed. Ms. Harris asked if the 1 foot is on his property. Ms. Torre confirmed that it is all on his property.

Mr. Rys: Motion to approve application #20-033 – Variance Request for front yard of 6 ft. where 12 ft. is required to locate a 114 sq. ft. accessory structure as shown on submitted plan received January 22, 2021, subject to conditions recorded.

Mr. Carmody: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Czerwinski – yes to approve; Harris – yes to approve and Acting Chair Rys – no to approve.

The variance is approved

Mr. Rys: Motion to approve application #20-033 – Variance Request for side yard of 1 ft. where 6 ft. is required to locate a 114 sq. ft. accessory structure as shown on submitted plan received January 22, 2021, subject to conditions recorded.

Mr. Wolfer: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Czerwinski – yes to approve; Harris – yes to approve and Acting Chair Rys – no to approve.

The variance is approved

Mr. Rys: Motion to approve application #20-033 – Variance Request for building coverage of 34.5% where a maximum of 33.5% is permitted to construct an accessory structure of 114. Sq. ft. as shown on submitted plan received January 22, 2021, subject to conditions recorded.

Mr. Wolfer: Second

Vote: Carmody – yes to approve; Wolfer – no to approve; Czerwinski – yes to approve; Harris – no to approve and Acting Chair Rys – no to approve.

The variance is denied.

DISCUSSION

4. Waiver of re-application fees for 26 Beechwood Drive (W/D #20-037)

Ms. Torre explained that this item (#20-037) was withdrawn at the last meeting and has been resubmitted for the March meeting. The agenda item is for a vote on waiving the re-application fee.

Mr. Wolfer: Motion to approve a waiver of the re-application fee for 26 Beechwood Drive (WD #20-037).

Mr. Carmody: Second

Vote: Unanimous to approve

CONSIDERATION OF MINUTES

Mr. Wolfer: Motion to accept the minutes of the Tuesday, January 19, 2021, regular meeting as submitted.

Mr. Carmody: Second

Vote: Unanimous to approve

ADJOURNMENT

Mr. Wolfer: Motion to adjourn the February 16, 2021 meeting of the Zoning Board of Appeals at 8:05 pm.

Mr. Carmody: Second

Vote: Unanimous to approve.

Respectfully Submitted,
Cheryl-Ann Tubby
Recording Secretary