

MEMBERS PRESENT: Rich Carey, Howard Haberman, Nanci Seltzer

ALTERNATES PRESENT: Tom Nichol, William Evasick

STAFF PRESENT: Kathy Kuchta, Zoning Enforcement Officer, Rose Elliott, Clerk

The meeting was called to order at 7:00 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **4 Parkland Place** (Zone R-10) Benjamin S. Proto, Jr., attorney, for Christopher T. and Kim E. Roberts, owners – request to vary Sec. 3.1.4.1 side yard setback to 5.1' (4.1' to overhang) in lieu of 10' required; vary Sec. 3.1.4.1 to allow 4' side yard setback for 4'x8' stairway from front balcony and 5.7' side yard setback for 4'x10' staircase and landing and 28'x4' 2nd floor balcony in lieu of 10' required. CAM received. Map 39, Block 606, Parcel 4.

Benjamin Proto, attorney, 2090 Cutspring Road, Stratford, reminded the Board his client was before the Board in September and their application was denied. In October he was back before the Board to ask for a rehearing prior to the six month waiting period, which was approved. This evening he is here to once again ask the Board to allow the house to be raised and a new ground floor added. In the previous application, a number of variances were requested. With this application, the variance requests have been reduced to two. The new proposal is to keep the existing footprint, raise the house up one story and request variances to allow the west side of the house to remain at 5.1' and the new roofline to protrude 1' into the setback (4.1'). The existing house on the eastern side of the structure currently sits at 9.7', with a set of stairs at 5.7', patio at 0' and another set of stairs at .1'. The Zoning Board of Appeals previously approved these setbacks of 5.1', 9.7' and 5.7', when the house was approved in 1972. An additional set of stairs would be constructed to the first floor balcony and would be 4' off the property line, substantially better than the .1' currently existing, but still encroaching into the setback. A new accessory structure would be built in the rear of the house, meeting all the requirements of the Regulations. The current coverage of the parcel is about 58%. They would be reducing the lot coverage to 45% by removing all the encroaching buildings in the rear of the house, the concrete patio and replacing the asphalt driveway with gravel and grass. The granting of the variances would make the property more compliant. The hardships are the property was approved as a building lot in 1972, with a width of 40', creating a pre-existing, non-conforming, undersized lot and also the topography of the land. Another hardship is as the Zoning Regulations have changed over the years, the parcels become subject to different regulations they might not have been subject to previously. The last hardship has to do with The American Disabilities Act along with the Fair Housing Act, as Mr. Roberts suffered a severe back injury when he served in the Navy and is now disabled. They are asking for a reasonable accommodation under those acts for easier access to the home.

Acting Chairman Haberman noted the applicant has reduced the non-conformity of the house and the number of variances requested down to two.

Ms. Seltzer thanked the applicant for making the changes and for reducing the non-pervious surfaces on the lot. She understands the ADA hardships but didn't feel the

purchasing of a small lot was a hardship. She liked the changes and didn't have a problem with approving the variance request as presented.

Attorney Proto added he had a letter of support from one neighbor, Ann Moore to which Acting Chairman Haberman stated a copy of the letter was in the file.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Acting Chairman Haberman agreed the applicant did a good job of decreasing the non-conformities and reducing the variance requests. There are existing hardships and he didn't have a problem with the application.

Ms. Seltzer made a motion to approve with Mr. Carey seconding. The hardships are the ADA and FHA for the injury of Mr. Roberts along with the topography of the land. The motion carried unanimously with Ms. Seltzer, Messrs. Nichol, Evasick, Carey and Haberman voting.

2. **4 Gerard Street cor. Edgefield Avenue** (Zone R-5) Francis X. Brogan, owner – request to vary Sec. 3.1.4.1 to 6.6' in lieu of 20' required to allow 10.3'x12.3' shed to remain and vary Sec. 4.1.7 to allow 6' high x 24' wide fence in front yard setback to remain (2.7' front yard setback on Edgefield Avenue). CAM required. Map 48, Block 713, Parcel 12.

Francis X. Brogan, 4 Gerard Street, owner, said his hardship is the size of his lot and the fact he is a corner lot. He had the shed put on the lot, not knowing he had two front yards. He added he went into the Planning and Zoning office and was told he did not require a permit for the shed as long as he stayed within the setback requirements. He did so, except for the front yard setback, which he thought was his side yard. There is no other place on the lot to put the shed. The shed is beautiful and he has received dozens of compliments on how he has improved the property with it. It fits into the environment and the lot perfectly. This area of Woodmont has very small lots and he has dozens of pictures of properties in the area with worse violations than his, because of the nature of the neighborhood. He wasn't going to point the addresses out, but was only pointing out that this is how the neighborhood is.

Acting Chairman Haberman asked about the second variance request for the fence to which Mr. Brogan explained the fence borders the shed and protects it from Edgefield Avenue. It is only 2 ½ sections of fence and fits in the neighborhood and compliments the shed. All his neighbors have the same fence.

Acting Chrmn. Haberman asked how many sections of fence were there to which Ms. Kuchta answered 2 ½ to 3 sections.

Mr. Brogan answered in the affirmative when asked by Acting Chrmn. Haberman if he were applying the same hardships of the shed to the fence.

Ms. Seltzer asked how far the fencing was from the front property line to which Ms. Kuchta answered about 3. She added as you drive down Edgefield Avenue, you don't notice the fence because although it is only 3' from the property line, it is raised up on a hill. The shed is not visible at all from the street.

Mr. Evasick asked the applicant if he obtained information regarding the shed from the Building Dept. or the Tax office prior to putting it up.

Mr. Brogan repeated he did go into the Planning and Zoning office for a permit and was told he did not require a permit as long as he stayed within the setback requirements. He did not know he had two front yards.

Ms. Kuchta confirmed a permit is required and if the variance request is granted, he would need to obtain a Planning and Zoning permit and then a Building permit. She told the Board a violation letter was sent for the shed by Linda Stock on September 22, 2009 and she was just doing a follow-up inspection on the violation. The homeowner is here now to correct the violation.

Ms. Seltzer asked if there was ever any consideration given to moving the shed behind the house.

Mr. Brogan said there wouldn't be enough room.

Ms. Kuchta explained how there didn't appear to be any other place to put the shed on the property.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Acting Chrmn. Haberman said he would like to separate the shed and the fence. He didn't have a problem with the shed as there didn't appear to be anywhere else to put it. The applicant didn't know he had two front yards and was given misinformation. He would have to obtain a permit from Planning and Zoning and the Building Dept. if the variance is approved. The issue is with the fencing. Although it does provide a nice buffer for the shed from the road, he was concerned that the neighbors who have similar fences on all the other connecting properties, would then expect variances for their fences. These fences all appear to be attached to each other. Ms. Seltzer agreed with Mr. Haberman. Mr. Carey wondered if it was safe to assume that if the fence is denied, the Zoning Enforcement Officer would be citing every single property on Edgefield Avenue for their fences. He said these fences go along Edgefield Avenue and are there for privacy along a highly traveled road. He considered that a hardship. He felt the fence should be approved.

Mr. Carey made a motion to approve with Mr. Nichol seconding. The hardship is the size of the property and the location on a highly traveled road. No matter where the applicant put the shed it would require a variance and the fence allows for some privacy from the highly traveled roadway. There are fences similar in nature all along Edgefield Avenue. The motion failed to carry 2-3 with Messrs. Carey and Nichol voting in favor and Ms. Seltzer, Messrs. Evasick and Haberman voting against.

Ms. Seltzer made a motion to split the vote and vote separately on the shed and the fence with Mr. Carey seconding and was approved.

Ms. Seltzer made a motion to approve the shed with Mr. Carey seconding. The motion carried 4-1 with Ms. Seltzer, Messrs. Nichol, Carey and Haberman voting in favor and Mr. Evasick voting against.

Ms. Seltzer made a motion to deny the fence with Mr. Carey seconding. The reason for denial is because of the topography of the land, there is no need for the fence to go that close to the edge of the property. The motion failed to carry 3-2 with Ms. Seltzer, Messrs. Evasick and Haberman voting in favor and Messrs. Carey and Nichol voting against.

3. **335 Meadowside Road** (Zone R-12.5) Thomas B. Lynch, attorney, for 335 Meadowside, LLC, owner – request to vary Sec. 2.5.5 to allow a lot of 28,146 sq. ft. in lieu of 43,560 sq. ft. required for a rear lot. CAM required. Map 26, Block 213, Parcel 3A

WITHDRAWN.

B. TABLED ITEMS

C. OLD BUSINESS

D. NEW BUSINESS

1. **11 Way Street** – request for an extension of time
2. **13 Way Street** – request for an extension of time
3. **17 Way Street** – request for an extension of time
4. **22 Way Street** – request for an extension of time
5. **24 Way Street** – request for an extension of time
6. **27 Way Street** – request for an extension of time

Acting Chrmn. Haberman asked when the applications were approved to which Ms. Kuchta said they were approved in November 2009.

Mr. Carey made a motion to approve an extension of time for all six properties for one year with Mr. Nichol seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Nichol, Evasick, Carey and Haberman voting.

7. **817 East Broadway** – request for an extension of time

Richard Grabowski, attorney, 250 Broad Street, said he is looking for an extension of time for the existing variance, which expires in December 2010. His clients, Marie and Gerard D'Angelo are currently under contract to purchase the property. Because of the current market and financial conditions, the current owners were never able to undertake construction for which the variance was approved. His clients would like more time to be able to do the construction.

Ms. Seltzer asked what the variance was approved for to which Atty. Grabowski said to add a roof on the currently non-conforming deck on the side of the house.

Ms. Kuchta explained the variance was granted to vary the side yard setback to construct a two story addition.

Mr. Carey made a motion to approve the extension of time for one year with Mr. Evasick seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Nichol, Evasick, Carey and Haberman voting.

E. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM OCTOBER 12, 2010 HEARING

The minutes were accepted unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR DECEMBER 14, 2010 HEARING

The meeting was adjourned at 7:47 p.m.

Attest:

Rose M. Elliott
Clerk ZBA