

**CITY OF WESTBROOK
ZONING BOARD OF APPEALS
June 14, 2016**

MINUTES

Present: Aaron Burns (Chair), Philip Brown (Vice-Chair), Michael Lemay, Nancy Milton Heath, Karen Axelsen (Alternate)

Absent: Sherri Quint

Staff: Richard Gouzie

Aaron Burns (Chair) called the Westbrook Zoning Board meeting to order at 7:00 p.m. in Room 114 of the Westbrook High School.

Old Business

1. Approval of May 10, 2016 minutes

Philip Brown moved to approve May 10, 2016 minutes as presented.

2nd by Karen Axelsen

The vote is unanimous in favor 5-0

New Business

1. Variance – Roberta A. Arsenault, 16 Nasson Avenue is requesting a nine (9') foot easterly side yard variance from the existing garage; to create a new 7500 square foot buildable lot. Tax Map: 043, Lot: 058, Zone: Residential Growth Area One.

Roberta Arsenault 16 Nasson Avenue, I was married to Ray, better known as Pickle Arsenault. He worked as a mail carrier for the Westbrook Post Office for thirty (30) years. We bought the property at 16 Nasson Avenue fifty-three (53) years ago, in 1963. We raised five (5) children there happily enjoying the rural feel of the City.

Then the grandchildren came, living on Cumberland Street, one quarter of a mile from our house. We were privileged to see them grow as they spent a lot of time with us. Ray passed away eighteen (18) years ago from ALS.

Now the whole area has changed with Mr. Corbin building a house ten (10) feet from my property line on the west side and Mr. Wilson building his development on fifty (50) foot lots on my north side.

My granddaughter Rebecca Arsenault married Nick LeDoux two (2) years ago and they would like to build their home in Westbrook. I have the golden opportunity to help them make this happen by selling them a 75 x 100 foot lot which would make my garage none (9) feet from their property line.

I am asking the City of Westbrook for a variance to make this happen with an undue hardship to me.

Thank you

Aaron Burns in order to obtain a variance there is five criteria that need to be satisfied in the application. Did someone help you fill out this application or is there someone here tonight that can speak for you?

Rebecca LeDoux I am hoping to buy the lot from my grandmother and I helped her put the form together.

Aaron Burns so there are five criteria that needs to be satisfied in order for us to grant a variance. What we typically do is go through the criteria, ask questions on them as we go and then take straw poll votes to make sure you have met the criteria.

In order to grant the variance the Board has to find that all five criteria have been satisfied.

So the idea is to create a second seventy-five hundred (7500) square foot lot from the existing lot, correct?

Rebecca LeDoux correct

Aaron Burns the nine (9') foot setbacks is a variance from the fifteen (15') setbacks.

Rebecca LeDoux I understand your question if the property line will be at the seventy-five (75') foot property line. Her garage is only nine (9') feet from the property line.

Aaron Burns so it is a setback variance.

Rebecca LeDoux correct

Aaron Burns what condition is the garage in?

Rebecca LeDoux it has a cement foundation was built in 1984 and the garage is in good condition.

Aaron Burns so it originally had no foundation but was added in 1984.

Rebecca LeDoux electricity was added then also.

Aaron Burns questions at this point?

Mike Lemay so the size of the variance needs to be changed to six (6') variance? They need 15 foot setbacks.

Aaron Burns we can figure out the setback variance towards the end. It is not more than nine feet.

1. The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located:

The appellant cannot split the existing lot by 150 feet wide by 100 feet deep to make two equal lots 75 x 100, meeting the setback requirement due to the location of the garage.

Rebecca LeDoux that is correct.

Aaron Burns any questions on that?

2. The strict application of the ordinance to the property results in significant economic injury to the applicant:

Moving the garage to meet setback requirements will cost the appellant approximately \$12,000 dollars further moving the garage in the open back yard and would diminish the space and negatively impact the market value of the property and by extension the neighborhood.

Aaron Burns how do you know that it is going to be \$12,000 dollars to move the garage?

Rebecca LeDoux my Uncle Bucky Holloway is a contractor and he spoke to some people and the estimate was about \$12,000 dollars.

Aaron Burns how much is the new lot going to be sold for?

Rebecca LeDoux \$30,000 dollars.

Aaron Burns what is the market value for a buildable lot in that area?

Rebecca LeDoux much more than that, \$60,000 dollars.

Aaron Burns is it feasible to re-locate the garage?

Rebecca LeDoux yes with a cost.

Aaron Burns \$12,000 dollars

Rebecca LeDoux yes

Mike Lemay is it a single car garage?

Rebecca LeDoux it is a single car garage.

Mike Lemay you can build a new one for eight grand.

Rebecca LeDoux talking to our contractor he quoted 12,000 to build a single car garage.

Aaron Burns to build a new one?

Rebecca LeDoux yes for a single car garage with the same dimensions.

Aaron Burns anyone have any further questions?

3. *The need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood.*

The need for the variance is due to the unique circumstances of the property considering where the garage sits in consideration to the seventy-five (75') foot property split.

Rebecca LeDoux that is correct.

Mike Lemay has there been an official survey done on this lot to confirm that it is 150 x 100? We know exactly where that seventy-five (75') line is as shown on a survey?

Rebecca LeDoux pins have been put in and we can confirm that it is one hundred and fifty (150) feet wide by one hundred (100') feet deep which would split it to seventy-five (75') feet.

Aaron Burns does anyone have any other questions?

Philip Brown I would like to know more of this lot in relation to the surrounding lots in the neighborhood.

Rebecca LeDoux you can refer to what is up on the screen if that is okay. The three lots going north are fifty feet (50') wide by one hundred (100') as well as the abutting lot to the left hand side.

Aaron Burns are the ones behind you in the same zone?

Rebecca LeDoux I believe so, I think the zone changes a little further out. These three lots are fifty (50) by one hundred and this lot is fifty (50) by one hundred (100). This lot appears to have a slight diagonal line.

Rick Gouzie just to clarify, this one hundred and fifty (150) by one hundred (100) foot lot were three fifty (50) by one hundred (100) foot lots. The middle as you can see is not built on the subdivision that Chris Wilson did, that was a paper street and they have acquired the rights when they bought the property in 1953 to the paper street. So she has three lots of record.

Aaron Burns so those are existing lots of record.

Rick Gouzie yes

Aaron Burns non-conforming

Rick Gouzie yes

Aaron Burns is this all the same subdivision at one point?

Rick Gouzie yes

Aaron Burns so Mrs. Arsenault has three of those lots.

Rick Gouzie the middle section of her lot was a paper street and she had two fifty (50) by one hundreds (100) on either side of her.

Aaron Burns she did not preserve the lots of record?

Rick Gouzie it is still there.

Philip Brown just to pursue that, if I understand it, the blue area was originally three buildable lots and one Paper Street at one time.

Rick Gouzie correct

Philip Brown when the paper street went away, how many buildable lots exists there presently? Did that all become one?

Rick Gouzie they were incorporated into one deed.

Aaron Burns the description matters if it is referenced in the same deed as two lots and a paper street that could preserve the lot of record. If it is a perimeter description it could be a different story.

Rick Gouzie I do not have the deed.

Paul Holloway Edgecomb Maine, prior resident of Westbrook. If you could span down the street you would see that her house was one of the first houses built in that neighborhood subdivision. As you go down the street you can see several house lots that were built.

When we first moved in on Cumberland Street that was the only house in the area. As you look at some of these houses and lots the garages are less than ten (10') feet from the property line. This house is less than ten (10') feet from the property line.

So when you go back up to Roberta's house the garage, if you allow her to split the lots (which was her and Rays' intention when they bought the lot) and paid the lawyer to get rid of the paper street so they could have three lots, their intention was always to split that lot in half. When they bought the property, zoning was not a problem.

If you allow her to split that lot and have to 7500 foot lots and drive down the street after Rebecca builds her house I think you will see something harmonious in that neighborhood. You will see a garage that might look close, but you will not notice the property line.

Rebecca and Nicks' house will be well over thirty (30') feet away from the garage. So you will still see a large space from the new house and Roberta's' house. The southerly part of the lot they plan to maintain sixteen (16') feet from the property line. There is a natural growth of trees behind her property, a nice buffer.

I guess my point, unlike the house that is next to her here as you drive down the street it will all look like the original neighborhood.

I would like to add that if we are talking monetary, it would not be hard for Roberta to sell her house, tear down the garage and sell two more building lots. She could make a lot more money. Her emphasis is she wants to stay in this house as long as she can; she still mows her own lawn, etc.

Aaron Burns I do not know if it is true that she could sell two buildable lots because she has two lots of record and a paper street.

Bucky Holloway she does have three lots of record.

Aaron Burns is that a lot of record or a paper street?

Bucky Holloway I think when they paid the lawyer to do away with the paper street, it became a lot of record. I might be wrong, but even Mr. Gouzie had verified that when we talked about that months ago.

To me the impact of having four (4) more houses on fifty foot lots is not desirable in that neighborhood.

Mike Lemay is that correct Rick; if they tore the house down they would have three (3) buildable lots?

Rick Gouzie if the tore the garage down, yes.

Aaron Burns I do not understand why the variance is in front of us. Shouldn't we be dealing with the last 50 x 100 foot strip? Just carve that lot off and we would not have any setback issues.

Bucky Holloway then you would have fifty (50') foot with ten (10') foot setbacks to keep the neighborhood more harmonious and she could still have a back yard. She could come in and make a small dog leg in the back yard, I could tell you tens or a dozen lots in Westbrook where they have skirted the setbacks.

Aaron Burns here is the issue I am having with this. Variances are supposed to be the exception that is why they are difficult to get and why you have to come before the Zoning Board and prove that you meet these five (5) criteria, show significant economic injury. It is a safety valve is what it is from the regular zoning standards.

What we have here tonight is basically; we have not decided this and no one no one is disputing this for at least two (2) lots of record and a paper street.

There is some question and it is really the CEO's call to determine whether or not in the first instance that the lots have been preserved and have not been merged into one lot. We have had those appeals before and sometimes they go for the applicant and sometimes they go against the applicant. It is really fact specific and we cannot prejudge that tonight. But what I am hearing though is there seems to me that there is a very easy fix here to keep more space on the existing house lot. You are decreasing the non-conformity by splitting off the middle lot into the two (2)

side lots which I think you can do because you are decreasing non-conformity and there is no need for a variance. You just need to carve off the middle lot to make the setbacks work.

Bucky Holloway correct

Aaron Burns that is Rick's decision in the first instance and then if you disagree with Rick's decision you come see us. But we do not decide that in the first instance.

Am I wrong Rick?

Rick Gouzie they are creating a new lot by moving lot lines.

Aaron Burns you can do that if you are decreasing non-conformity.

Nancy Milton-Heath but it is a recorded subdivision, right?

Aaron Burns you can split it off to a sale to an abutter.

Nancy Milton-Heath you do not have to meet the plan?

Rick Gouzie I do not see where you are going with this.

Aaron Burns they are altering lot lines now because we have three (3) lots.

Rick Gouzie that is why they are here.

Aaron Burns no they are not here for three that are here to get a variance on one lot, you still have to carve off the second lot. It is just a question of where you are carving it off. You are taking three (3) lots that are 50' by 100' and you are turning into two (2) lots that are 75' by 100' so there is a 25' foot of space that you are doing the same thing, you are just doing it differently. The way I am saying to do it eliminates the need for a variance.

Bucky Holloway I have lost track too. We need to make a fifty (50) foot lot?

Aaron Burns let's assume for the sake of argument that we have three (3) 50 x 100 foot lots. What she is proposing to do here is to get a variance so she can sell one and half of those lots, so she is moving lot lines on existing lots of record.

Paul Holloway correct

Aaron Burns what I am saying is the way it is being proposed right now you need a variance to do it. I do not think you qualify for a variance because there is a feasible alternative to the variance.

The feasible alternative is move the line over so she is keeping enough space to meet the set back and you still have a lot that is at least 7500 square feet – it is not 7500 square feet but it is decreasing the non-conformity to an existing lot of record.

Paul Holloway it gets complicated.

Nancy Milton-Heath so what you are saying is that they need 75 feet frontage but they can take some from the back?

Rick Gouzie 65' feet of frontage. The zone only requires 65 feet of frontage.

Aaron Burns right, so if they keep 10 feet your variance...

Paul Holloway she would have an 85 foot lot in the front.

Rick Gouzie but she would have to take some of the back lot behind the garage to create 7500 square feet of land.

Aaron Burns if we all agree the lots, one, two and three; three is the furthest one down from the house. Three is buildable now because it is a lot of record, right?

Rick Gouzie correct

Aaron Burns that is less than 7500 square feet. If you take some of the land from two you will not get the 7500 square feet but you still have more than what is there now so you are decreasing the nonconformity.

Rick Gouzie you are creating a new lot that is non-conforming.

Aaron Burns the non-conforming lot is already there.

Rick Gouzie 50 x 100 is a conforming lot.

Aaron Burns right, that can be built on.

Rick Gouzie right

Aaron Burns so if she carves the lot of land off and there is a sale to an abutter of x number of square feet so she is keeping 7500 square feet on hers but is making the other lot a little less non-conforming I do not see what the problem is.

Rick Gouzie she is not selling it to an abutter.

Aaron Burns she sells lot three (3) first, and then she has a sale to an abutter right afterwards. So that gets around the subdivision requirements and gets around the lot split.

Rebecca LeDoux are the setbacks still fifteen (15') feet or are they now ten (10') feet from a sale to an abutter? If I purchase the land and do a sale to an abutter for some of the middle lot do I then have to apply for a variance to make my lot conforming? How does that work?

Aaron Burns you would just have to be within the setbacks.

Rebecca LeDoux my house does.

Aaron Burns your house does. Say you are on lot three (3) it is ten (10') feet setback as it is an existing lot of record.

Is that right Rick?

Rick Gouzie yes

Aaron Burns so if you were to then buy half of lot two (2) from your grandmother right afterwards, I do not know how the setbacks would work because that would be a new lot or would it just be increasing because it is not built upon.

I am probably over complicating this.

Nancy Milton-Heath but it is an approved subdivision, does that make a difference?

Aaron Burns it is not an approved subdivision because it predates the Zoning Ordinance.

Rick Gouzie right, it is a recorded subdivision.

Aaron Burns so you do not need to go to Planning Board to change it because the Planning Board never approved in the first place.

Michael Lemay or they could sell lot three (3), keep lot two (2), take down the garage and make more money.

Aaron Burns that is the other option.

Rebecca LeDoux it is not about making money. It is my grandmother's garage and she would like to have a place to cover her vehicle.

Mike Lemay right, I am thinking twenty years down the road, there is no sense in splitting it in half because you could share the lawn and mow it.

Rebecca LeDoux if we wanted to do that would make the second lot non-conforming.

Mike Lemay it is on record as conforming already.

Aaron Burns the problem I am having with this and I am trying to work with you to find an alternative, there are feasible alternatives to a variance. I am one vote out of the Board. I could be in the minority of one but I am seeing several feasible alternatives to the variance and that means it cannot have a variance by reading the ordinance.

My job is to apply the ordinance to the situation and I am not a member of the City Council and not a member of the legislature, I cannot make up the rules as we go. The rules as I see them; for the first criteria, what we have to deal here is there is no feasible alternative to a variance. I am seeing at least a couple alternatives. Feasible alternative number one is move the garage. It costs \$12,000.00 dollars but the lot is being sold at a discount already, it could be sold for more to make up the difference.

Feasible alternative #2 is something along the lines of what I just talked about doing the same thing but you need to reconfigure the lot line and I am pretty sure that could be done in some fashion.

There are alternatives here other than a granting a variance which needs to be the last possible option.

Other comments?

Nancy Milton-Heath #2 the scenario that you said, is my understanding is that they would not need a variance and do what the applicant wants to do but they do not need the variance. They could come to the same resolution.

Aaron Burns I am seeing that as a feasible possibility at this point but it is really up to Rick. In the first instance he could think that I am all wet and then they have a right to appeal what was presented to us.

I could be wrong but assuming these have been maintained as separate lots of record there are three (3) lots and all three (3) are buildable and it makes sense to me as long as you have one buildable lot you can purchase land from an abutter that is an exception to subdivision review and create pretty much almost what we are talking about here.

Paul Holloway so if they bought the fifty (50') foot lot and then they bought twenty-five (25') more feet as an abutter and then gave her an easement for the garage over their land, this would be done.

Aaron Burns that gets a little more complicated. I do not think an easement is going to work. If you are creating a new lot the garage would have to be fifteen (15') feet from the other lot line.

Paul Holloway why if in your scenario buying an abutting piece of land; the other problem I see ...

Aaron Burns you need to keep the garage within the setback. Once you have reconfigured the lot lines you are going from the ten (10') foot setbacks to a fifteen (15') foot setback. You would have to keep the garage fifteen (15') feet from the lot line. But if you did it in stages, you still have to keep it from the lot line you should be able to get around the density, square footage requirement because you are taking an existing lot of record and adding to it. As long as you are not creating nonconformity on the other side by taking away too much land by going below the 7500 on the lot that is being retained.

Paul Holloway this would all have to happen before she started building her house.

Aaron Burns yes

Paul Holloway if you approve the variance tonight they could start building tomorrow.

Aaron Burns they would have to get a building permit, yes theoretically.

Paul Holloway to simplify things the variance would probably be the easiest way to go.

Aaron Burns the easiest way is not always the legally correct way.

Mike Lemay I am in agreement with Chairman Burns.

Aaron Burns I would love to say yes go ahead. I do not think I can because you have feasible alternatives to a variance. The variance would almost always be the easiest alternative. That goes against the City Council setting Zoning and setback requirements.

Nancy Milton-Heath Mr. Burns could you repeat the second scenario again to see...

Aaron Burns possibly what could happen is if they purchase lot three (3) and in another transaction they purchase a chunk of lot two (2) from Mrs. Arsenault to create a bigger lot but it to do that you would have to be fifteen (15') feet away from the garage unless you wanted to move the garage.

Paul Holloway not if they did not have 7500 square feet, if they bought x amount of feet, they could go to the ten (10') foot setbacks of the five thousand square foot, correct?

Aaron Burns if they wanted to stay in the existing lot three (3) yes it could be within ten (10') foot setbacks. And there would be no problem because they are going to be fifty (50') feet away from the other house.

Nancy Milton-Heath you do not need a setback then.

Aaron Burns if you want to stay in lot three (3) there is no issue. You could build tomorrow.

Nancy Milton-Heath yes, no setback.

Paul Holloway then she could buy a piece from her grandmother.

Aaron Burns yes presumably at one point once the house is constructed and then if she wanted to buy half (1/2) of lot two (2), yes.

Paul Holloway she could not purchase half (1/2) of lot two (2) from what you are saying because she would have a nonconforming lot.

Aaron Burns what Rick is showing on the map is there are other ways you can figure the lot with a jog or something else to keep both lots at 7500 square feet and keep the setbacks intact.

Paul Holloway and that is acceptable?

Aaron Burns nothing says the lot has to be square.

Paul Holloway yes, I have seen the Mayor do it several times.

Rick Gouzie you could go with a sixty-eight (68') foot road frontage go back and then do this jog to give her the 7500.

Nancy Milton-Heath but they have to purchase the first lot first, correct?

Rick Gouzie no

Paul Holloway the surveyor could just come in and lay out the lot and be done.

Aaron Burns and that does the same thing so you do not need the variance.

Philip Brown Mr. Chair can I suggest a slightly different version or option? Go back to what is originally proposed, start with three lots, we make a new division line which creates two (2) and the lot line ends up nine (9') feet away from the existing nine (9') feet from the garage therefore that variance request. So what if that line were drawn fifteen (15') feet from the garage, not nine (9'), fifteen (15') that leaves the original lot where the house exists at eighty-one (81') feet wide, the area is eighty-one hundred (8100) square feet, the new lot is sixty-nine (69') feet wide or sixty-nine hundred (6900) square feet, it does fall short of the seventy-five hundred (7500) in the ordinance but you are still getting the two (2) lots from the existing three (3) and arguably that is less non-conforming.

Aaron Burns that is what I was talking about initially but the indication would be that the Code Office would be disinclined to approve the first instance unless there were creating two (2) seventy-five hundred (7500) square foot lots. We would end up being back here and who knows how that appeal would come out.

Paul Holloway to my understanding, if they did what Phil suggested doing and they had a sixty-eight hundred square foot lot does that mean they fall within the ten (10') foot setbacks?

Rick Gouzie like Aaron Burns said you are creating two new lots; they have to comply with the ordinance today that states seventy-five hundred (7500) square feet.

Aaron Burns if you want to do that, you are not limited by having squares for lots. You can create gons and create your two lots with seventy-five hundred (7500) square feet.

What I am hearing from Rick who will make his decision on the merits when someone asks him if you go to the Code Office with a map proposing a lot split with two (2) seventy-five hundred (7500) square foot lots, with sixty-five (65') feet of road frontage for each lot, he is not going to have a problem with that. Is that fair to say?

Rick Gouzie that is correct

Paul Holloway so, if they came to you and said they bought lot three (3), we are going to start building our house and put a ten (10') foot setback on the southern lot line and fifteen (15') feet to the road and build the house, then buy a piece from Meme mere and decide to put a two car garage on they need to meet the setbacks then, if they do it in stages?

Rick Gouzie if they build on the 50 by 100 and then buy a piece of land and build a two car garage?

Aaron Burns then you are creating a new lot.

Paul Holloway she is selling to an abutter.

Aaron Burns you are changing the lot dimensions so the old setbacks are no longer grandfathered. You have to comply with the newer setback requirements if you are changing the lot dimensions.

Mike Lemay but it would, you move the house over six feet...

Aaron Burns although if you were to buy lot three (3), build on lot three (3) use the ten (10) foot on one side, that buys you more feet on the other side but you have to comply with the fifteen (15') feet on the other side and you have five (5) more feet because you are picking it up on the far side.

Rick Gouzie the garage would still have to be conforming though.

Aaron Burns right, the garage would have to be fifteen (15') feet from the lot line.

Mike Lemay but it would be possible.

Aaron Burns if you build the house first you have a ten (10') foot setback and then after you build the house and they come to you for a garage it is okay as long as they have a fifteen (15') foot setback from the other lot line. So they have relaxed the setback as long as they build their house first.

It is a problem when you have lawyers involved in these things.

Rick Gouzie I know.

Paul Holloway but if you granted the variance we would be done.

Aaron Burns the problem is I cannot grant the variance because we have pointed out several feasible alternatives already.

Paul Holloway I guess you have to define feasible to me, feasible being reasonable.

Aaron Burns possible, basically what the variance is meant to do is allow or make possible something that is impossible to do under the existing ordinance. But there has to be no other way to do it and you have to meet the other criteria. There are several ways to skin this cat other than granting the variance.

I have a very difficult time saying that the lot that is being sold at a discount for half the market value is it not possible to require an additional \$12,000 dollars to the purchase price to relocate the garage. I cannot get past that. Assuming I do get past that, the second thing I have described is there are a number of ways to reconfigure the three (3) lots such that you can do exactly what you want to do without needing a variance.

The variance is being requested because it is easier. It would be great if we could just move lot lines around where we want but we can't. We have very definitive criteria we have to meet before we can do that.

Paul Holloway as I drive down that street as I have done thousands of times and I look at the neighborhood and I see the 10 foot setbacks that are creeping up all over the place and having a seventy-five (75') foot lot to me is so much more valuable to my Niece and Nephew.

The discounted part of that price; these kids cannot afford a house in Westbrook, they cannot afford the fifty (50') foot lots out back she is making it easy for them to do that by discounting the lot by giving them the deposit towards there \$200,000 dollar home. The houses out back are selling to \$225,000 without garages.

I would just contend against that thinking that I know it is easy for you to say that you can do this and just move that. To me it is easy for you to say to accept this but let's make two (2) nice 7500 square foot lots to give us plenty of room for a woman who has lived here all of her life, paid taxes all her life can feel comfortable with, she does not have to move the garage and spend the money to do that, lose her back yard and still offer them something that is attractive and valuable to this City.

Aaron Burns which I think Rick has just said that Rick would approve as long you had two (2) 7500 square foot lots.

Paul Holloway without seventy-five foot frontage.

Aaron Burns you do not need seventy-five (75) feet of frontage, you need sixty-five (65') feet of frontage so all you would have to do is put a jog in the back to get the square footage and it is exactly what you described.

Paul Holloway I understand, the jogs is what I do not understand. I am done, if anyone else has something to say.

Pauline Holloway I just wanted to say that I just appreciate you listening to this, it sounds that you are trying to find a way to make this work.

I am going to give you a little bit of background with my Mom living in this neighborhood , it started very sparse, she said it was rural, I grew up there, lived across the field, raised my children there. This neighborhood has changed drastically is what we are trying to address for this woman who takes care of her house, takes care of herself, lives in this house by herself my brother passed away a couple of years ago now does not feel safe in this neighborhood. There are prowlers that we have seen at her garage, heard footsteps, she now locks her doors all day long and by having my niece and nephew live next door will give her a sense of safety and a sense of comfort that she could live in her home much longer. She is independent but not fearless at this age, eighty-six years old. She is not fearless anymore. We thought creating this and I know you do not understand the hardship but by moving that garage and taking \$12,000 dollars away from my mother, a small amount of money in her retired years is a hardship that is a lot of money for her.

By selling this land to my niece at that price is so Rebecca can raise a family in Westbrook. They were looking at houses in Gray - New Gloucester just to find something that was affordable and a convenient commute to Portland. They would rather be in Westbrook, her father and mother live across the field. We are Westbrook people and have lived here, raised our families here. My Mother has lived in this house for fifty-three (53) years. I do not know a lot of people who can say that.

So for us this is very heartfelt, it means safety and it means my mother feels comfortable in her home for a long as she can. Thank you

Aaron Burns any other members of the public who wishes to speak?

Colleen Peterson I live across the street from Meme Mere and have been there for thirty-three (33) years. I understand the safety concerns. We have seen people prowling about and I understand, I am in the same boat, I feel as though I do not feel comfortable in my own home any longer, I have been broken into twice and she needs to feel safe in order for her to stay in her own home. Thank you,

Nick LeDoux I understand the dogleg the extra make-up space, the way people see it is easily done to make the 7500 foot lot. That is a little less desirable to have if we wanted to fence in the back yard to go in back of someone else's back yard, Meme Mere for now and for someone else if we were to sell the house, people wouldn't like it either.

Aaron Burns anyone else want to speak?

No comments

Public Comment closed

Aaron Burns let's turn it over to the Board for discussion?

Workshopping through these:

The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.

I do not think that has been satisfied as there are ways with the ordinance for the applicant to pursue what is being sought here without the need of the variance.

Anyone agree or disagree with me?

Philip Brown I must admit I am still confounded by the fact that, whereas this describes that we are splitting an existing lot into two (2) equal lots, we have had discussion here tonight that indicates that in fact that it is not one lot, it is three lots and this would propose to split into two (2). That distinction creates confusion for me about the circumstances. If we are splitting three lots into two (2) I can see some argument for doing it.

Mike Lemay it would decrease the density.

Aaron Burns the issue is you have three (3) nonconforming lots of record which it seems, assuming without knowing the Code Office would determine if they are existing lots of record given what is constructed behind it and would be able to build on all three of them if you sited everything properly and permitted them properly.

There is an argument the one and two may have merged but probably not three.

Assuming you have all three you are taking, I think you could take, if you did it in stages, you could buy lot three, start construction and then go back and buy a portion of lot two as long as you

left lot one as a conforming lot with the proper frontage and density. You could carve it that way and I think that gets you where you need to go.

You could do it because you would have fifteen feet from the existing garage and would just be adding square footage to lot three. And it gives you the other advantage of ten feet setback if you wanted to when you start construction. As long as you only own three, you have ten (10) foot side setbacks, so after you have finished construction and you went to pull a separate permit for the garage, buy half (1/2) of two (2) pull a separate permit at that point you need to comply with the fifteen (15') foot setbacks because you have changed the dimensions of a lot of record. You could pick up the five (5') on the siting of the house, I think.

Nancy Milton-Heath would it behoove them to buy the whole thing at once?

Aaron Burns no, if you do that you are changing the lot lines and then you have to comply with the new fifteen (15) foot setbacks.

The other alternative is to put a jog in the back, that may or may not be desirable but it is feasible. It is done and people do it.

I do not think the strict application precludes the ordinance.

Rick Gouzie under the nonconformity except as otherwise provided in Section 203.5 Nonconforming Use may not be altered, extended or enlarged in any manner. not enlarged – expanding

Page 459 – City of Westbrook Code of Ordinances

203.5 Expansion of a Nonconforming Use Within a Building.

A nonconforming use may be extended, altered or enlarged within a building without a variance under the following conditions:

- A. The building or structure must conform to the performance standards of the zoning district in which it is located.***
- B. Any increase in building footprint must not result in coverage that exceeds either the maximum footprint factor or the maximum gross density factor.***
- C. No part of the expansion of the building or structure shall encroach, extend or project into any yard space distance required by this ordinance, except where noted in this ordinance.***
- D. The expansion or creation of an accessory use to a nonconforming residential building or structure shall be covered by the requirements of this section.***

So if you are taking a non-conforming lot and expanding it, you cannot expand a non-conforming lot.

Aaron Burns beg to differ on that because you are decreasing the non-conformity of lot three (3).

Rick Gouzie it is still a non-conforming lot.

Aaron Burns right but at that point you are decreasing the non-conformity because it is in separate ownership. We are not deciding that today, that is something you have to decide.

Nancy Milton-Heath did you come up with something different?

Mike Lemay they would have room for a garage on a sixty-nine foot lot using a ten foot side they would just have to flip the house the other way. The garage would have to be on this side.

Nancy Milton-Heath but don't they have to meet a fifteen foot setback?

Mike Lemay on this side, so if they did ten (10') and this is twenty-six (26') feet and then added the extra lot it would be a total of sixty-nine minus fifteen minus the twenty-six minus the ten it ends up being eighteen feet so they would be able to get a garage and a half instead of just the one and still have fifteen (15') on one side and ten (10') on the other. They would have to build the house first then buy the lot and add the garage on.

Nancy Milton-Heath and still meet setbacks.

Mike Lemay ten (10') feet on one side and fifteen (15') feet on the other.

Aaron Burns any other comments?

Philip Brown I am still confused on the argument that the house would fit on a fifty (50') lot.

Mike Lemay it wouldn't it is too large, the garage would have to come down.

Philip Brown so to go back to the question we were discussing I think the strict application of the ordinance would preclude the applicant from pursuing the use desired use because the fifty (50') foot lot does not satisfy the building requirements.

Aaron Burns that is one possibility, you do not have to have just the fifty (50') foot lot. You can configure this in a way to meet the setbacks without getting a variance, which is a feasible alternative.

Mike Lemay or build a smaller house.

Aaron Burns I do not think you have to do that, you just have to put a jog in the back that may not be desirable but it is feasible.

Mike Lemay but you make the lot size sixty-nine.

Aaron Burns for frontage

Mike Lemay then fifteen (15') on each side and it still would not fit because fifteen plus fifteen and the house is thirty-eight, so fifteen, and fifteen and thirty-eight is sixty-eight, so it would fit.

Aaron Burns and you are within all the setbacks. Thinking about this again, I would be more comfortable with the idea of if we were to give a variance giving it from the seventy-five hundred (7500) square feet requirement as opposed to the lot line as that way you are keeping straight lines.

Nancy Milton-Heath which is what they came for in the first place, right?

Aaron Burns the easier way to do it would be to get a variance from the square footage.

Philip Brown that option makes a lot more sense to me.

Aaron Burns then the lot will be bigger than the other lots in the neighborhood you are not going to have this issue with the jog in the back which could possibly decrease value, theoretically.

Mike Lemay do we have the authority to grant a variance for a smaller lot?

Aaron Burns yes if you meet the practical difficulty.

Mike Lemay would the applicant be opposed to a 6900 square foot lot?

Aaron Burns I do not think we can do that it needs to be noticed.

Mike Lemay they would have to re-apply for a variance?

Aaron Burns or amend it.

Rebecca LeDoux would amending it make it happen tonight? Or would we still need to come back?

Aaron Burns it would not necessarily be another month, but it would have to be re-noticed for another hearing. The variance has been noticed as a side yard set-back variance not a square foot variance.

Linda Gain Mr. Chair, may I have clarification on the notice as far as the applicant not wanting to come back next month? With the notice requirements and the room availability we would still need to have another meeting. Correct?

Aaron Burns probably

Linda Gain I can guarantee the second Tuesday of the month.

Aaron Burns even during the summer months?

Linda Gain they have workshops during the summer and do not have access to the schedule tonight, I would have to verify that tomorrow.

Philip Brown I would challenge whether there is sufficient change to require being re-noticed. The application is before us tonight wanting to split this parcel into two (2) that runs none feet from the existing garage. The alternative we were talking about is to draw the line fifteen feet from the garage resulting in the need to address a non-conforming lot area.

In terms of the impact to the neighborhood it seems to me that those two scenarios are similar and arguably would not require a new notice.

Aaron Burns quoted:

704.3 Practical Difficulty Variance.

The Zoning Board of Appeals may grant a variance from the dimensional standards of the zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

So we can grant a variance to dimensional standards. They are changing their request to a different variance from a dimensional standard. It does seem like a DeMinimis change quite frankly.

Philip Brown I agree

Aaron Burns we are only talking about 600 square feet.

Mike Lemay my other comment is we had one neighbor that spoke up at public comment and no other neighbors spoke and she could probably address any concerns she may have and get her opinion on the lot size.

Aaron Burns also someone could ask for reconsideration of it if they had a problem with it within fourteen days.

Mike Lemay do we want to have anyone speak?

Aaron Burns does anyone object to amending the variance as we just talked about?

Mrs. Arsenault are you okay with changing the variance from a setback variance to a square footage variance?

Roberta Arsenault I said that from the beginning. I did not understand why it had to be a setback variance.

Aaron Burns I know it is way too complicated. It is the way the ordinance reads.

Mike Lemay we could have saved all the trouble if we had listened to you in the beginning.

Roberta Arsenault yes if it is fine with Rebecca and Nick it is fine with me. We would not need the variance?

Aaron Burns you would need the variance but it would be a lessor variance.

Roberta Arsenault it would be a different variance and we would not have to wait another month?

Aaron Burns no it should be okay.

Roberta Arsenault I have gotten in touch with Mr. Dick Eaton a surveyor and he says as soon as the meeting is done to call him and he will do the surveying. I asked him should the surveying be done first, he said no, go to the City Council first and then we will do the surveying right after that, depending on how they rule.

Are we good to go?

Aaron Burns not yet, we still have some work yet.

Philip Brown I would like to test the applicants, if they can deal with direction we are headed in now, just to create the new lot at sixty-nine feet wide. Is that going to be workable as you are concerned?

Rebecca LeDoux Mr. Lemay, could you repeat what you said and what I saw you writing?

Mike Lemay what I was trying to figure out if we went with Mr. Burns plan and have the house ten (10') feet from the side and then your uncle had said could we do a two (2) car garage on the other side it would give you eighteen feet so it would give you a garage and a half (½) and not a full two car garage. Doing it by buying the 50 by 100, building the house buying the extra...

Aaron Burns basically what we are talking about now would be you would be using the lot frontage, you would have sixty-nine (69') feet of lot frontage instead of seventy-five (75'), but you only need sixty-five (65').

The variance would be, you would have a 69 x 100 foot lot instead of a 75 x 100 foot lot. You would have to get a variance from the 7500 square foot requirement.

The reason I am more comfortable with that is because of what I have been told here tonight, the evidence in front of the Board is that you have three lots of record, 50 x 100 feet. You are basically taking a chunk of the middle lot and parceling it off to the other two lots. So you are getting rid of one lot, so you are actually reducing some non-conformity by doing it this way.

What we are doing here is less of a modification because instead of making the garage need a variance for the setback the variance is only for six hundred (600) square feet of space which I think you can get there another way besides a variance but it seems more efficient to do it this way.
– 6900 square foot lot

Rebecca LeDoux so this amended variance is to create a 6900 square foot square lot, instead of the 7500 foot lot with a dog leg. The variance would be for a 6900 square foot lot.

Aaron Burns if you are okay with doing it this way, you can say no and then we will vote on what you proposed. You may win, you may lose.

If you ask us to amend us to do this, I am more comfortable with it. It seems like the other Board members will be more comfortable with it.

You can do it the same way just by putting a jog in and creating a goofy looking lot on the side where you are not going to have straight fence lines.

Rebecca LeDoux then there is no need for a variance at all because it is 7500 square feet.

Aaron Burns correct, you can do it that way. There are at least two ways you can do this without a variance. You can do the 50 by 100 foot lot, smaller house. You can do a 59 x whatever with the jog on the back and create a 7500 square foot lot that is completely conforming but not really desirable. Or let you build on a 69 x 100 lot. The tradeoff is the setbacks are fifteen feet all the way around.

Rebecca LeDoux can we ask the Board to amend our proposal to a 6900 square foot lot?

Aaron Burns I think the sense of the Board is that would be okay. Is that what you want to do?

Rebecca LeDoux yes please

Mike Lemay I think it should come from Roberta Arsenault requesting the change.

Aaron Burns is the okay with you Mrs. Arsenault?

Roberta Arsenault yes it is

Philip Brown at the risk of belaboring this, I want to make sure the applicant understands that the sixty-nine foot wide lot would accommodate the building sketch as we have seen it. It would likely not accommodate a revision to include a two (2) car garage.

Rebecca LeDoux thank you understood. Actually the plan and what we proposed the garage is built into that plan.

Aaron Burns there has been a motion by the applicant to amend the variance application to provide for a variance to have a sixty-nine (69') foot by one hundred (100') foot new lot to be created out of part of three lots of record.

Anyone care to make that motion?

Philip Brown I move the application for Roberta Arsenault be amended to describe that her property would be divided into two lots. One being 81 by 100 including her present house and garage and the second lot be 69 by 100 as shown in her sketch but with the property line being slid over.

2nd by Mike Lemay

The vote to amend is unanimous in favor 5-0

Aaron Burns is there any member of the public that wishes to speak on the amended application that we just discussed?

Colleen Peterson I live across the street and I think that is a great idea.

Aaron Burns the variance application in front of us now is to create two lots, one 89' by 100' and one 69' by 100' and no setback variances are being requested. The variance now is to depart from the 7500 square foot requirement for a new lot of record and only require 6900 square feet, which I think, is a much more modest variance. A 6900 square foot lot and an 8100 square foot lot and that is conforming.

Vote on Findings and Fact

The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located:

The vote is unanimous favor 5-0

The strict application of the ordinance to the property results in significant economic injury to the applicant:

The vote is unanimous favor 5-0

The need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood.

The vote is unanimous favor 5-0

The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.

The vote is unanimous favor 5-0

The practical difficulty is not the result of action taken by the petitioner or a prior owner.

The vote is unanimous favor 5-0

No other feasible alternative to a variance is available to the petitioner.

The vote is unanimous favor 5-0

The granting of a variance will not unreasonably adversely affect the natural environment.

The vote is unanimous favor 5-0

The property is not located in whole or in part within shoreland areas as described in Title 38, Section 435.

The vote is unanimous favor 5-0

Aaron Burns the Chair would entertain a motion to grant a variance to Roberta A. Arsenault, 16 Nasson Avenue, Tax Map: 043, Lot: 058, Zone RGA 1, to allow for the creation of two lots, one 81' by 100' feet and the other 69' by 100' feet, granting a 600 square foot variance from the 7500 square foot minimum lot size to create the second lot for construction of a house for her granddaughter and family.

Philp Brown so moved

2nd by Nancy Milton-Heath

The variance is approved 5-0

Aaron Burns the variance is approved.

Under the Westbrook Ordinance you may obtain a certificate of variance from the Code Office that needs to be recorded in the Cumberland County Registry of Deeds within 90 days or it is void. If you do not do that, the City does not do that for you the variance is null and void.

Philip Brown move adjournment

2nd by Karen Axelson

The vote is unanimous in favor 5-0

Adjourn

THANK YOU, respectfully submitted, Linda Gain lgain@westbrook.me.us