

MINUTES of the **REGULAR MEETING** of the **ZONING BOARD OF APPEALS** Village of Montgomery held on **MONDAY, APRIL 24, 2023**, at 7:35 p.m. in the Village Meeting Room at 133 Clinton Street, Montgomery, N.Y. 12549.

PRESENT: Chrmn. Randy Wilbur, Mbr. Antonio Marano, Mbr. Charles LaRocca, Mbr. Craig Henrie, Mbr. Kyle Wikel (absent), Village Atty. Marcello Cirigliano, Kenn Hunt (applicant), Brian (applicant representative)

TO CONSIDER the applications of:

A. 90 RAILROAD AVENUE on referral from the Building Inspector for in the Matter of the application of **KENN HUNT** for an area variance from Section 122-5 (Dimensional Regulations) of the Village Code to shorten the 10-Foot Side Yard Setback to 6-Foot. 8-inches, to allow for site plan approval for the construction of an Attached Garage.

SUBJECT PROPERTY is located at **90 Railroad Avenue**, in the Village of Montgomery and is designated on the Tax Maps as **Section 206, Block 4, Lot 6.2** and is in the **R-5 (Village Residential) Zoning District**

CALL TO ORDER

Chairman Wilbur at 7:30pm, called the meeting to order and open with the Pledge of Allegiance to the Flag.

RE: AFFIDAVITS

Chairman Wilbur shared a little housekeeping first – hope all two gentlemen have signed in. When we open the public hearing for the record, please state your name, so we know who is speaking as it's transcribed.

All confirmed with nods.

Chairman Wilbur asked if the original notice of public hearing, the affidavit of posting and publication and the affidavit of regularity have all been received and filed?

Deborah Delgado confirmed all received and filed.

Chairman asked how many were sent out?

Deborah Delgado confirmed 9 were sent out and about were received back - 4 received.

Chairman Wilbur said OK, thank you. At this time, do we have a motion on the board to open the public hearing regarding 90 Railroad Avenue?

OPEN PUBLIC HEARING – 90 Railroad Avenue (206-4-6.2)

MOTION to Open the Public Hearing for **90 Railroad Avenue (206-4-6.2)**
made at 7:38pm by Mbr. KaRocca, Seconded by the Mbr. Marano. **Motion Carried, 4 Ayes 0 Nays**

Chrmn. Wilbur shared at this time the meeting is open regarding 90 Railroad Avenue, looking for an area variance. At this time, I would like to ask the homeowner or resident to explain the request.

Kenn Hunt shared I want to introduce Brian Wutch as one of my employees, as Chief mechanic. To say my name K-e-n-n Hunt.

Brian Wutch shared he will be speaking for Kenn. What we are asking for is, you have a 10-foot setback, and we are trying to build a 12-foot, wide garage. That would encroach on that (set back). Honestly, I asked for 3 feet, and it should be 2.5 feet because we will cover the overhang on that. It would set it back to roughly 7 feet.

Chrmn. Wilbur mentioned when I looked through the drawings you have 18 feet by 8 inches now according to the house built, is that correct?

Brian Wutch confirmed I believe that was to the house itself – yes.

Chrmn. Wilbur shared you want to add a 12-foot wide, garage which is normal; but then a 12-inch overhang. I don't believe that is part of the area variance; so, you are looking for a full 12-foot. I want to make sure for later, we want to make sure we get the map right. If you have 18-foot 8-inches and you are asking for 12-foot, that leaves us with a 6-foot 8-inch set back.

Brian Wutch said correct.

Chrmn. Wilbur shared so you are asking for 3-feet 4 inches.

Brian Wutch said, ok. Yes.

Chrmn. Wilbur shared because if we grant a variance for 3-feet, now you just lost. I want to make sure that with everything here, we are considering the right numbers.

Brian Wutch shared I was trying to consider the overhang. I didn't know about that.

Chrmn. Wilbur shared if I am not mistaken, if you don't exceed the property dimensions with an overhang, you're alright. It doesn't factor in.

Brian Wutch shared it's going to be a standard.

Chrmn. Wilbur shared that you really provided us with a lot of details. That is the construction detail. For the zoning and area variance, we're basically looking at the footprint and the

neighboring properties. The property next to you that has a driveway, that goes to the property line, correct?

Brian Wutch confirmed, correct.

Chrmn. Wilbur asked the impact there is.

Kenn Hunt shared his house about 4-feet from the property line and they are new owners too.

Brian Wutch shared they just moved in. I spoke to them, even on a personal level, and shared we are doing this. They said go ahead.

Kenn Hunt shared they said their comment was, they are from the Bronx. They are used to a space or two.

Brian Wutch shared they are used to having an alleyway.

Chrmn. Wilbur shared we are trying to avoid that. Does it go back to the full depth of the house?

Brian Wutch confirmed, yes.

Chrmn. Wilbur said, ok. Again, one of the things we look for is the overall impact on the neighborhood. It may not exist, but we would like to make sure we understand the project. Does anyone have any questions, any thoughts?

Brian Wutch shares that our intent is to match the house; so, it looks like it's part of the house. It's going to be beautiful garage doors.

Chrmn. Wutch asked what is in this space now, a paved driveway?

Brian Wutch shared a paved driveway.

Mbr. Henrie asked are we supposed to have 10-feet and he wants 3-feet 4-inches?

Chrmn. Wilbur shared the setback in this area, and we will rely on what they requested in dealing with the Building Inspector, as I couldn't find what this piece of property required. I think it's a 10-foot side yard on this side. They would like to reduce it down to 6-foot 8-inches, so it's a 3-foot 4-inch variance they are looking for. To build a smaller garage doesn't make any sense, because anything less than 12-feet, you can't get a car in really.

Mbr. Henrie shared well you could.

Brian Wutch shared objectively too, we are looking at two things for assistance and wheelchair access, anything like that as we want him to have space to be able to come and go around.

Chrmn. Wilbur said, ok. Not very much to ask questions about.

Mbr. Henrie confirmed this one is pretty cut and dry.

Chrmn. Wilbur asked if the board is familiar with the location of the property?

Board members said yes.

Chrmn. Wilbur said yes, that helps a lot as well.

Mbr. Marano shared he agrees it's 6-foot 8-inches from the land there.

Chrmn. Wilbur reiterated that their driveway is a few feet over. There is a paved driveway over here. There is a little bit of buffer to the property line. Where they have 18-feet now, they would like to put a 12-foot garage which brings the side yard down to 6-foot 8-inches. Which is typical in that neighborhood. Good. At this time, if I have not missed anything and there is no further comment, we will close the Public Hearing. There is no one from the public here except the new folks.

MOTION to Close the Public Hearing made by Chrmn. Wilbur and Seconded by Mbr. Henrie.

Motion Carried: 4 Ayes, 0 Nays

MOTION to declare a negative action under made by Chrmn. Wilbur and Seconded by Mbr. LaRocca.

Motion Carried: 4 Ayes, 0 Nays

Chrmn. Wilbur shared just so you know that says there is no environmental impact or anything that has to be further investigated, so that's a good thing. We are not done yet. This is where we get a chance to talk among ourselves.

Mbr. LaRocca shared the only thing I thought, that's a new house. Why wasn't that included from the start?

Kenn Hunt shared my engagement with Bruce has been very welcoming. He just wanted somebody with the capacity to come up and clean up the previous builder's mess. They were supposed to put a lawn in and there was a swamp. I spent \$18K on sod to make it look good and get dust off the neighborhood and keep the mud from the dogs off white coaches. There has been a curtain drain put in that we cleaned up and maintained before I moved in. The builder thought she would make money and flip the house next to us. The house next to us just flooded the day after we moved in.

Chrmn. Wilbur shared the thing about that neighborhood – the water level is very high.

Kenn Hunt shared the French Drain works. I can't answer that question (directed at Mbr. LaRocca) as I bought the house as I had to move up from Florida from the weather. I have Parkinson's and the heat was bothering me. I didn't have a choice.

Chrmn. Wilbur asked to clarify, you didn't have the house built for you, did you?

Kenn Hunt said no. I bought it.

Chrmn. Wilbur shared, not that it matters, but it does help answer the question why you didn't have it built with a garage. You bought the house basically from Crawford Builders.

Kenn Hunt shared I tried to have it negotiated in the sale, as it became so complicated dealing with her, that it was just – forget it.

Brian Wutch shared we are matching the façade with Montgomery. It's not going to be an eye soar.

Kenn Hunt shared not sure if Chris placed it on the drawing, but it's going to match the front façade where the front porch is, it's not going to be a wrap-around porch; because we have to stay within the utilities, but it will match that angel. The door that I bought is an \$11K, cedar door.

Brian Wutch shared it will match the cedar around the house.

Kenn Hunt shared trying to keep it true to the house as was stated.

Chrmn. Wilbur asked if anybody wanted to make a motion either way. To clarify, they are seeking relief from a 10-foot side yard that's required. They need a variance to use 3-foot 4-inches and will end up with a side yard of 6-foot 8-inches.

MOTION to approve the area variance where 10-foot is required but they will have a variance of 3-foot 4-inches leaving 6-foot 8-inches **made by Mbr. Henrie. Seconded by Mbr. Chrmn. Wilbur.**

Motion Carried:

4 Ayes 0 Nays (Mbr. Wikel absent)

Attorney Marcello shared gentlemen, I want to be clear for the record.

*VILLAGE OF MONTGOMERY
ZONING BOARD OF APPEALS
FINDINGS OF FACT
AND DECISION
TAX MAP NO. 206-4-2*

The property that is the subject of the application is located at 90 Railroad Avenue and is designated on the tax map as Section 206, Block 4, Lot 2. The applicant seeks area variance from Section 122-5 (Dimensional Regulations) of the Village Code to shorten the 10-foot side yard setback 6-foot 8-inches, to allow for site plan approval for the construction of an Attached Garage.

This matter comes to the Board upon an appeal of the Building Inspector's denial of an application for a building permit. The property is located in an R-5 (Village Residential) zoning district. A public hearing on the application was held on April 24, 2023, at the Village Hall, 133 Clinton Street, Montgomery, New York. Notice of said public hearing, including the subject, date, place, and time, was duly published, and mailed. Proper affidavits of publication and mailings were received from the applicant.

The applicant appeared at the Public Hearing before the Zoning Board of Appeals. The subject property is an improved residential village lot located at 90 Railroad Avenue, and the applicant presented a Final As - Built Survey Map of Lot #2 (filed Map # 374 - 21) prepared by Daniel J. O'Brien, P.L.S. and Plot Plan for the proposed attached garage. The as-built survey and plot plan is hereby incorporated into this decision and a set shall remain in the Zoning Board of Appeal's file in this matter.

The applicant's reasons for the need for the area variance from Section 122-5 are based on the fact that side yard setbacks under the plans of 6-feet 8-inches are less than the 10-foot minimum side yard setbacks pursuant to the Village Code's Dimensional Regulations. There were no members of the public who were heard during the hearing. Thereafter, the Board closed the public hearing. The Board determines that the applicant has timely appealed the Building Inspector's denial.

The Board determines that this is a Type II action under the State Environmental Quality Review Act (SEQRA) [6 NYCRR §617.5]. As such, this project is not subject to review under SEQRA.

The Board determines that this is an application for an area variance and that the criteria that the Board must consider in determining whether or not to grant the variance are the factors set forth in Village Law, Section 7-712-b(3). In considering the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood and community by such grant, the Board has considered the following five factors.

I. WHETHER AN UNDESIRABLE CHANGE WILL BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES WILL BE CREATED BY GRANTING OF THE VARIANCE?

The property in question is located in an R-5 (Village Residential) zoning district. The applicant is proposing to construct an attached garage. The applicant wishes to construct the garage with a 6-foot 8-inch side yard setback instead of the required minimum of 10 feet, if any. The Board determines that the proposed garage will not produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties.

II. WHETHER THE BENEFIT SOUGHT BY THE APPLICANT CAN BE ACHIEVED BY SOME METHOD FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN THE AREA VARIANCE?

The applicant explained that the variances are necessary to fit the garage footprint. Given this explanation, the Board determined that there was no other feasible means for the applicant to pursue other than seeking the variances.

III. WHETHER THE REQUESTED AREA VARIANCE IS SUBSTANTIAL?

Considering that 3-feet 4-inches is a minor deduction from the allowed 10-foot side yard setback, the Board determines that the requested variance is not substantial.

IV. WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD?

The Board determines that the proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The proposed garage appears to be architecturally and aesthetically consistent with other garages located on Railroad Avenue. The Dimensional variance still allows for adequate space for a side yard setback.

V. WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED?

The Board finds and determines that the alleged difficulty is self-created as then an applicant purchased this property charged with the knowledge of the need to obtain a variance to obtain a building permit for the proposed garage. However, under the circumstances presented, the self-created nature of the need for the variance requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as a result.

DECISION

The Board determines that the application of Kenn Hunt for an area variance from Section 122-5 (Dimensional Regulations) of the Village Code, allowing for the issuance of a building permit to construct an attached garage located at 90 Railroad Avenue, with a side yard setback of 6-feet 8-inches, where a minimum of 10-feet, if any, is required, is hereby granted.

The applicant is reminded that it must obtain the necessary approvals from the Planning Board and/or obtain a building permit from the Building Inspector prior to the commencement of any work.

Present and voting on this decision:

Randy Wilbur, Aye

Charles LaRocca, Aye

Tony Marano, Aye

Craig Henrie, Aye

Chrmn. Wilbur shared “I think we covered everything and how long is the Building Inspector notified.

Deborah Delgado said she would give this to the Building Inspector in the morning as they already paid the fee for the permit. I have insurance from the property owner. That’s up to the Building Inspector to check. If he needs more information/insurance the building inspector will call you and let you know. He normally takes 5-7 business days to get the permit completed. He’s back on Wednesday in the office.

Chrmn. Wilbur stated the worker’s compensation is something he will help you investigate. It shouldn’t stop you if you want to contact the Building Inspector to ensure he has everything he needs. Thanks to the applicants, thank you for sharing.

MINUTES

MOTION to *approve the minutes for August 22nd, 2022,* made by **Chrmn. Wilbur. Seconded by Mbr. Marano.**

Motion Carried:

4 Ayes

0 Nays

DISCUSSION

Chrmn. Wilbur said there are many trainings, and we are required to do 4 hours of training in 2023. Please check the online courses.

Deborah Delgado shared the community want more on energy effective – so potentially take some of the trainings and Mbr. Marano can come join in the Village Hall if needed.

ADJOURNMENT

MOTION to *adjourn the ZBA meeting* made by **Chrmn. Wilbur. Seconded by Mbr. Henrie.**

Motion Carried:

4 Ayes

0 Nays

Randy Wilbur, Chairman

Deborah Delgado, ZBA Secretary