

TOWN OF ESOPUS
P.O. Box 700
Port Ewen, NY 12466
Zoning Board of Appeals

TOWN OF ESOPUS ZONING BOARD OF APPEALS
Minutes of the November 20, 2012 Meeting

CALL TO ORDER: Acting Chairman, Joe Guido, called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Vic Barranca, Sean Fitzgerald, Joe Guido, Kathy Kiernan, Linda Smythe, Karl Wick
Excused: Chairman, Don Cole
Also in attendance: Gloria Van Vliet.

MINUTES

Vic made a motion to approve the October minutes as written. Seconded by Kathy. All in favor.

VOUCHERS

Kathy made a motion to approve the vouchers for secretarial work. Seconded by Vic. All in favor.

Joe explained that he was filling in as chair for Don tonight
He stated that Don, Vic and Linda's terms were expiring (Dec. 31, 2012) and Don would need to know who is interested in remaining on the ZBA. The Town Board makes its nominations in January 2013.

PUBLIC HEARING

10-16-12-01	Ralph and Verna Allen 228 Green Street	Area Variance 56.67-4-15
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Joe asked secretary to read a neighbor's telephone comments into the minutes. Margaret Walker, 225 Green Street said that "she has no objection to the Allen's building the carport.

Ralph Allen was present and he stated that he wanted to build a carport on the driveway on the right side of the house starting from about two feet from the corner of the house. It will be a metal structure, four posts, flat roof.

Joe stated that he visited the property and there is a shed that was not on the plot plan that applicant submitted with his application. It is a 12x20 shed in the back of the house. There was a building permit for this shed and a plot plan submitted with the permit application has different figures on it than the plot plan with the ZBA application. The distance from the house to the road is marked as 35 ft. on the ZBA plot plan and 38 ft. on the building permit plot plan.

Applicant stated that the three foot difference could be a matter of where (one) determines the edge of the road. Joe stated that the measurement needs to be to the property line, not the edge of the road. Applicant said he doesn't know which measurement is correct.

Joe asked applicant if he knows where the front property line is and applicant replied that he assumed it is the edge of the road. He does not know where the town right-of-way ends. Joe asked if applicant knows the side property line and explained that the Board needs to know these distances because if they grant a variance, it is specific to the distance of the variance. If the numbers are not correct, the variance will not be correct. He explained that if, in the future, a neighbor builds next door and a survey is done, the lot line on the variance could prove incorrect.

Applicant stated that he cannot say where his property line is between his house and Dr. Anderson's except that there are metal posts in the ground that he presumes was a fence along the line. He has asked Dr. Anderson and he doesn't know the property line either. He and Dr. Anderson assume the trees along this line are on Dr. Anderson's property.

Vic asked, "If the property lines are incorrect, is the Town liable if the ZBA approves this variance?" He added that, without a survey, it is difficult.

Applicant stated, "You are approving a variance for me to build it in front of the house instead of on the side of the house. I understand that the setback is that you have to be three feet from the line, but you're not granting a variance for that." Kathy stated that the distance required is five feet from the line. Applicant said that he will need a variance for that also. Kathy pointed out on his plot plan that the carport will be 5 feet from the side property line at the front of the carport, and 4 feet 6 inches at the rear of the carport. Applicant agreed and said the house is not parallel with the line.

Kathy asked applicant how long the new blacktop driveway is from the edge of the pavement. Mr. Allen replied about 38 feet and it ends right at the corner of the house.

Joe noted that the plot plan shows the back property line as 80 feet and the tax map shows it is actually 60 feet. Mr. Allen remarked that he thought the lot was square, but it isn't. He didn't measure the back line.

Karl asked applicant what his deed says for the property lines. Applicant could not answer "off the top of his head." Karl stated that would be a definitive source.

Joe asked applicant which plot plan was correct and Mr. Allen stated that the one he drew for the shed building permit application was more accurate. Joe noted that this plot plan has incorrect measurements also.

Kathy asked, "Can you fit two cars on that blacktop driveway?" Applicant answered, "Just barely." Kathy stated that when she drove by the house, it did not appear to her that there was that much room from the pavement to the house. Secretary walked out 38 feet so the Board

could get a visual sense of the distance. Kathy asked applicant if that measurement was out to the pavement and Mr. Allen answered that it was.

Joe asked what the front yard setback is in an R12 zone. Karl answered 30 feet. Joe stated that the edge of the carport should be 30 feet from the line and it is going to be 17 feet. He stated that the side setback for a detached building is five feet. Karl, after reading from code, stated that this has to be five feet from the front and the side, but it needs to be 10 feet from the house. The only variance would be the distance from the house and that half foot on the side and that could be (remedied) by moving the carport 6 inches to the left.

Joe noted that Tim waived the distance from the house requirement of 10 feet because the structure is all-metal fabrication and there is no fire issue. He stated that, if the variance is granted, applicant could not enclose the carport at a later date. Applicant said he was not planning to do that.

There was discussion on moving or rotating the carport so that both ends are five feet from the (presumed) side property line. Applicant stated that he could move it, but it would not be in line with the house and would look weird. Also, there is a gas line coming across this area so he has to be careful.

Applicant asked if the side line issue could be part of the variance. He stated that he has seen many buildings in the neighborhood that are closer than five feet from the property lines. Karl stated that before code, that was common. Zoning was created to prevent this for fire and maintenance issues.

Joe stated that the six inches was an issue with him because applicant is unsure of location of the property line. Discussion followed concerning the gas line location and inconvenience of moving the carport over six inches. Applicant repeated that he set it up to be parallel to the house.

Karl stated that it would be great if the Board had a real scale plan – they are shooting in the dark. He would not recommend paying surveyors and engineers to draw up a plan, but an accurate plan would be a help. He noted that the gas line was not on applicant's plan, and the Board has two plans with different measurements.

Joe asked the Board if they were comfortable voting on this application or would they want to keep the public hearing open and get more information from applicant. Karl wondered if they would be able to get any more information. Joe asked applicant if there were any markers on the property and applicant replied, "Just the fence posts that held a wire fence."

Joe asked if Board members had been to the property. Most had driven by it.

Karl stated that, not knowing where the property line is, he would hesitate to vote in favor of granting the variance on the side. Applicant asked if it was Karl's opinion that he wanted the carport to be five feet from the property line. Karl agreed.

Applicant asked if the posts are (in the right place), what if the overhang of the building is a little outside of the posts? Karl stated that code allows for eaves and cornices to overhang into the space between the property line and the five foot setback, but not all the way to the property line.

Karl made a motion to close the public hearing. Seconded by Sean. All in favor.

Joe asked if the Board was comfortable voting on application or wanted to wait until next month. Vic re-stated that his concern is not knowing where the property lines are and Town liability in the future if a survey is done. Karl said the Board could word the variance to cover that. Joe stated that if a variance is not granted for the side line, it is not an issue. It is the applicant's responsibility to make sure he is at least five feet off the property line. Joe said it is the responsibility of the Building Department to make sure the structure is placed five feet from the property line. Vic asked how the Building Dept. would do that without knowing where the property line is. Karl stated that using a metal detector, find a stake in the front, a stake in the back, put a string in between, confirm with the deed that it is one line, and measure off the string.

Karl said if the neighbor agrees, it isn't an issue until he sells. The next owner will need a survey. He would be willing to vote on both variances, but would like them as separate motions. Joe reminded him that it is only one issue – the accessory structure in front of the residence. The carport will be five feet from side property line and Tim waived the distance to residence requirement.

Kathy asked Karl to clarify, "If we grant approval to put this in front of the house, that negates any other setback requirements as far as front yard?" Karl stated that it is allowed to be in front of the house according to the note in Town Code 123-21. In November 2009 they deleted the "accessory in front of the house" part. "All we have to do is say, 'it is not 10 feet away from the house.'" Grant a nine foot variance to that. Kathy asked, "What about the front yard setback?" Karl said it has to be five feet, because the code reads, "from any lot line."

There was discussion on placement of the property lines: pavement edge, center of road, right-of-way to Town, etc. Karl said it depends on the deed.

Kathy said she is not comfortable voting on this without any property lines. If there is a vote, she would not be in favor.

Sean asked for clarification on what the Board was voting on. Joe stated that the variance would be to put the carport in front of the house. The distance from the house was already waived by the Building Inspector.

Sean and Karl said that since the code section, 123-21 C (5)(d) was removed, a variance was not needed to put an accessory structure in front of the house.

The secretary noted that paragraph (a) states "located in any required side or rear yard." It does not say front, so a variance is needed to put it in the front.

Karl said the Board needs to know the intent of the code change. Joe asked Gloria if she was on the Board when the change was made. She didn't remember accessory structures in the front yard being allowed.

Mr. Allen stated that if he had to wait another month, it would be hard to dig. He said he would leave and let the Board "sort this out." Joe said if the Board votes on it, he would be contacted.

Discussion followed on the distance from the road to the house. Consensus was that it could not be 38 feet. Kathy does not think any of the measurements provided by Mr. Allen are legitimate.

Vic said he would go out to the property with a tape measure and get accurate numbers. The Board decided to wait until the next meeting to vote on this application. The secretary was asked to call Mr. Allen and ask him to provide a deed and copy it for Board. Joe reminded Board members to call Mr. Allen before going on his property.

Kathy made a motion to adjourn the meeting. Seconded by Sean. All in favor.

The meeting was adjourned at 7:47 pm.
The next meeting of the ZBA is December 18, 2012.

Respectfully submitted,

Joan Boris, Secretary
Zoning Board of Appeals