

**ZONING BOARD OF APPEALS
March 13, 2018
MINUTES**

Present: Aaron Burns (Chair), Philip Brown (Vice-Chair), Michael Lemay, Sherri Quint, Karen Axelsen (Alternate)

Absent: David Morse (Alternate), Nancy Milton Heath

Staff: Richard Gouzie, David Finocchietti

Administrative Agenda

1. Approval of November 14, 2017 minutes

Sherri Quint moved to approve the November 14th, 2017 minutes as presented.

2nd by Philip Brown

Minutes approved

2. Approval of the 2017 Zoning Board Chairman's Report

**City of Westbrook
ZONING BOARD OF APPEALS**

**WESTBROOK ZONING BOARD OF APPEALS
2017 CHAIRMAN'S REPORT**

During 2017 the Zoning Board of Appeals heard (3) Variance Requests (1) postponed item and (1) withdrawn item

01.10.2017 Zoning Board of Appeals Meeting

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

Absent: Sherri Quint

Variance Request – Frank Stafford, 64 Middle Street, is requesting a five (5') foot side yard variance and a ten (10') foot rear yard variance to allow the construction of a twenty-four (24') x thirty-two (32') foot two (2) car garage with one sixteen (16') garage door. Tax Map: 026, Lot 025, Zone: Residential Growth Area 1.

Variance Approved 5-0

08.08.2017 Zoning Board of Appeals Meeting:

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

Variance Request – Shamayel Karger agent for Rahem LLC, 23 Lamb Street, is requesting a change of current commercial use for Unit 3 to a residential one (1) bedroom unit. Tax Map: 040, Lot 112, Zone: Residential Growth Area 1.

Item postponed to September 12th, 2018 (Applicant not present)

09.12.2017 Zoning Board of Appeals Meeting:

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

Variance Request – Shamayel Karger agent for Rahem LLC, 23 Lamb Street, is requesting a change of current commercial use for Unit 3 to a residential one (1) bedroom unit. Tax Map: 040, Lot 112, Zone: Residential Growth Area 1.

Postpone to October 10th, 2017 (Allow applicant to provide additional submissions)

10.10.2017 Zoning Board of Appeals Meeting * this item was continued from September 12, 2017

**Customer withdrew variance request

Meeting cancelled

~~Variance Request – Shamayel Karger agent for Rahem LLC, 23 Lamb Street, is requesting a change of current commercial use for Unit 3 to a residential one (1) bedroom unit. Tax Map: 040, Lot 112, Zone: Residential Growth Area 1.~~

11.14.2017 Zoning Board of Appeals Meeting

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

Absent: Sherri Quint

Variance Request – Nicholas and Barbara Soloway; 72 Pennell Street, is requesting a four (4) foot side yard variance to enable the repair and reconfiguration of their back deck. Tax Map: 029, Lot 069, Zone: Residential Growth Area 1.

Variance denied 0-5

For the Zoning Board of Appeals,

Aaron P. Burns, Chairman

cc: Mayor Sanphy
City Council
Jerre Bryant, City Administrator

Philip Brown move to send the 2017 Zoning Board Chairman's Report to the City Council

2nd by Sherri Quint

The vote is unanimous in favor 5-0

3. Election of Zoning Board of Appeals Officers

Aaron Burns opened nominations for Zoning Board Chairman

Philip Brown moved to nominate Aaron Burns for Zoning Chair

2nd by Sherri Quint

Aaron Burns passed gavel to Vice Chair Philip Brown

Philip Brown do I hear any other nominations?

No further nominations

Sherri Quint moved to cease nominations

2nd by Karen Axelsen

Nominations ceased

The vote for Zoning Chair is unanimous in favor 4-1 (Aaron Burns abstained)

Aaron Burns is Zoning Board of Appeals Chair for another year

Philip Brown passed gavel to Chairman Burns

Aaron Burns opened nominations for Zoning Board of Appeals Vice-Chair

Sherri Quint nominated Philip Brown for Vice-Chair

2nd by Michael Lemay

No further nominations

The vote is 4-1 in favor (Philip Brown abstained)

Philip Brown is Zoning Board of Appeals Vice-Chair for another year.

4. New Business

5. Variance Request – Daniel & Teresa Brady, are requesting a five (5') foot side yard variance and a five (5') foot rear yard variance to allow the moving of a twenty-four (24') x twenty-four (24') two (2) car garage. Tax Map: 025, Lot 086, Zone: Residential Growth Area 1.



City of Westbrook

DEPARTMENT OF PLANNING & CODE ENFORCEMENT

MEMO

DATE: March 8, 2018

TO: Zoning Board of Appeals
FROM: Richard Gouzie, City Code Enforcement

Officer Cc: File

RE: March 13, 2018 Zoning Board Meeting

Items in this memo:

1. Variance Request – Daniel & Teresa Brady

Agenda Item #1 – Variance Request – Daniel & Teresa Brady, 12 Louise Street, are requesting a five (5') foot side yard variance and a five (5') foot rear yard variance to allow the moving of a twenty-four (24') x twenty-four (24') two (2) car garage from Tax Map: 025, Lot: 084 to 12 Louise Street, Tax Map: 025, Lot 086, Zone: Residential Growth Area 1.

Project Description:

This is a variance request from Daniel & Teresa Brady – To move a twenty-four (24) x twenty-four (24) two (2) car garage needing a five (5') foot side yard variance and a five (5') foot rear yard variance. A smaller shed almost against the rear property line has been demolished and the new garage would be brought further away from the rear setback line.

For the Board's reference:

*Our Land Use Ordinances defines **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:**

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. 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;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner;
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

Staff Comments:

The applicant's request is to move a twenty-four (24') x twenty-four (24') two (2) car garage. Staff is providing comment on each of the tests of the ordinance for the ZBA's consideration in this matter.

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
 - a. Staff finds the proposed location of the garage will be in line with the existing house.
 - b. To push the garage further from the side lot line would be less in keeping with the neighborhood.
- B. 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;
 - a. Staff sees no issues on this point.
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
 - a. Staff finds this test is met for the following reason:
 - i. The property slopes to the right and would require fill that could change the natural drainage off the property.
 - ii. Driveway location was an existing condition.
- D. No other feasible alternative to a variance is available to the petitioner;
 - a. There is no feasible alternative as the property slopes dramatically.
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
 - a. Staff has no issues on this point.
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.
 - a. Staff sees no issues on this point.

In closing, Staff does support this variance request move a twenty-four (24') x twenty-four

(24') two (2) car garage. To date there have been no abutter concerns received by the Code Department from the neighborhood.

Aaron Burns Mr. Brady please present your variance request.

Daniel Brady, we approached Mr. Frustaci to move the 24' x 24' garage from the property next to mine to our property. We would like to have the garage more to the lot line as you see, in line with the driveway about five (5') from the fence line. This area would drop off dramatically and would require more fill. If we obtain the variance and keep it five (5') feet from the side.

We would like to obtain a five (5') foot rear variance to keep it away from the house and make it easier to drive into the driveway.

The shed will be removed. Mr. Frustaci is interested in giving us the garage as he would have to demolish it prior to building a house on that lot. I approached him last fall to see if he would give us the garage and met with him on site again to discuss movers from Scarborough, Merry Movers and another contractor and did discuss the variance and he had no opposition to the variance.

Aaron Burns where does the property slope?

Daniel Brady showed the sloping area. If keeping with the current setbacks this would require a lot more fill. From this corner to this corner there is about four (4') difference, it slopes off quite a bit and if we had to stay with the current setbacks it would be harder to get around and would not be in line with the driveway.

Aaron Burns questions from the Board?

Philip Brown we have a couple of pictures and I assume that is the existing garage that you are proposing to move?

Daniel Brady some of you are familiar with the Roger LeClair property up on Central Street and corner of Louise, this is the property. He since has sold that property and are going to tear the garage down and I approached the new owner, Joe Frustaci to see if he would be interested in giving me the garage. He was going to have to pay to have it demolished and hauled away. We met on site this morning with a couple of contractors and would try to move it when frost leaves the ground.

Philip Brown and your proposed location takes the building overhangs into account?

Daniel Brady yes it does. I met earlier with Rick, the overhang will be within five (5') feet. The building itself is 24' x 24', the overhang is about eighteen inches. If the Board needs that I can get that. It will be within the five feet. There is no overhang on the back side at all.

Philip Brown I am not sure that addresses the question. You are proposing to locate the building

five (5') feet from the property line. My question is does that include the overhang?

Daniel Brady, I did not think of the overhang at the time, but we can include the overhang if needed.

Aaron Burns questions from the Board?

Philip Brown it looks like there is a statement from one abutter. Can we clarify that?

Aaron Burns there is a submission from Elaine Mowry?

Daniel Brady yes, Elaine Mowry my rear neighbor.

**Showed location of Mowry property

Aaron Burns Linda, all the direct abutters received notice of the meeting?

Linda Gain yes

Aaron Burns so the abutters do not care or are supportive.

Daniel Brady to my knowledge they have, and a number of neighbors talked to me about my project.

Aaron Burns questions or concerns with the application?

No questions

Aaron Burns hearing no further concerns or evidence, the way we typically do this is to workshop through it and take straw votes on each of the elements. As you see in the packet, there are different elements you need to get fulfilled in order to get the variance approved.

If we have questions as we go through the process, we will ask you to address those.

Rick, I saw the memo from administration and is administration still supportive of the request?

Richard Gouzie yes, we are supportive of the request. I walked the property last fall with Mr. Brady when he approached the property owner to the right of his property to obtain the garage.

Aaron Burns Public comments?

No Comments

Open Public Comment

No public comments

Close Public Comment

Aaron Burns it seems to me that it satisfies the criteria and administration is supportive. Phil's concern of the overhang is well taken and if the variance is approved you must take the overhang in to consideration.

Daniel Brady I will make sure that is take into consideration, I will make sure it is six (6') feet to be clear.

Aaron Burns you must stay within the setbacks as provided by the variance. You cannot be any closer to the variance we give you.

Aaron Burns we will workshop the Findings and Fact and take a straw poll.

Daniel & Teresa Brady are requesting a five (5') foot side yard variance and a five (5') foot rear yard variance to allow the moving of a twenty-four (24') x twenty-four (24') two (2) car garage. Tax Map: 025, Lot 086, Zone: Residential Growth Area 1.

The justification of the variance, seeking a practical difficulty variance; criteria to the strict application of the ordinance precludes the applicant pursue the use permitted in the Zoning District that the property is located.

A garage is a permitted assessor use in the RGA 1 Zone.

The justification is the feature of the property is due to the slope to the lot and location of the house that in order to place the garage on the property without incurring a large expense for fill and disrupting the natural drainage of the site that they need the five (5') foot side and rear setback.

Straw Vote - 5-0 in favor

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

The applicant would have to get a lot of fill in order to place the garage within the setback.

Straw Vote - 5-0 in favor

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

The property was constructed without a garage and is not caused by the general condition of the neighborhood.

Straw Vote - 5-0 in favor

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;

Moving the garage from the Frustaci property to this property should not affect anyone and we have not received any objections.

Straw Vote - 5-0 in favor

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

This is natural feature of property with the slope that requires placement where it is to have the garage functional.

Straw Vote - 5-0 in favor

No other feasible alternative to a variance is available to the petitioner;
Sloping precludes an alternative

Straw Vote - 5-0 in favor

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

There is no indication of any adverse effects on the environment.

Straw Vote - 5-0 in favor

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

This is not in Shoreland Zone

Straw Vote - 5-0 in favor

Aaron Burns based on the Findings of Fact, I would entertain a motion to adopt the Findings of Fact formally as determined in the straw poll votes and to grant the requested variance that is before the Board.

Philip Brown so moved

2nd by Sherri Quint

No further discussion

The variance is approved 5-0 in favor

Aaron Burns the variance is approved. Linda will prepare a Variance Certificate that you need

to get recorded within 90 days at the Cumberland County Registry of Deeds. It is your responsibility to get the Variance Certificate recorded.

If the Certificate is not recorded, you will not have a variance.

No new business

Sherri Quint move to adjourn

2nd by Philip Brown

Board in favor of Adjournment

Adjourn