

**CITY OF WESTBROOK  
ZONING BOARD OF APPEALS  
June 11, 2019  
MINUTES**

**Present:** Aaron Burns (Chair), Michael Lemay, Nancy Milton Heath, David Morse (Alternate)

**Absent:** Philip Brown (Vice-Chair), Sherri Quint, Karen Axelsen (Alternate)

**Staff:** David Finocchietti

**Administrative Agenda**

**1. Approval of March 12, 2019 minutes**

**Aaron Burns** are there any changes or corrections to the minutes as provided in the packet? Hearing none, absent of any objections the **March 12, 2019 minutes are approved.**

**New Business**

~~**2. Variance Request** — Anne Lunt, Lincoln Street, is requesting a three foot front yard variance to allow the building of a twenty four (24') foot by twenty (20') foot, ten (10') by twelve (12') foot "L" shaped single family home. Tax Map: 038, Lot 087B, Zone: Residential Growth Area 1.~~

**\*\* Variance Application postponed to July meeting needs to be re-notified.**

**3. Variance Request – Jason Brown, 45 Monroe Avenue, is requesting a thirteen (13) foot, one (1") inch back yard variance to allow the demolition of a twenty-two (22') x twenty (20') by thirteen (13') foot high existing garage and construct twenty-two (22') x twenty-six (26') by fifteen (15') foot high garage. Tax Map: 029, Lot: 192, Zone: RGA 1**

**MEMO**

**DATE:** June 07, 2019

**TO:** Zoning Board of Appeals

**FROM:** David Finocchietti, City Code Enforcement Officer

**Cc:** File

**RE:** June 11, 2019 Zoning Board Meeting

Items in this memo:

**4. Variance Request – Jason Brown**

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- 5. Agenda Item #1 – Variance Request – Jason Brown**, 45 Monroe Avenue, is requesting a Thirteen (13') foot One (1") inch back yard variance to allow the demolition of a twenty-two (22) x twenty (20) by thirteen (13') foot high existing garage and construct a twenty-two (22') x twenty-six (26') by fifteen (15') foot high garage. Tax Map: 029, Lot: 192 Zone: Residential Growth Area 1.

**Project Description:**

- 6.** This is a variance request from Jason Brown – variance to allow the demolition of a twenty-two (22) x twenty (20) by thirteen (13') foot high existing garage and construct a twenty-two (22') x twenty-six (26') by fifteen (15') foot high garage.

**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 build a twenty-two (22') x twenty-six (26') by fifteen (15') foot high 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 would be in line with the existing garage and driveway.
- 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. Garage location was an existing condition. (prior to zoning)
- D. No other feasible alternative to a variance is available to the petitioner;
  - a. The garage could move closer to the existing house with some loss of back yard and modification of existing driveway.
- 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 to build a twenty-two (22') x twenty-six (26') by fifteen (15') foot high garage. To date there have been no abutter concerns received by the Code Department from the neighborhood.

**Jason Brown** 45 Monroe Avenue, I am grateful for the chance for the Board's time tonight to hear my request.

We bought the house a couple of years ago and the house is in great shape, but the hip roof garage is sinking on what is called a mud sill, with some concrete block. It is sinking into the ground and is on an angle and we want to replace it.

We have been there a couple of years and we love the neighborhood and we like the way the neighborhood looks. Everyone we have spoken to about fixing the garage has said it would be a very costly, long haul to fix the garage as it stands now. We have put that aside for now and in hopes of replacing it with something that is almost identical, visually very similar but a little longer to accommodate newer vehicles as the garage was built in the 30's so I think the early Fords were shorter and we do not have really large cars but enough room to accommodate a Honda Fit and a Honda CRV, so not much bigger but a little longer.

We see an opportunity here if we can replace it, two things,

1. Make it a little bigger to fit two modern cars in it.
2. The other thing as even as it exists now, it does not conform in either direction with the setbacks.

This side area in particular has a fence here with our neighbor and another garage here at 41 Monroe that has a little garage there that you cannot quite see with a fence and a very small bit of land.

The one thing about replacing instead of repairing we can actually move it forward a bit a more gracious space. It is really clogged up back here.

\*\*Editor's Note Applicant showed the Board an additional picture of the existing back yard.

Our request obviously is:

1. Bring the side to conformance with the setback will do a great deal of work towards making this area more spacious, to let more sunlight in here and create more separation form these structures.

2. Our neighbor Don would love to not have our garage riding along his fence.
3. Our goal is to bring our garage forward when we re-build it.
4. Create more green space.
5. We have a very large driveway for the size of this property. Cut out this part of the driveway and get the green space back and remove all the asphalt.
6. By bring the garage forward a bit bring the garage away from the fence.

Those are the constructive ideas we have.

Here are the limiting factors we have:

Bringing forward off the side lines is no problem. Bringing it off of the back lot is only 23 inches that is close to the line. Bringing forward to that basically put our garage about 30 feet

\*\*Editor's Note showed where garage is proposed to be placed.

Here is a patio and here is where the garage would need to be moved to conform to the back setback which would take away our entire yard. Then the driveway would have to be moved to meet the garage.

Part one is we really do not want to get rid of our yard.

Part two is right here is a utility pole.

\*\* Editor's Note: Showed utility pole location.

Even if we tried to get this in conformance we would break up our yard and also we would have a utility pole in the middle of a future driveway. So that is also a factor.

Those are the limiting factors that have driven us to ask you for a variance on the back side.

Some other things I want to say are that it is common in the neighborhood to have garages placed on the property line or close to the property lot lines along Monroe Avenue.

I think we have all the difficulties necessary and a positive story we can actually improve the overall relationship between the three properties here by actually rebuilding and moving it forward a bit. Our two neighbors both agree.

The last thing I would say the one positive thing is that there is a driveway separating us from the neighbor's house, so it will not be stacked up on their house, as shown in the photos.

The only thing I can say is we are hoping to get more green space for the family. We tried to figure out another way to not have to come here and ask for a variance and we could not find a resolution that worked and did not completely ruin our yard or if we could even move a utility pole.

**Aaron Burns** you can but it is not cheap.

**Jason Brown** okay, so I think that is all I have.

**Aaron Burns** any questions from the Board?

**\*\*Editor's Note:** No questions

**Aaron Burns** I will open this up for public comment.

**Donald Estes** 41 Monroe Avenue, I wrote a letter that you should have that indicates that as presently drawn with the conditions that we had talked about that we had no problem with the variance request.

We had talked extensively. Jason came up with a few different drafts because of the impacts of the one of the earlier drafts that had more height involved so we talked about increasing the height but pushing it more forward so obviously if it is close to my property line by pushing it forward more that it minimizes the impact of the height, so I would support the Zoning Boards approval hopefully of the maximum amount you could push forward that would be good for him and good for me.

That is what I indicated in the letter. It is an old decrepit garage and Jason has every intention improving it for the neighborhood and will do a really good job with it. That is why I am happy to support it. Because our lots are so tiny the increased height would have been a shadow of half of my back yard, so by pushing it forward and minimizing the height impact it shows that good neighbors work together.

If you have any questions I would be happy to answer them.

**Aaron Burns** the City Staff has provided comments. Is there anything else you want to add?

**David Finocchietti** no

**Aaron Burns** anyone else have comments?

**Michael Lemay** we are not asking for a side yard variance?

**Aaron Burns** I think it is a rear yard because the way the house is situated.

**Michael Lemay** so if we do not give a side yard variance, he has to be within 10 feet of the property line?

**Jason Brown** we plan on doing at least 15 feet.

**Michael Lemay** ten or fifteen?

**Aaron Burns** if he is 10 feet from that sideline, there is no issue there. It is just the rear yard.

**Michael Lemay** we had that come up before and this is a corner lot, does that make a difference? We tried to determine the back from the side.

**David Finocchietti** we go by what it is addressed. It is addressed off of Monroe, so Monroe is the frontage.

**Aaron Burns** any other questions?

\*\*Editor's Note: no questions

**Aaron Burns** we are going to go through the criteria.

*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:*

**1. The strict application of the ordinance prohibits the use which the property is located.**

This seems to be met because the existing garage is not adequate and cannot be expanded to be usable for modern vehicles without obtaining a variance of some kind.

*Board Members Agree the criteria has been met*

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

This is met because in order to rebuild the garage without a variance it would either result in losing significant back yard space between the garage and the house or moving a CMP utility pole which is quite expensive and would require the City Engineer to approve a curb cut and with the utility pole it is not guaranteed.

*Board Members Agree the criteria has been met*

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

This is a corner lot so this is a unique circumstance for this particular property and everything in the neighborhood appears to be smaller lots and could not be corrected by an Ordinance change.

*Board Members Agree the criteria has been met*

**4. 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;**

Based on the several letters of support received from the abutters and the drawings received we can determine that this would enhance neighborhood and not take away from it.

*Board Members Agree the criteria has been met*

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

The Staff's memo and we have heard testimony that the house was built in 1930 era which predates the zoning ordinance about 40 years or so. When it was built they could build wherever they wanted.

*Board Members Agree the criteria has been met*

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

*Board Members Agree the criteria has been met*

**7. The granting of a variance will not unreasonably adversely affect the natural 7.**

*Board Members Agree the criteria has been met*

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

*Board Members Agree the criteria has been met*

**Aaron Burns** we have gone through all of the criteria, does anyone want to vote on any of the criteria separately?

Or does everyone agree that each of the criteria has been met?

*Board Members Agree the criteria has been met*

**Aaron Burns** I will ask for a vote that all the criteria has been met based on the findings articulated. Do I hear that motion?

**David Morse** so moved

**2nd by Nancy Milton – Heath**

**The vote is unanimous in favor 4-0**

**Aaron Burns** I would entertain a motion to grant a variance for Jason Brown to allow the demolition of a 22 x 20 x 13 foot high existing garage and to construct a 22 x 26 x 15 foot high garage on property located at 45 Monroe Avenue Tax Map: 29, Lot:192 Zone RGA 1 and Based on the findings and fact and conclusions of law as voted by the Board earlier and conditioned on the information Mr. Brown has submitted being correct.

**David Morse** so moved

**2nd by Nancy Milton Heath**

**The vote is unanimous in favor 4-0**

**Aaron Burns** explained the recording requirements for the variance certificate that needs to be completed within 90 Days of approval by the Zoning Board at the Cumberland County Registry of Deeds or the variance will be voided.

**Jason Brown** thank you

**Aaron Burns** as there is no other business to come before the Board I would entertain a motion to adjourn.

**David Morse** move to adjourn

**2nd by Nancy Milton Heath**

**The vote is unanimous 4-0**

**7. Adjourn**

*THANK YOU, respectfully submitted by Linda Gain [lgain@westbrook.me.us](mailto:lgain@westbrook.me.us)*