

TOWN OF TAGHKANIC ZONING BOARD OF APPEALS

MINUTES OF THE JULY 27, 2015 REGULAR MEETING

A regular meeting of the Town of Taghkanic Zoning Board of Appeals was held on Monday, July 27, 2015 at the Town Hall.

Those present were:

James Romaine, Elizabeth O'Donnell, Mark Stickles, Thomas Mirabelli,

Those absent were:

Tara Buffa, Moisha Blechman

Also present were:

John Lyons, Esq., Counsel to the Planning Board

Kimberly Garrison, Counsel to the Planning Board

**Approved
August 24, 2015**

Mr. Romaine opens the meeting at 7:00 p.m. with the pledge.

Old Business -

Minutes –

June 27, 2015 –

Ms. O'Donnell makes a motion to approve June 27, 2015 minutes, seconded by Mr. Stickles and approved as follows:

Approved 3 Aye (O'Donnell, Mirabelli, Stickles)
0 Nays
2 Absent (Buffa, Blechman)
1 Abstained (Romaine)

March 30, 2015 –

Mr. Romaine makes a motion to approve March 30, 2015 minutes, seconded by Mr. Stickles and approved as follows:

Approved 3 Aye (Romaine, Mirabelli, Stickles)
0 Nays
2 Absent (Buffa, Blechman)
1 Abstained (O'Donnell)

Public Hearing –

Ms. O'Donnell makes a motion to open the Public Hearing for Cheryl Rogers for an Area Variance, seconded by Mr. Stickles and approved as follows:

Approved 4 Aye (Romaine, O'Donnell, Mirabelli, Stickles)
0 Nays
2 Absent (Buffa, Blechman)

At this time the Mr. Romaine asks if there are any comments or concerns from the public. No comments or concern at this time.

Mr. Romaine makes a motion to close the Public Hearing, seconded by Ms. O'Donnell and approved as follows:

Approved 4 Aye (Romaine, O'Donnell, Mirabelli, Stickles)
0 Nays
2 Absent (Buffa, Blechman)

The Board and Attorneys take the time to discuss the draft resolution. Ms. Garrison informs the Board that they did send the information over to the Col. Cty. Planning Board and has not heard back from them as of today. At this time the information has not been sent to the Town Planning Board. Mr. Romaine asked that I send it to the Board. Mr. Lyons suggest the Board add a section G to the resolution stating, this approval shall be contingent upon the referral to the Planning Board and shall become effective upon approval or non-responsive answer from the planning Board.

The Board takes some time to discuss the roof issue on the deck. If the applicant would like to put a roof on in the future they would have to apply for a new application to do so. Mr. Romaine believes a roof with no walls is suitable and does not make it living space. Other Board members feel a roof would make it not so appealing. At this time the applicant is ok with no roof but maybe a retractable awning. The applicant understands that if she wants to add a roof in the future she would have to start a new application to do so.

Ms. O'Donnell makes a motion to approve the resolution with the revisions, seconded by Mr. Romaine and approved as follows:

Approved 4 Aye (Romaine, O'Donnell, Mirabelli, Stickles)
0 Nays
2 Absent (Buffa, Blechman)

**Final Resolution of the Town of Taghkanic Zoning Board of Appeals
Approval of Area Variance for Cheryl Rogers
Tax Map # 183.-1-13**

Date: Monday, July 27, 2015
Applicant: Cheryl Rogers
Matter: Application for Area Variance
Property: 483 County Route 15, Elizaville, New York, 12523
Property ID: 183.-1-13

WHEREAS:

1. On April 22, 2015, the Applicant, Cheryl Rogers, submitted to the Town of Taghkanic Code Enforcement Officer (CEO) an Application for a Building/Use Permit for the purpose of adding an 8' x 44' deck to the front of her residence at 483 County Route 15, Elizaville, New York, Tax Parcel #183.-1-13.
2. The Applicant resides in the R-2 District, which has a front yard setback of 75 feet, side yard setback of 50 feet, and rear yard setback of 50 feet.
3. The addition of the deck would create a front yard setback of 69.6 feet.
4. On May 1, 2015, the Town of Taghkanic CEO, Dennis Callahan, denied the Building Permit request because the front yard setback for the R-2 District would not be met by the addition of the deck.
5. On May 4, 2015, the Applicant filed an appeal with this Zoning Board of Appeals (ZBA) from the CEO's decision and applied to the ZBA for a 5.4 foot area variance to construct the deck to the front of her home.
6. On May 4, 2015, the Applicant also submitted an Agricultural Data Statement, stating that the location of the proposed project was not located within an agricultural district and was not within 500 feet of a farming operation, and a short form Environmental Assessment Form (EAF).
7. On June 22, 2015, ZBA Member Tara Buffa recused herself from the review of this application.
8. On June 22, 2015, the ZBA reviewed the application and asked the Applicant questions about proposed deck. The ZBA inquired whether the proposed project was an open deck or if there would also be a roof installed over the deck.
9. According to the Applicant, the proposed deck will be open, with no roof covering the deck or side enclosures except for required parapet rails. There was some discussion about the possibility of a retractable awning, but there would be no additional permanent fixture as a roof to the deck.

10. On June 22, 2015, in accordance with the Area Variance criteria as set forth in New York State (NYS) Town Law Section 267-b and on the Town of Taghkanic Area Variance application form, the ZBA members inquired of the Applicant about the proposed deck in relation to the following factors necessary for the consideration of an area variance:
 - whether there would be an undesirable change in the character of the neighborhood or any detriment to nearby properties by adding the deck to the Applicant's property;
 - whether the benefit sought by the Applicant could be achieved by another method;
 - whether the 5.4 foot area variance required for the deck is substantial;
 - whether the proposed deck would have an adverse effect on the physical or environmental conditions in the neighborhood; and
 - whether the difficulty was self-created.
11. On June 22, 2015, the ZBA requested that the Applicant provide a brief narrative to answer the above questions.
12. On June 22, 2015, the ZBA accepted the application as complete, on the condition that the Applicant submit this narrative.
13. On June 22, 2015, the ZBA classified this action as a Type II Action under the State Environmental Quality Review Act (SEQRA), pursuant to Section 617.5(c)(13). Accordingly, this application is exempt from SEQRA and no environmental review of this application is required.
14. On June 22, 2015, the ZBA scheduled a public hearing for Monday, July 27, 2015 at 7:00 P.M. to be held at the Taghkanic Town Hall.
15. On June 23, 2015, at the direction of the ZBA, their counsel, Grant & Lyons, LLP, referred this application to Columbia County Planning/Economic Development, pursuant to NYS General Municipal Law Section 239-m because the requested variance applies to real property within 500 feet of County Route 15, a county road. No response was received within 30 days, and the ZBA is permitted to take final action without any recommendation by Columbia County Planning/Economic Development.
16. On July 27, 2015, a duly noticed public hearing was opened and no comments from the public was offered.
17. On July 27, 2015, the public hearing was opened, held and closed on that same evening.

18. Pursuant to the Town of Taghkanic Zoning Law Section VIII A(6), the ZBA referred this application to the Town of Taghkanic Planning Board for its advisory opinion on the variance.
19. The ZBA has carefully and deliberately considered the balance of the benefit to the Applicant, if the area variance is granted, weighed against the detriment to the health, safety, and welfare of the neighborhood or community, if the area variance is granted, as well as the factors set forth in the Town of Taghkanic Application for a Variance, and the written and oral testimony offered by the Applicant.

THEREFORE, BASED ON THE FOREGOING, NOW BE IT RESOLVED THAT

- Section A. We, the Town of Taghkanic Zoning Board of Appeals, find that the requested variance will not result in an undesirable change in the character of the neighborhood and that granting the area variance will not create a detriment to nearby properties. The scale of change presented by requested change in setback is very small and the change to the neighborhood by this small incursion into the setback will be indiscernible to the average citizen. Moreover, the ZBA feels that the addition of the new deck will actually beautify the area and be a benefit to the character of the neighborhood.
- Section B. We find that the benefit sought by the Applicant cannot be achieved by another method. The Applicant seeks to use the deck to replace a set of existing cement stairs located in the front of her home. Given this fact, and the other facts about the configuration and location of the Applicant's home, it does not make sense to construct the deck in another conforming location.
- Section C. The required front yard setback is 75 feet and the setback requested by this variance is 69.6 feet. The difference is 5.4 feet. Hence, the applicant is asking that the setback be reduced by only about seven percent (7%). Under the circumstances presented here, we find that the requested variance of 5.4 feet is not substantial.
- Section D. We have reviewed this application and we can find no impact on the physical environment of the neighborhood. The deck will blend in with the house and will not be incongruent with its surroundings. Further, the area to be disturbed for construction of the deck is a residential front yard and has no particular environmental or ecological significance. Hence, we find that the proposed variance will not have an adverse effect on the physical or environmental conditions in the neighborhood or district.
- Section E. Because the existing setback rule is in place, and the Applicant now wants to construct a deck in the setback, we find that the hardship here is self-created. However, as mandated by law, that finding is but one factor out of five for our consideration in the overall balancing test.

Section F. We have considered all of our findings and determinations listed above. Because four elements of the five criteria favor the granting of the variance, we find that the overall balancing test also favors the granting of the requested variance. Hence, we hereby grant the Applicant a variance, as has been applied for, from the front yard setback requirements so that she may construct a deck having a front yard setback of only 69.6 feet as shown on the plans submitted with her application.

Section G. This approval shall be contingent upon the referral of this matter to the Planning Board and shall become effective upon approval or non-responsive answer by the Planning Board.

On a motion by: Elizabeth O'Donnell
 And Seconded by: Jim Romaine

Roll Call Vote on Resolution:	Aye	Nay	Absent/Abstain
Jim Romaine, Chair	<u> X </u>	<u> </u>	<u> </u>
Elizabeth O'Donnell	<u> X </u>	<u> </u>	<u> </u>
Mark Stickles	<u> X </u>	<u> </u>	<u> </u>
Moisha Blechman	<u> </u>	<u> </u>	<u> X </u>
Tara Buffa	<u> </u>	<u> </u>	<u> X </u>
Tom Mirabelli	<u> </u>	<u> X </u>	<u> </u>
Final Vote:	<u> 4 </u>	<u> 0 </u>	<u> 2 </u>

Resolution Passed: July 27, 2015

New Business -

Mr. Estes – Area Variance

Mr. Estes comes to the Board with an in complete application at this time. The applicant would like to build a garage with in the setbacks and need approval from the Board. The Board discusses the application and recommends the following:

- Put together an explanation of why the building cannot or should not be built elsewhere on the property.
- Get maps/drawings of said property and show where said building will be built.
- Take all information to Mr. Callahan for review and further instructions.

Mr. Romaine lets the Board know the next schedule meeting is Aug 24th at 7:00 p.m.

Mr. Stickles moved to adjourn the meeting at 7:45 p.m., seconded by Mr. Mirabelli and approved by all present.

Approved 4 Aye (Romaine, O'Donnell, Mirabelli, Stickles,)
0 Nays
2 Absent (Buffa, Blechman)

Jean-Adele Howard
Secretary, Town of Taghkanic Zoning Board of Appeals

Accepted by: _____
Title: _____
Date: _____