

**MINUTES OF A REGULAR MEETING
OF THE ZONING BOARD OF APPEALS OF THE TOWN OF POMPEY**

November 13, 2023

7:00 PM

Pompey Town Hall

Board Members Present: David Tessier, Chairman
David Hale
Kevin Sharpe
Donald Neugebauer
Seara Haines
Sarah LoGiudice, Board Secretary

Also present were Town of Pompey Codes Enforcement Officer Tim Bearup and Attorney Tim Frateschi.

Chairman Tessier called the meeting to order at 7:00 pm.

Application dated 10/13/2023 by Sarah Muller, located at 4421 Watervale Road, tax parcel 003.-02-01.0, requesting an AREA VARIANCE for a front yard setback in a Residential District. The variance is for a partially built residential home that does not meet the front yard setback requirements of 50' from the road boundary line. The resident is asking for a 19' variance giving resident approximately 31' front setback from the boundary line.

Present were the applicant, Sarah Muller, and Thomas Oot from Build Your Own Home.

Fees were paid, the hearing was been properly advertised, and neighbors were notified. OCPB review was not required.

Chairman Tessier received a letter from Thomas Oot from Build Your Own Home in East Syracuse dated October 10, 2023. A survey by SeGuin Land Survey dated 8/29/2023 was attached to letter. This applicant was in front of the ZBA approximately one year ago re: the depth of the lot and the size of the lot. The survey provided at that time, which was also attached to the building permit application, was dated 8/23/2022, and the two variances requested were granted using that survey. The 8/23/22 survey shows the building 51 feet back from the street boundary, which would be a proper front yard setback pursuant to Town Code.

The 8/29/22 survey provided with the new variance shows the partially constructed house only 32.5 feet from the road boundary, thus violating the front yard setback requirement by approximately 17.5 feet. This is the first time the Board has seen this survey. The building should be 50 feet back from that street line, which was how it was shown on the 8/23/22 survey provided last year. The issue is that the structure was not built to the survey that was previously provided to the Board when the original variance was requested, and the building permit was submitted.

T. Frateschi explained that the application for the building permit was submitted with the August 23, 2022 survey. That was also the survey that was used when the matter was previously before the Board. Chairman Tessier confirmed that the Board now was presented with a new survey for this project, which does not match the 8/23/22 survey.

Another survey that the applicant provided at the meeting (a third survey) was dated 10/30/2023 was an as-built survey. It shows the building as built being 32.5 feet from the road boundary.

D. Neugebauer confirmed that it should be 50 feet from the road boundary. It should be; and that is what was showed to the Board at the meeting one year ago.

Chairman Tessier noted that it might not be as important to figure out how this happened, as it is to figure out what the Board can do about the situation. This is now a new variance application for a house that is already constructed and violates the front yard setback requirements of the Town.

D. Hale asked if the Building Permit was submitted with the original dimensions of the property. T. Frateschi confirmed that the Building Permit was submitted with a survey dated 8/23/22 that the Board reviewed to grant the original lot area and depth variance last year. That survey showed the building at least 50 ft. from the road boundary. D. Hale asked if the person that laid out the building was present; he was not.

Mr. Oot explained that when the surveyor prepared the proposed lot line he had not seen the property. When he visited the lot, he must have realized that it was not feasible to place the building so far back. D. Hale noted that the Town or Code Enforcement should have been contacted at that time. Mr. Oot assumed the 8/29/22 survey was the one submitted with the application.

S. Muller said that she did not personally submit the survey, as it was submitted with the building permit. When she submitted the application for the 2022 variance, she was unaware that the wrong survey was submitted.

The Town has been using the street boundary line for setback measurements for many years.

T. Frateschi explained that the problem was with the Building Permit and the survey. Whoever put the house where it is was not looking at the Building Permit survey (8/23/22 survey) when they placed the house on the lot. T. Oot felt that the surveyor who did the offset stakes should have mentioned it. According to the survey dated 8/29/2022 (submitted with the most recent variance request), the length of the garage was 45 feet and what was actually built was 48.4 feet. They disregarded the survey and disregarded the plans when they built this house. S. Haines points out the other side of the garage is different on the as-built survey as well. The north side of the garage is different dimensions.

D. Hale asked when the foundation was signed off on. T. Bearup was not sure. When the front yard setback issue was brought to T. Bearup's attention, he went to measure, and he determined that the building is closer to the road than it should be. A neighboring resident, Paul Billings, measured the distance of the house from the centerline. The reason why he did this was that he noted that vehicles were having a hard time backing in and pulling out of the driveway.

The Public hearing was opened at 7:29 pm.

Paul Billings, 4407 Watervale Road- Mr. Billings is the next-door neighbor. He was the one who measured the distance of the home from the centerline. When he spoke to T. Bearup, he remarked to him that apparently the measuring of the centerline to the road to the foundation was 17.5 feet too close. His obligations as an architect dictates that he needs to report such things.

Russ Haynes 4390 Watervale Road-Mr. Haynes confirmed that cars are having a hard time getting in and out of the residence. The speed limit on the road is already an issue, and this is going to cause further issue. He asked how the house ended up too close to the road if the foundation was okay.

Sara Muller was not made aware of this issue until after the house was sided; she believed it was around 10/10/23.

Mr. Billings stated that one year ago he was here and the Board granted an area variance because the lot was too small. The approval was based not on a building, but a future building that would have to meet all setback requirements. The grievance of having it too close to a highway boundary is a cardinal mistake. His home office faces the lot; and he looks at the lot 10 hours a day, 6 days a week. He knows what is going on there. The excavation began considerably further back, but the house was not built there. He had concerns for Ms. Muller because it has been built on an unstable hill; it is all rock. It is subject to fault because those

rocks do move. There was an opportunity to build the house farther back, but that did not happen. It is well known that if you cannot excavate or put a house where it needs to be, you change the design. He owns the entire hill behind Mr. Muller's property. He was concerned because it is not that stable to begin with. Tom Oot felt that it would have been worse if the house were further back. Mr. Billings disagreed because the house would have acted as a retaining wall.

Russ Haynes said that there was a large excavator with a jackhammer at the site for two weeks; they just kept trying to hammer through the rock.

D. Hale asked if there was a full basement. Yes, there is. Mr. Oot reported they hauled approximately 10 trucks of rock out of the site.

D. Hale asked what were the dimensions of the driveway from the corner of the house to Watervale Road. Sarah Muller reported that it is 31.4 feet to the road boundary. There is approximately 65 feet available to park a car; a large truck may pose an issue.

Sara Muller said that a few houses down, on the Pompey side, a house appears to be closer to the road.

Mr. Billings stated that every house on the road is at least 75 feet off the highway boundary. The house that is closest to the road near where Ms. Muller's house is being built is in the Town of Manlius. This is about zoning, and setbacks, and it is about the conditions that were imposed at the time the previous variance was granted. Bending the zoning will not solve the problem.

T. Frateschi noted that somebody submitted the Building Permit that had a survey that wasn't followed.

Sara Muller confirmed that she was not made aware of any issues until 10/5/23. The footer was approved in January; the foundation was approved in April of this year.

P. Billings explained that when Codes does a foundation inspection they are not measuring to anything. It has nothing to do with the location. It has to do with the way the foundation and building is constructed.

Mr. Oot felt that where the house was built is a better location than setting it back further. D. Hale noted that the location is not what was previously approved and it doesn't meet Town Code.

Mr. Haynes stated that there were probably 14 neighbors previously before Board, all who had issues with the project. They tried to explain the issues to the Board. Now the house goes up, it is wrong, and Ms. Muller is back for more variance. After the stop work order was issued, they

continued to work. Not every single day, but 80% of the time. They would sheetrock all weekend well after the notice went up. D. Hale said that Codes should have been notified of this issue. T. Bearup confirmed that he was notified, and they were granted permission to continue work inside at their own risk knowing the house needed a variance.

Sarah Muller confirmed that there were two weeks when there was no work done, and then T. Bearup allowed the sheet rocking and she understood the work would be done at her own risk.

R. Haynes said that the gas truck, an excavator and National Grid truck were there last week. The point is that working was occurring through the stop work order. The septic is not even in yet.

D. Hale recalled that when the Board approved that site, they found it feasible that a house would fit there and could meet the setbacks based on the 8/23/22 survey.

Mr. Oot confirmed that rough plumbing is done and inspected by the county. The electrical is all roughed in and approved. The septic design is approved and perked. Water is coming from the county. He understood that there is no excuse for mistakes, but he feels that the surveyor should have said something.

Sarah Muller said that she had a text from a neighbor across the street who fully supports the project.

T. Frateschi stated that the purpose of the Board is to review and determine if it should grant variances based on the balancing test of whether the benefit to the applicant outweighs the detriment to the neighborhood. He asked the neighbors what they thought the detriment of the home being that closed to the road is.

Zach Smith 4347 Watervale Road-Mr. Smith said that the house is too close to the street. It does not match the neighborhood. It is not even architecturally the same as the houses around it. It is smaller, and it sticks out like a sore thumb because of its closeness to the road. As he turns down his driveway, he can see the house; he cannot see any other houses. It is not in keeping with the neighborhood because it is too close to the road.

Mr. Billings felt that one of the aspects of having it there is economic damage to the other properties. In this particular case, it does not fit into the character of the neighborhood to a degree where it is causing economic damage because it makes our properties worth less. His house now will sell for thousands less than if there was nothing there. Where does this end? We are supposed to follow the rules. He has nothing against Ms. Muller and respects Mr. Oot and his business. An error was made, but that does not mean that the ZBA has to correct it.

Compliance with the building permit is the responsibility of the general contractor and/or the construction manager.

T. Frateschi confirmed that once Ms. Muller had the approval for the lot size, she still needed to meet the setback requirements.

K. Sharpe asked whether the Building Permit was issued without the project meeting code. No, it was not, based on the 8/23/22 survey provided at the time of the original variance application.

K. Sharpe asked Mr. Billings if we would still have an issue if the house were not in sight of his residence. Mr. Billings said that yes, he would. K. Sharpe asked Mr. Billings if he was present last month when the Board issued a height variance. No, he was not, because he did not receive a notice due to living within 1000 ft. of that project.

D. Neugebauer made a motion to close the Public Hearing at 8:06 pm. K. Sharpe seconded the motion. All were in favor, none were opposed. The hearing was closed at 8:07 pm.

Chairman Tessier noted that the Board could approve the variance as requested, deny the variance, or approve the variance with conditions.

D. Neugebauer asked for clarification of what the variance was actually needed was.

Chairman Tessier explained that the as-built survey showed (presented tonight) the building 31.4 feet from the road boundary, so Ms. Muller would need an 18.6 ft. variance. Essentially a variance for 19 feet from the 50 feet that is required.

K. Sharpe asked what would happen next if the variance were denied. D. Tessier said that is up to the owner of the property. The stop work order would continue until they rectify the situation and no certificate of occupancy would be issued.

K. Sharpe asked if there would have been any inspection or enforcement before the CO was issued if Mr. Billings had not measured the distance. T. Frateschi said that Codes would not have issued a CO had the current as-built survey been submitted.

The Board will address the five criteria of an area variance: Whether the benefit sought by the applicant can be achieved by some other feasible method, Whether the variance will result in an undesirable change in the character of the neighborhood, Whether the requested variance is substantial, Whether the variance will have an adverse effect on physical or environmental conditions and Whether the alleged difficulty was self-created.

D. Tessier reads the written response to the criteria submitted by Tom Oot.

Mr. Frateschi said that it is now up to the Board to determine if they agree with Mr. Oot's answer to the questions or whether they disagree – the Board could determine what weight to give to each question and apply it to the standard related to benefit to the applicant versus detriment to the neighborhood.

1. Whether the benefit sought by the applicant can be achieved by some other feasible method?

D. Neugebauer noted that it would not be easy, but it would be possible to move the garage back to meet the front yard setback requirement. D. Hale agreed.

2. Whether the variance will result in an undesirable change in the character of the Neighborhood?

Chairman Tessier personally agreed that the house sticks out more than almost all of the houses on that section of Watervale Road because of its close proximity to the Road. D. Hale agreed that the house does crowd the Road. D. Neugebauer agreed that it does not look like the other houses in the neighborhood; it looks substantially closer to the Road than the others do. K. Sharpe noted that if a hedgerow were planted, then you would never see the house. The consensus was that it does look different and does pose an undesirable change in the character of the neighborhood. S. Haines noted that it matters that it does look different because it is ~~too~~ close to the road, but not for any other reason like the size, style or material of the constructed house.

3. Whether the requested variance is substantial?

Chairman Tessier did not agree with Mr. Oot's rationale that the variance was not substantial. The substantiality is not only in the 19 foot of variance requested, but in the context of how this house looks too close to the Road in comparison to other houses on the Road. D. Hale felt it was substantial. S. Haines and D. Neugebauer agreed.

4. Whether the variance will have an adverse effect on physical or environmental conditions?

S. Haines asked if potential physical impact could include needing to back into the driveway. Could a condition include that there needs to be a turnaround added to the driveway to ensure that you do not need to back out into the road? D. Neugebauer stated that the area is a pretty area in Pompey. He did not think the house is prettier than the landscape; it does affect the environment but he does not think that he would weigh that heavily.

5. Whether the alleged difficulty was self-created?

Yes, it was self-created. All agreed. The house was not constructed pursuant to the building permit and the variance that was granted last year and this is weighted heavily since meeting setback requirements was a condition of the 2022 variances.

K. Sharpe asked what Board believed was the biggest detriment.

D. Neugebauer said that if the house did not need a variance and could have been back 18 feet, it would have been more in line with the neighborhood. He struggled to give an 18, 19-foot variance because the house should not have been placed that close in the first place based on the variance that was granted in 2022.

K. Sharpe said that he was attempting to determine who said it was okay to put the house where it is. The owner did. T. Frateschi asked K. Sharpe if his concern was that responsibility lied with someone other than the owner. K. Sharpe said that we had a similar situation last month. S. Haines noted that the difference was that last month the applicant was given the Building Permit and built the structure pursuant to the building permit. In this case, the survey that was submitted with the building permit (8/23/23 survey) and was submitted with the variance request in 2022 was not followed. T. Oot said that because the two surveys were six days apart, it seemed that everyone was under the impression that the August 29, 2022 survey was what was provided.

D. Neugebauer asked what the previous variance that was granted was. Approximately a 15% variance was granted for lot size and approximately 30' for lot depth. Was there any chance that this Board should have noticed that they put a house too close to the road? No, because the 8/23/23 survey showed that the house had a 51 ft. setback. The Board members again reviewed the original map that was submitted with the building permit and the 2022 lot size/lot depth variance application.

K. Sharpe made a motion to deny the request for a variance at 8:36 pm based on the comments from the public at the public hearing, the discussion between the Board members and the answer to the questions required under State statute. D. Neugebauer seconded the motion. As much as he would like to find a way to approve this, he did not feel he could.

A Motion on the table to deny the application as presented was considered by all.

Roll call

S. Haines: deny
D. Hale: deny
Chairman Tessier: deny
K. Sharpe: deny
D. Neugebauer: deny

The application for variance was denied 5-0 at 8:37 pm.

D. Hale made a Motion to the close the meeting at 8:38 pm. S. Haines seconded the motion.

Respectfully Submitted,

Sarah LoGiudice
Secretary to the Zoning Board of Appeals
Town of Pompey