

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

December 11, 2023

7:00 PM

Pompey Town Hall

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

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

Chairman Tessier called the meeting to order at 7:01 pm.

The purpose of the hearing was to review an application 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 single-family residence that does not meet front yard requirements. The resident is requesting approximately a 6'6" front yard variance. This reduces the total front yard setback from 50' to approximately 43'6". Local Law – 165 Attachment 1 – Schedule Limiting the Use of Buildings and Land.

The applicant first came before the Board just over a year ago, in November of 2022. At that time, she applied for a variance for both the lot size and depth; both variances were approved. On November 13, 2023, the applicant was before the Board requesting a front yard setback from the closest part of the structure to the road right-of-way (the garage) which was approximately 19' variance; that request was denied for the reasons set forth in the minutes of the November 2023 meeting.

The current application was again for a front yard setback, approximately 6'6" from a different part of the structure than the garage, which is proposed to be taken down and moved away from the road, behind the existing structure. It was suggested that the number be rounded off in favor of the applicant. Chairman Tessier suggested that the Board discuss a 7' front yard setback variance.

Fees were paid, neighbors were notified and public notice was given. OCPB review was not necessary. The Board Secretary received a letter of support from one of Ms. Muller's neighbors since the last meeting. A letter of non-support from Paul Billings was received by Chairman Tessier and provided to the Secretary at the meeting. Survey's dated 11/19/2023 were provided to the Board Members as well.

The letter from Paul Billings claimed that this the second Public Hearing on the same issue. It is the same house, and same property, but the request was denied at the last meeting. Mr. Tessier and the Board disagreed and said this a new application with a new request for different dimensions from a different part of the building. The ZBA's denial of the variance in November still stands and the garage will have to be taken down and move further away from the road. Mr. Billings made a comment that this Board mandated some actions; Chairman Tessier denied that the Board mandated any action to the applicant. Chairman Tessier believed that the Stop Work order was still in place. The letter also addressed various things that may have been done wrong by the Board; Chairman Tessier does not agree that anything was done wrong and that this is a proper application with a new fee and different request for a variance that has been submitted.

Kent Syverud, the Chancellor of Syracuse University, submitted the letter in support. Mr. Syverud owns the property across the street. He does not live there full time; his son lives there and he lives there when school is not in session and he does not believe the variance requested will have any impact on him as the neighbor most directly affected. This is the only property that directly faces the property of the applicant. Chairman Tessier reads a small portion of the letter.

This is a residential area variance, which is a Type 2 action. No further environmental review is required. K. Sharpe made a motion for the Board to act as lead agency on the SEQR at 7:13 pm. D. Neugebauer seconded the motion. All were in favor, none were opposed. The motion carried at 7:13 pm.

Present was Tom Oot on behalf of Ms. Muller; Ms. Muller attended. Mr. Oot believed that the house was placed where it is due to the substantial rock located in the rear of the property, which made it difficult to set the house back further from the road. It is unknown why the incorrect survey was submitted with the initial application. Right now, they are attempting to get as much setback as possible in light of the rock formation behind the house. Mr. Oot discussed some of the logistics involved with moving the house back; it is not feasible and would cost in excess of \$200,000.00. The current variance sought has been minimized from 19 feet to 7 feet. Ms. Muller explained that they now propose to remove the current garage and move it to the other side of the house. The new garage placement would be 48' from the road, which is further back than the house. Ms. Muller's property is right on the Town of Pompey and Town of Manlius line. Houses not far down the road in the Town of Manlius are much closer to the road. From an architectural engineering standpoint, this is the best they can do.

D. Tessier confirmed that the closest point to the road would now be the North side of the home because the garage will be moved back, at substantial cost to the Applicant.

D. Neugebauer confirmed that a 50' setback would not need a variance. Based on the new map, it appeared that the closest point is 43.4'. This is why a 6.6' variance is needed.

T. Frateschi explained that if the variance were granted, any part of the structure that is more than 43.4' from the road would be okay. The garage was previously the closest point, but no longer is. Variances are from the closest point of the structure to the road boundary.

K. Sharpe asked if there is a cement floor in the existing garage at this time. Yes, there is. It will need to be removed.

Neugebauer asked for further explanation on the breezeway that was mentioned.

Interior plans of the house were submitted to the Board for review. S. Haines also requested to review the letter submitted by Paul Billings.

D. Hale asked T. Bearup if the concrete in the garage actually has to be removed. The Town requires patios to be enclosed to be part of the structure. The applicant plans to remove the concrete regardless.

K. Sharpe asked if the new driveway would need to be approved by the County. Yes, it will need to be approved. The applicant explained that the County has already approved the site lines etc.

D. Neugebauer made a motion to open the Public Hearing at 7:29 pm. D. Hale seconded the motion. All were in favor, none were opposed. The Public Hearing was opened at 7:29 pm.

Steven Roach, 4410 Watervale Road-Mr. Roach lives kitty corner to the property. He had read Paul Billings letter. There was a question on septic and perc tests etc. These questions would be for the County. Ms. Muller confirmed that she has a permit for the septic. D. Neugebauer confirmed that if the house did not pass the perk test, then the house could not be built.

Paul Billings, 4407 Watervale Road-The Board had mentioned receiving the letter. He did send the letter to Chairman Tessier and the Town, was it sent to the Board members? T. Frateschi noted that the Board members could review the letter now. T. Frateschi has reviewed the letter, and does not feel that from a legal standpoint, Mr. Billings is correct. This is a new application and stand alone. The application that was denied last month was different in terms of placement of the structure and size of the variance. Mr. Billings asked if the applicant could continue to come back each month with a different number or different problem. It seems as though they made a determination that the application failed to receive relief. Now, it being reviewed once more to see if it is due relief. T. Frateschi again stated that the same relief is not being sought as in the previous application. This Board looked at a variance of 19 ft. requested from the closest point of the structure to the road. This Board reviewed this based on the criteria set forth by the State Legislature and decided that the detriment to the community was more than to the benefit of the applicant. The garage was previously the structure that was too close to the road. The variance requested in November was denied. Tonight, they will be considering whether the house, as it sits on that lot, is too close to the road. Mr. Billings asked what happens to the denial that was given last month, is that just swept away. No, it is on the record and it stands. In addition, not only that, but the applicant has to now move the garage at a significant expense. Mr. Frateschi stated that the standard Mr. Billings is using about "hardship" is not the standard anymore and was replaced by the balancing test the ZBA used in November and will use tonight. Mr. Billings does not recall the previous variance denied stating that the garage was the structure that needed to be varied. D. Tessier said that in the previous application, they did not ask for a variation of seven feet. S. Haines pointed out that this a new

application, with new fees paid. Anyone is free to apply for something at any time and be heard.

Russell Haynes, 4390 Watervale Road - Mr. Haynes asked if part of the variance was not only the garage, but everything that was in non-compliance. Is this still part of the original denial? The Board again explained that the 19-foot variance was denied last time. Mr. Haynes wondered what type of precedent would be set for the rest of the Town; can you just build whatever you want? The houses in the Town of Manlius were probably built in the 40's and 50's when different Codes were in place. The houses in Manlius are irrelevant. Chairman Tessier disagrees with this. The letter sent by Mr. Syverud said the land was previously in disarray; this is not true. It was just vacant land. The Board confirmed that the concrete pad under the garage would be removed.

Chairman Tessier had a response to the comment on the house in the Town of Manlius. These houses are part of the neighborhood. There are likely different zoning and setbacks, but this does need to be taken into consideration. R. Haynes felt the Board has lost site of the original issue. The house is still in non-compliance.

D. Neugebauer added that he thinks it is common for the ZBA to get a second application on a project, if one application is not approved. If all issues were brought into compliance, then a second application would not be necessary.

Liza Lamb, 4389 Watervale Road- From what she understood, the Board is going to consider if 7 feet from the line is detrimental to the neighborhood. This is still an issue for her. Everyone was under the understanding that this was part of the original application. 7 feet still does not meet the Town of Pompey Codes as they were written.

Ms. Muller acknowledges that a mistake was made. This will be the last request. We evaluated the current structure. The current plan takes into account the existing roof trusses. If it is denied, then the only option is to move the whole house. There is no further application, because moving the house is not an option. Tom Oot points out that this variance is far less substantial than the initial request in November.

Helen Bailey had a question via Facebook. She asked if the garage going to meet the side yard setback requirements Yes, it is. The side yard setback is 15'.

Kelly Roach, 4410 Watervale Road- How was this lot determined by a realtor to be a buildable lot? This would not have happened if there had been some checks and balances. She felt bad for Ms. Muller, but someone was negligent here and this has snowballed and cost Ms. Muller a lot of money.

K. Sharpe said that we are a Board that has granted variances. The Board is not here to just tell people no. There is a process of review that the ZBA is required to undertake and it will. He appreciated the fact that the applicant went back and changed the application-the neighbors complained about traffic, they complained about trucks turning around etc. The neighbors would not see the house if there were bushes in front of it. They came back with 7 ft. and now

the Board has to decide if 7 ft. is too much. How much is 7 feet closer to the road going to hurt the community?

S. Haines emphasized the point that the Board did talk about traffic and vehicles last time and that played a large role in the denial of the variance. There were concerns about the short drive-way to the garage and its impact on parking and backing out on the road. That seems to be resolved with the new application in that the garage is now going to be set back behind the existing house. No one has really talked about what the detriment of a house that is 7 ft. closer to the road would really be. What is the detriment to you as neighbors and a community? P. Billings said that when you have an entire neighborhood where all of the houses are 80, 90 feet away from the road, it is very detrimental. He claims his property value would be adversely affected.

D. Hale said that the lot has been empty for years. P. Billings said that he previously asked to purchase the land. The previous owner knew the lot was not buildable when she sold it and he feels that Ms. Muller knew that it was not buildable when she purchased it. This is self-incurred. The two Code Enforcement officers in the Town prior to Tim were spoken to, and they said there was no possibility that a house would ever be built on that lot.

Michelle Saunders-Smith, 4347 Watervale Road-She can understand that variances need to be offered at times. She has years of commercial realty appraisal experience. Somewhere here there was a fundamental break of how this should happen. She wants to know from a community standpoint why this is happening. It feels that these rules are being flouted.

R. Haynes said that they have kept on working since the stop work order was issued. They worked four out of five days in a workweek.

Ms. Muller said that as soon as she was made aware, work was stopped for 2.5 weeks. She spoke to T. Bearup and was told that interior work could continue at her own risk. The work was done to get heat in to prevent moisture.

D. Hale made a motion to close the Public Hearing at 8:04 pm. S. Haines seconded the motion. All were in favor, none were opposed. The Public Hearing was closed at 8:04 pm.

To determine whether the benefit to the applicant outweighs the detriment to the neighborhood, the Board addressed 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.

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

The applicant has noted that moving the house would cost over \$200,000.00, which would be a significant detriment and may encroach on the rock outcropping behind the house. Chairman Tessier did not feel that moving the house back 7' was a feasible option given the insignificant impact of the house being 7' too close to the road. S. Haines wondered what would change if the house was moved back seven feet – it would hardly be noticed by anyone in the neighborhood or the traveling public? As far as feasibility goes, Chairman Tessier felt that this was a good compromise to the denial from November and that was the consensus of the ZBA.

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

The applicant did not feel that granting the variance would cause a change in the neighborhood. The Board does have to consider the homes in the Town of Manlius as they contribute to the character of the neighborhood. D. Neugebauer added that he felt the garage was a detriment in the previous application; that was his reason for denying the application the previous month. S. Haines agreed. The garage was previously out of character because the garage was so close. This application, for a 7' variance, is different from the November variance request in that the garage, which stuck out significantly from the house toward the road would be removed. The 7' encroachment of the house in the front yard setback will not be noticeable. This was the consensus of the ZBA.

3. **Whether the requested variance is substantial?**

The variance is addressing 7 ft. out of 50 ft. T. Frateschi noted that substantiality also addresses the detriment to the neighborhood. Mathematical findings cannot be weighed alone. It is certainly not as substantial as the previous request was. D. Neugebauer was not sure he completely agreed. He felt that this was a substantial number. S. Haines noted that she considered if driving down the road that 7 ft. would be noticeable or substantial. She does not believe it would be noticeable so in the context of the neighborhood, it is not substantial. This was the consensus of the ZBA.

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

D. Hale did not feel that the garage being where it is will have any impact on drainage etc. because it is far enough from neighboring properties. If the house were to be moved 7 feet back, then that could actually pose an adverse effect on the environment because of the rock outcropping and having to remove that rock. This was the consensus of the ZBA.

5. **Whether the alleged difficulty was self-created?**

They did not have to build a house here. D. Neugebauer noted that the real estate agent, the surveyor, the engineer, and the homeowner are all responsible. This is a self-created issue. This was the consensus of the ZBA.

T. Frateschi reminded the Board that they needed to weigh the potential detriment to the neighborhood versus the benefit to the homeowner. The only potential detriment that has been brought up is the potential change in property value due to the home being 7 ft. too close to the road. There has been no proof presented to the ZBA to substantiate that claim. . He asked if any member of the ZBA felt that a house that encroached 7' too close to the road would have any real impact on property values – the consensus of the ZBA was that it would not. The structure will likely look much better without the garage sticking out so far forward and close to the road.

Chairman Tessier felt that generally, the benefit to the applicant does outweigh the detriment to the community in this case.

T. Frateschi noted that the five criteria have been weighed and it appeared that the only concern is the substantiality of the request, as identified by D. Neugebauer. All agree that based on the weighing of the five criteria, the benefit of the 7' variance to the applicant outweighed the detriment to the neighborhood. It does not appear that any conditions could be imposed. D. Neugebauer said that the real estate agent is absolutely at fault. The Board gave approval for the lot to be built on one year ago, the house could have been built according to Code and it was not. The Board did not approve that house to be built in the wrong place. The applicant understood that and was willing to make a substantial change by moving the garage back. It still does not put the house in compliance. The Board could grant the variance or say no and make her pick the house up and move it 6.5 feet. What benefit would that have if the Board forced that situation? How would that affect the homeworkers nearby? There is no value to moving the house back 7 feet other than to make it in compliance and the ZBA is here to look at variances to the Code. He was in favor of approving the variance. D. Neugebauer made a motion to grant the variance at 8:24 pm. K. Sharpe seconded the motion. K. Sharpe noted that the Board was not voting on everything that led to this but simply whether the 7' variance should be approved based on the balancing test. The Board is not setting a precedent.

Roll call vote:

S. Haines: approve

D. Hale: approve

Chairman Tessier: approve

K. Sharpe: approve

D. Neugebauer: approve

The new plans will now need to be approved by the appropriate people. The Variance was granted and the meeting was adjourned at 8:28 pm.

Respectfully Submitted,

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