

Danbury Township Board of Zoning Appeals

August 19, 20

The Danbury Township Board of Zoning Appeals was called to order at 6:38 p.m. by the Chair, Joseph Fetzer. The Pledge of Allegiance was recited.

The roll call showed the following members present: Chair, Joseph Fetzer, Vice-Chair, Loretta Grentzer, Mr. Clyde Shetler, Ms. Sherry Roberts and Alternates, Mr. Gregory Huffman and Ms. Patty Zsigo. Ms. Lisa Bauer was excused. Ms. Dale state the record will show that Ms. Zsigo will be seated in Ms. Bauer's place and that Mr. Huffman was free to leave the meeting. Also present was Kathryn Dale, Zoning & Planning Administrator. Visitors present were Richard Henry, Marnie McAtee, Julie Ensman, Felix & Sharon Polanco.

Ms. Dale read the rules of order for the meeting proceedings. The meeting is being held via Zoom due to the Covid-19 pandemic. Ms. Dale acknowledge everyone who joined the meeting and explained that prior to speaking, the Chair would call on everyone to give them the opportunity to speak. She asked that if they were not speaking to place themselves on mute so that any background noise was blocked. Ms. Dale explained that at the conclusion of the hearing during the Board's deliberation, the applicant and any members of the public would be placed in the "waiting room" of Zoom. She explained that they should not leave the meeting because the Board will come back and make their decision openly. The Chair asked Mrs. Dale if all the documents relating to the case had been received and were in proper order. She indicated that they were. The Chair swore-in the Zoning and Planning Administrator, Kathryn Dale.

The Chair asked Mrs. Dale to introduce the first case of the evening.

**Adjudication Hearing
Case BZA #2020-172
2027 Arlington
Ensman**

Request for an Area Variance from Section 5.1.7 to allow for a covered front porch to encroach into the west, front-yard setback (13' proposed/20' required) and the north, side-yard setback (0' proposed/5' required) and to Section 7.12.3.A to allow more square footage onto a nonconforming structure than permitted [310s.f. (26.7%) proposed/232s.f.(20%) permitted].

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Ms. Grentzer moved and Mr. Shetler seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale shared that the applicant is proposing to install roughly an 8' wide, L-shaped, wrap around covered porch onto the front of the existing single-family home. Since the permit was refused and notice was sent, the owner submitted a mortgage survey that is signed & sealed by a licensed surveyor with more accurate dimensions of the property. The proposed porch will actually be a little farther away from the property lines than initially thought. The porch addition is proposed to be 14' from the west, front property line where 20' is required and 1' from the north, side property line where 5' is required. This is measured to the roof overhang of the porch. The existing house is nonconforming because it encroaches into the north, side-yard setback. The existing house contains 1,160s.f. Twenty (20%) percent of this would allow for a 232s.f. addition. The total amount of new square footage to be added is 310s.f. or 26.7%. Ms. Dale concluded by reviewing the Duncan Standard decision criteria the Board would be considering during their deliberations.

Kenneth Ensman & Julie Swanger-Ensman, Owners/Applicants, 2027 Arlington, were both called upon and sworn in. Mrs. Ensman reviewed the paperwork via the "shared screen" option from Ms. Dale's computer and stated it was as they submitted. Mrs. Ensman said she wanted to clarify that the porch will remain open and is not intended at this time to be enclosed and may not even have a railing. Mr. Ensman said under Exhibit 1, page 10 there is a photograph of the front of the cottage. He explained the single window on the north side of the house and the door is 38" wide with about 1' on either side of the door to make up the proposed 6' deck along this side of the house. Mr. Ensman said the proposal is to take the roof line above that doorway and extend it all the way around to the front of the cottage. He said they are just trying to continue the line of the covered, enclosed portion that currently exists with an open-air porch. Mrs. Ensman said their hope is to make it look as though it has always been there.

Mr. Ensman said in Exhibit 2, page 6 is the drawing that Highlander-Harris has submitted. He said the Board will notice that the 6' area is replacing a small deck that is already there, covering it and then wrapping it around from north to south for 32' on the front of the cottage. He explained that once it turns the corner it will become wider with an 8' depth to the porch.

Mr. Fetzer asked if and Board Members had any questions for the applicant. Ms. Grentzer asked about the north, side-yard setback. She confirmed they are asking for 4', or anotherwords the porch will only be 1' away from the property line where 5' is required. Mrs. Grentzer asked if the area

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to the north is available to be built on or if it was community space. Mr. Ensman said that the property to the north is owned privately and the same individual who sold them this cottage. He said it is a vacant parcel right now. Mrs. Ensman said this proposed porch would be no closer to that property than where the house currently sits. Mr. Ensman said they are strictly following the existing overhang which is already 1' away from that north property line.

Mr. Fetzer asked if there was anyone with standing who wished to testify. Ms. Dale shared that in order to ensure the adjoining property owners had a chance to have a say in this hearing who may not have been able to participate in the Zoom format, she allowed written statements due to the health crises situation. She reported that no letters or emails were received. Ms. Dale indicated that there was also no one else on the Zoom meeting for this case.

Ms. Roberts made a motion to close the public comment segment of the hearing, seconded by Ms. Grentzer. All were in favor and the motion carried.

Mr. Shetler motioned to recess into executive session to deliberate the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. The motion carried and the Board recessed at 6:58p.m. Ms. Dale reminded the applicant and other non-board members that they would now be placed in the Zoom waiting room and not to disconnect from the meeting.

All participants were removed from the waiting room and brought back into the meeting. Ms. Roberts moved and Ms. Grentzer seconded the motion to reconvene. The roll call vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. The Board reconvened at 7:06p.m.

The Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2020-172:

With regard to BZA-2020-172 being a request for an Area Variance from Section 5.1.7 to allow for a covered front porch to encroach into the west, front-yard setback (14' proposed/20' required) and the north, side-yard setback (1' proposed/5' required) and to Section 7.12.3.A to allow more square footage onto a nonconforming structure than permitted [310s.f. (26.7%) proposed/232s.f. (20%) permitted] for the property located at 2027 Arlington:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can continue to be used for a single-family residence and some sort of an improvement or addition is permitted.
2. The request **is not** substantial because the porch will be no closer to the north property line than the existing house and there is approximately 10' of grassy area in front of this house that is in the road right-of-way, providing the appearance that the porch will still be a significant distance from the street. The increase to the 20% addition limitation is also not substantial because the size of the porch is reasonable and fitting to the house style and because it will remain open-air.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because they are staying in-line with and continuing the same roof line as the existing porch.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property.
5. The property owner states they **were not** aware of the zoning restrictions at the time they purchased the property.
6. The property owner's predicament **cannot** feasibly be obviated through some method other than a variance due to the nonconforming placement of the home in relation to the north property line and to the west, the porch would only be able to accommodate a 3' wide walkway if the requirements were met.
7. The spirit and intent behind the zoning requirement **would be** observed and substantial justice done by granting the variance because there is no negative impact on adjoining properties.

Mr. Shetler moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (2) (3) (6) (7) weigh more heavily to show that:

- a. Practical difficulty **is** sufficient to warrant granting the Variance requested.
- b. There **is** a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does** support the applicants request for a variance.

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Therefore, the Variance should be accordingly **APPROVED**.

Motion Seconded by Ms. Grentzer. Roll Call Vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. Vote 5-0 the motion passed. The Chair stated that the application has been approved and the applicant can pick up permits following the Board's next meeting which is September 16, 2020.

Ms. Dale explained that the applicant from this case was now free to leave the meeting or they were welcome to stay on to watch the Board complete the rest of their regular business.

Adjudication Hearing Case BZA #2020-174 466 Church Henry

Request to for an Area Variance to Section 5.2.1.A.i to allow for an accessory structure to exceed 2,000s.f. (3,750s.f. proposed) and Section 5.2.1.C.i to exceed the maximum height of 20' (22'4" proposed).

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Ms. Robert moved and Mr. Shetler seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale shared that the applicant is proposing a 50' x 75' (3,750s.f.) detached pole barn on their 5 acre property where 2,000s.f. is the maximum allowed. An existing 10' x 12' shed will be removed from the property. The applicant is also proposing that the detached pole barn will be 22'4" tall where 20' is the maximum height allowed to allow for a 4/12 pitch. The owner is also considering a 3/12 pitch which would lower the height to 20'3". Either way, the barn will not be as tall as the house which is 28'-30' tall. All other requirements related to setbacks and lot coverage will be satisfied.

Larger buildings can be constructed under an agricultural exemption if they are using the structure for a bona fide agricultural use. While the owner will have some equipment in the building to maintain the land, the primary use of the building will be for personal items.

Ms. Dale shared that there was a listing of other similar sized buildings in their packet to be able to get a feel for the size this proposed building will be. She pointed out that in 2018 the Board granted a variance to the property to the north at 416 Church for a 40' x 75' (3,000s.f.) building on 5.75ac. At 506 S. Church Road (house to the south of this subject property) has 4.62 acres, with 4 structures that total 4,600s.f. but this is an Agriculturally Exempted property as well. The barn directly across the street from this property that has been rehabbed is approximately 38' x 56' (2,128s.f.) and nearly 33' tall. There may be a section off the back of this barn that is 16' x 50' (800s.f.). Ms. Dale concluded by reviewing the Duncan Standard decision criteria the Board would be considering during their deliberations.

Richard Henty, Owner/Applicant, 466 Church Road, Marblehead was called upon and sworn in. Mr. Henry stated that he was not able to see the shared screen on his device, but assured that if the packet was the same as the one he received prior to the meeting on the website, then that was indeed all the information he provided and submitted. Mr. Henry stated the building he is proposing, he has double checked with the builder and it will be a 3/12 pitch, so it will be lower than 22'4" and more around 20'3". Mr. Henry said he has placed the building so the narrowest portion of it is facing the street so as to alleviate any size problems and it will be 400' from Church Road. Mr. Henry said his house will remain taller and wider than this building. He said he doesn't believe that it would look out of place or out of character. He doesn't think it will or should affect any of his neighbors since there is a large barn across the road, and on either side of him, and the property behind him is tillable ground & woods.

Mr. Fetzer asked if and Board Members had any questions for the applicant. There were none.

Mr. Fetzer asked if there was anyone with standing who wished to testify.

Marnie McAtee, 416 S. Church Road, Marblehead was called upon and sworn-in. Ms. McAtee stated that she just wanted to give her support for this variance and encourage the Board Members to approve it. She said the building proposed is conducive to the area. The area is all rural and agricultural, and barns are conducive to that. Ms. McAtee stated she sees no reason why it should not be approved.

Ms. Dale shared that in order to ensure the adjoining property owners had a chance to have a say in this hearing who may not have been able to participate in the Zoom format, she allowed written statements due to the health crises situation. She reported that one email was received 08/10/2020 from Bernard Knoble who owns the refurbished barn across the street and it will be entered into the record as Knoble Ex. 1. Ms. Dale read the email verbatim, which was in support of the request. No other letters

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or emails were received. Ms. Dale indicated that there was also no one else on the Zoom meeting for this case.

There were no further questions from the Board and Mr. Henry had nothing more to add.

Ms. Zsigo made a motion to close the public comment segment of the hearing, seconded by Ms. Roberts. All were in favor and the motion carried.

Ms. Zsigo motioned to recess into executive session to deliberate the merits of the case. Ms. Roberts seconded the motion and the roll call vote was as follows Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. The motion carried and the Board recessed at 7:24p.m. Ms. Dale reminded the applicant and other non-board members that they would now be placed in the Zoom waiting room and not to disconnect from the meeting.

All participants were removed from the waiting room and brought back into the meeting. Ms. Roberts moved and Ms. Grentzer seconded the motion to reconvene. The roll call vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. The Board reconvened at 7:34p.m.

The Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2020-174:

With regard to BZA-2020-174 being a request for an Area Variance from Section 5.2.1.A.i to allow for an accessory structure to exceed 2,000s.f. (3,750s.f. proposed) and Section 5.2.1.C.i to exceed the maximum height of 20' (20'3" proposed) for the property located at 466 Church Road:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property has ample space for accessory structure(s).
2. The request **is** substantial because it is 88% more than what is allowed, but the owner has sufficient property to accommodate a building of this size.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because there are similar structures nearby and it is an agricultural area. The building will also be located a significant distance (400') from the roadway.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property.
5. The property owner states they **were** aware of the zoning restrictions at the time they purchased the property.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by reducing the size of the building, but it would not be of sufficient size to meet their needs.
7. The spirit and intent behind the zoning requirement **would be** observed and substantial justice done by granting the variance because when taking into consideration the size of the property and other structures in the vicinity, the proposed building is not out of character, nor would it infringe on adjoining property owners health or safety.

Mr. Shetler moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (3) (7) weigh more heavily to show that:

- a. Practical difficulty **is** sufficient to warrant granting the Variance requested.
- b. There **is** a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does** support the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**.

Motion Seconded by Ms. Grentzer. Roll Call Vote was as follows Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. Vote 5-0 the motion passed. The Chair stated that the application has been approved and the applicant can pick up permits following the Board's next meeting which is September 16, 2020.

Ms. Dale explained that the applicant from this case was now free to leave the meeting or they were welcome to stay on to watch the Board complete the rest of their regular business.

The Chair asked Mrs. Dale to introduce the last case of the evening.

Danbury Township Board of Zoning Appeals**August 19,****20****Adjudication Hearing
Case BZA #2020-175
8456 E. Bayshore Road
Polanco****Request for an Area Variance from Section 5.2.1.C.ii to allow for a detached garage to encroach into the south, rear-yard setback (1' proposed/ 5' required).**

The Chair asked if there were any Board members who would have a conflict and wished to abstain from this hearing. There were none. Ms. Zsigo moved and Ms. Grentzer seconded the motion to open the public hearing. All were in favor and the motion carried.

The Chair asked the Zoning Administrator to give an overview of this application. Ms. Dale shared that the applicant is proposing to tear down the existing 20' x 36' detached garage and replace it with a 30' x 36' detached garage in the same general location. The existing garage is 1' from the south, rear property line and the new garage is proposed to remain at that distance where 5' is required. The east, side yard setback of 5' will be satisfied along with all other zoning requirements.

This lot was platted in 1995 and in 1998 Baywinds Mobile Home Park was platted. At the time of the platting of the Mobile Home Park, road access to all the new lots would have been required by the County Subdivision Regulations. The once private driveway leading into the mobile home park became the legal dedicated street access. Due to this, the subject parcel would have then become a corner lot requiring two front-yard setbacks. It appears that in an attempt to not put any hardship on this subject parcel, there were variances granted via the platting process to allow this lot to have its east property line remain as a side-yard instead of becoming a front-yard. Even though the proposed new garage will be 12' from the east property line, a variance isn't being requested since a 20' front-yard setback isn't required from Baywinds Drive; only a 5' setback is required per the recorded plats. Ms. Dale concluded by reviewing the Duncan Standard decision criteria the Board would be considering during their deliberations.

Sharon Polanco, Owner/Applicant, 8456 E. Bayshore Road, Marblehead was called upon and sworn in. Mrs. Polanco reviewed the paperwork via the "shared screen" option from Ms. Dale's computer and stated it was as she submitted. Mrs. Polanco said that the existing garage is 20' deep and 36' wide, which they intend to maintain the 36' width but would like to increase it 10' in depth. She said on the south side, to stay within the existing footprint, there would only be 1' from the property line. She commented that if an overhang is added to this side, then the overhang would be 6" from the south property line, but they could eliminate the overhang altogether on the sides of the building.

Mr. Fetzer asked if and Board Members had any questions for the applicant. Ms. Grentzer asked why they can't make the 5' side yard setback requirement, why can they not move it since there is plenty of space. Ms. Polanco stated that if they move it to the north – Ms. Grentzer interrupted about the directions. Discussion ensued about where the building was on the property and the directions, there was some confusion due to the side street curving.

Mr. Shetler asked if they are reusing the footers and foundation of the existing garage. Ms. Polanco said no. Everything of the old garage will be torn down and removed. She said if they end up going with Attica Lumber, they use post and frame with a footer for the post and not a foundation. Mr. Shetler confirmed that the building will go in the same place to allow them to try to keep all their existing concrete intact. Ms. Polanco said that was correct. She said on the north side they really don't want to have to rip all that concrete out and lose their patio.

Mr. Fetzer asked if there was anyone with standing who wished to testify. Ms. Dale shared that in order to ensure the adjoining property owners had a chance to have a say in this hearing who may not have been able to participate in the Zoom format, she allowed written statements due to the health crises situation. She reported that two emails were received. The first, which will be identified in the record as Harvey Ex. 1, was received 08/18/20 from Alexandra Harvey, 2246 Linda. Ms. Dale read the email verbatim, which was in support of the request. The second email will be identified as Harvey Ex. 2, which was received 08/18/20 from David Harvey, 2246 Linda. Ms. Dale also read this email verbatim, which was also in support of the request.

Ms. Dale indicated that there was no one else on the Zoom meeting for this case.

Ms. Roberts made a motion to close the public comment segment of the hearing, seconded by Ms. Grentzer. All were in favor and the motion carried.

Ms. Roberts motioned to recess into executive session to deliberate the merits of the case. Ms. Zsigo seconded the motion and the roll call vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. The motion carried and the Board recessed at 7:56p.m. Ms. Dale reminded the applicant and other non-board members that they would now be placed in the Zoom waiting room and not to disconnect from the meeting.

All participants were removed from the waiting room and brought back into the meeting.

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Ms. Roberts moved and Ms. Grentzer seconded the motion to reconvene. The roll call vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. The Board reconvened at 8:10p.m.

The Chair asked Mrs. Dale to read the Findings of Fact for BZA Case #2020-175:

With regard to BZA-2020-175 being a request for an Area Variance from Section 5.2.1.C.ii to allow for a detached garage to encroach into the south, rear-yard setback (1' proposed/ 5' required) for the property located at 8456 E. Bayshore Road:

1. The property in question **will** yield a reasonable return and **can** be used beneficially without the variance because the property can continue to be used for a single-family residence and there is ample space to accommodate a detached garage.
2. The request **is** substantial because the new building encroaches 4' into the required setback after a nonconforming structure has been eliminated.
3. The essential character of the neighborhood **would not** be substantially altered by the variance and adjoining properties **would not** suffer a substantial detriment as a result of the variance because the new garage will be no closer to the south property line than the existing building.
4. There is **no** indication the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because all utilities are available to the property.
5. The property owner states they **were** aware of the zoning restrictions at the time they purchased the property but did not have plans to replace the garage.
6. The property owner's predicament **can** feasibly be obviated through some method other than a variance by moving the structure 4' north, which they have ample space to do.
7. The spirit and intent behind the zoning requirement **would be** observed and substantial justice done by granting the variance because there is no negative impact on adjoining properties.

Mr. Shetler moved that the Board adopts and makes the findings of fact as read by the recording secretary and that after considering and weighing these factors, the Board finds that Decision Standards(s) (3) (7) weigh more heavily to show that:

- a. Practical difficulty **is** sufficient to warrant granting the Variance requested.
- b. There **is** a preponderance of reliable, probative and substantial testimony; and
- c. There is evidence that **does** support the applicants request for a variance.

Therefore, the Variance should be accordingly **APPROVED**.

Motion Seconded by Ms. Roberts. Roll Call Vote was as follows: Mr. Shetler – yes; Ms. Grentzer – yes; Ms. Zsigo – yes; Ms. Roberts – yes; Mr. Fetzer – yes. Vote 5-0 the motion passed. The Chair stated that the application has been approved and the applicant can pick up permits following the Board's next meeting which is September 16, 2020.

Ms. Dale explained that the applicant from this case was now free to leave the meeting or they were welcome to stay on to watch the Board complete the rest of their regular business.

Old Business

There was none.

New Business

There was none.

Other Business

Ms. Grentzer reminded member that ODOT will be holding a virtual meeting tomorrow afternoon regarding the Roundabout at Northshore Blvd, Englebeck & SR163.

Adjournment

Ms. Roberts moved to adjourn the meeting and Ms. Grentzer seconded the motion. All in attendance were in favor and the motion carried.

The meeting was adjourned at 8:21p.m.

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Kathryn A Dale
RECORDING SECRETARY

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Plyce Shatto

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DocuSigned by:
Loretta Grentzer

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BOARD OF ZONING APPEALS