

**ZONING BOARD OF APPEALS
TOWN OF CANADICE**

Canadice Town Hall

December 8, 2021

Present: Linda Moorhouse, Chairperson
Diane Horning, Vice Chairperson
Ed Bott
Jesse Hallett
Steve Smith
Marty Gascon - Absent

Guest: Janet Elman
Jerry Elman
David Rydell

PUBLIC HEARING – Janet and Jerry Elman

Chairperson, Linda Moorhouse called the meeting to order at 7:30 p.m.

Chairperson, Linda Moorhouse introduced the Zoning Board of Appeals

members and stated that a quorum was present to hear the application. The criteria, which the Zoning Board of Appeals uses to make decisions regarding an area variance were reviewed.

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.

Whether the requested area variance is substantial.

Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Whether the alleged difficulty was self-created, in which consideration shall be relevant to the decision to the Board of Appeals but shall not necessarily preclude the granting of the area variance.

L. Moorhouse invited Janet and Jerry Elman to come and sit before the board.

Janet Elman - We didn't bring our stuff, because you have all the information. Is that ok?

D. Horning - Yes.

Janet Elman - We want to put a deck to add on to the side of the house to extend to the back. We have an overhang already that is 54" off of our house, the deck on the side is underneath that. We had to apply for the variance because the distance to our neighbors was so close as it was. We knew we just couldn't get a permit. So, all we are asking is where the overhang is, we plan to have the deck, we wanted to have an allowance of just 6" to exceed the overhang just to account for posts. Depending on how the wood would lay out. We just don't want to get locked in at just

Page 2

that spot. The 6" would give us just a little leeway to play with. What we figured out is that is no more than half the distance to the neighbor for the 10ft.

L. Moorhouse - Ok, so if I understand correctly, the overhang is 54"?

Janet Elman - Yes. So, basically the deck would be underneath it. It's not really a deck, it's only one foot up.

Jerry Elman - It would cover that sidewalk.

Janet Elman - We already have an existing sidewalk, it would cover that sidewalk. But, the sidewalk there is only 36". So, we wanted to match up to where the overhang is and we would like to have the extra 6".

L. Moorhouse - Beyond the overhang?

Janet Elman - Yes, beyond the overhang.

L. Moorhouse - Which brings you how far from your neighbor's property?

Janet Elman - About 5ft.

L. Moorhouse - So, we are looking at, normal set back Steve is 20ft. there?

S. Smith - Sides are just 10ft., yes.

L. Moorhouse - Ok.

Janet Elman - It's only up a foot from the ground, we are close.

E. Bott - Technically, the house is already within 6" of that.

Jerry Elman - Yes.

E. Bott - So, you are only looking at a change of 6" from the existing situation.

Janet Elman - Exactly. We originally wanted to go more, but realized that wasn't a wise decision.

Jerry Elman - And then at the back of the house, it will come around to where the existing deck is. There are no issues there.

L. Moorhouse - Right. So, this hedge is going to stay there?

Page 3

Janet Elman - Yes, that is going to stay there. That won't interfere with what we are planning to do.

L. Moorhouse - Ok, do we need any other information from Mr. and Mrs. Elman?

No Questions.

L. Moorhouse - Ok, we will close the Public Hearing.

L. Moorhouse - Motion to accept the application as complete, seconded by J. Hallett, all in favor.

E. Bott - Explained the two step process of accepting the application and then voting on the variance.

Roll Call Vote to accept or deny:

L. Moorhouse **YES**, D. Horning, **YES**, E. Bott, **YES**, J. Hallett, **YES**

L. Moorhouse - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

D. Horning - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

E. Bott - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

J. Hallett - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

L. Moorhouse - Your request for a variance has been approved.

The Public Hearing concluded at 7:41 p.m.

PUBLIC HEARING - David Rydell

L. Moorhouse invited David Rydell to come and sit before the board.

L. Moorhouse - We are glad to see you here.

D. Rydell - Sorry, I didn't make it to the last meeting. I didn't know that I was supposed to be here.

E. Bott - You don't have to be here, but we had questions we wanted to ask you before we set a ruling on it. We didn't want to vote blindly on what limited information we had. So, that is why we didn't accept the application. Once we accept it, then it is locked in.

D. Rydell - Steve explained that to me.

L. Moorhouse - Then you would have to wait a year before you could apply again and you don't

Page 4

want to have to do that.

D. Rydell - I appreciate that.

L. Moorhouse - Ok, so would you explain to us what you want to do? It says here that you want to build a covered porch and you want it in the front?

D. Rydell - Yes, the house is on the water, this is on the road side.

J. Hallett - The west side?

D. Rydell - Yes, it is on the west side of the house.

L. Moorhouse - So, this is where you want to put the porch? (Looking at the pictures provided)

D. Rydell - Yes, you see on the front there, we just have this little wood step. We haven't really done much on the front of the house. So, we wanted to add a porch, just to make it a little easier to get in and out of the front door. We started out, we wanted to put a little deck there and then decided if we were going to put a deck on, then we should put a roof over it. We don't want to extend this roof line, because that never works out very good. We are just going to come in right underneath this one and attach it that way. So it would be another roof, lower than that one.

E. Bott - You wanted to go the full width of the house?

D. Rydell - Yes, we were going to go the full width of the house.

S. Smith - Not the full width of the house.

D. Rydell - It's only this portion of the house. Like a lot of other cottages on the lake, there are additions. So, it's not the full width of the house.

E. Bott - It's just the full width of this section right here?

D. Rydell - Correct.

L. Moorhouse - And this is closest to the road, correct?

D. Rydell - Right. I think I put the dimensions in there. It's like 22ft. from Bartholomew Drive.

L. Moorhouse - Ok, so we are looking at a variance from the road, is that what I am understanding?

J. Hallett - So, he is extending the east side of the house, flush with where it currently is.
Page 5

The problem is with the east property line.

D. Rydell - Technically, the south side. The south side of my house is only 3ft. off the property line.

L. Moorhouse - Did you build this house?

D. Rydell - No, I didn't. I bought that house seven years ago.

L. Moorhouse - Ok, so you bought it with all the, whatever.

D. Rydell - All the baggage it came with.

S. Smith - You are looking at 10 X 25.

E. Bott - You already have a wood deck and wood steps that are already on the property line?

D. Rydell - Yes, going up to a deck on the water side of the house. There is a deck there and a set of steps there. They were there when I bought the house.

E. Bott - That is probably one of those that they stuck in without a permit. There is no way that would have flown.

S. Smith - Nope.

J. Hallett - Where those steps are is pretty much the line.

E. Bott - So, there is a concrete wall here?

D. Rydell - Concrete walk. My neighbor's house to the south is right here and he is close to the line also. So, we have a concrete walk that goes right down the side of my house and goes to his front door.

E. Bott - This is what our concern is, because you have to be a distance from the next building. That's why they try to keep people off the lines in the first place. You don't want to impede on your neighbors property outside of your line and then when you get close to the line you are actually doing that. So, that's why they have these, to prevent that kind of situation. How far away is the other house over here? Do you know that? Steve do you know, by any chance?

S. Smith - I never went down and took any measurements. The south side, I'm not sure.

D. Rydell - His house, off that property line, I'm going to say maybe 6-8ft. But, his house doesn't start until here. (Reviewing the pictures) He is closer to the water. His house starts
Page 6

here. At the back of my house here.

L. Moorhouse - This blue one here?

D. Rydell - Correct. The front of his house starts right there. Otherwise, our houses would be right next to each other.

E. Bott - Even this deck is far too close to the other house.

D. Rydell - Yes.

L. Moorhouse - However, we can't do anything about that.

E. Bott - No, we can't and that is why we end up with all these rules and regulations, because the state wants them no less than 10ft. apart, or is it 20?

S. Smith - For fire?

E. Bott - Yes, for fire.

S. Smith - Yes.

D. Horning - 10, right?

E. Bott - Is it 10 total?

S. Smith - You can actually build a shed and put it 5ft. away.

E. Bott - It can't be any less than 10ft. for two residential homes?

S. Smith - Right.

E. Bott - We put 10ft. on either side so you have room.

D. Rydell - So, it turns out to be 20ft.

L. Moorhouse - We don't know how close your house is to your neighbors?

D. Rydell - His house is past mine. Right through that property line, is a right of way.

E. Bott - That's actually important. Is that a deeded right of way?

D. Rydell - Yes.

Page 7

E. Bott - So, how wide is that right of way?

D. Rydell - How wide is it? 2ft. It's enough to walk. That's what that sidewalk is.

E. Bott - If it's a deeded right of way, then nobody can build there anyway. If it's only 2ft., then it really doesn't come into play. If you had a 15ft. deeded right of way down here, then it is just like you had a wall there as far as code goes. No one could ever build there. There is a right of way that runs next to my property and my next door neighbor wanted to put a pool there and you can't do that.

L. Moorhouse - Are we talking 2 or 4? This says 4ft. easement.

D. Rydell - Does it say 4? Okay, then my mistake, then it's 4ft.

E. Bott - Is it centered on the right of way? So, actually those steps are illegal, because they are right in the right of way.

J. Hallett - Is this between the properties, or is it 2ft. on each property.

D. Rydell - 2ft. on each property.

E. Bott - So, it is centered on the line?

D. Rydell - Yes.

L. Moorhouse - And besides, he didn't build it.

E. Bott - Oh, I know.

D. Rydell - Let's keep complicating the story, I own the house that has the deeded right of way.

L. Moorhouse - Ok.

E. Bott - That doesn't affect this, because they are separate properties. If you sell it, someone else owns it. They could, technically, make someone tear that out, because it's in the right of way.

L. Moorhouse - The stairs, you mean?

E. Bott - Yes, it's in the right of way.

D. Rydell - That deck and those stairs are not attached to the house.

Page 8

E. Bott - It doesn't matter, they are in the right of way.

D. Rydell - Ok.

E. Bott - If someone bought your other place, they could make you tear it down, because it's in the right of way.

L. Moorhouse - But, you know what had happened for so many years down there. We will all get together and we need to get down to the lake.

D. Rydell - Everybody is selling 2ft and 4ft.

E. Bott - If that were 15ft. or even 10ft., that becomes significant.

D. Rydell - Ok, I understand.

D. Horning - You have a right of way on the north side also, right?

L. Moorhouse - It says alternate 4ft. easement.

D. Rydell - That one, I don't know about.

D. Horning - I'm picking it up from what is here.

E. Bott - You are at 3ft. 3" currently and you want to extend that 10ft.? Do I have that right?

D. Rydell - Yes, 25 wide and 10ft. deep.

E. Bott - 3ft. is greater than 50% part of the variance. That's where the burden starts to go against you.

D. Rydell - Ok.

E. Bott - That is why we wanted to have this conversation.

J. Hallett - I have a question here. When we are looking at a birds eye view of this house, are we looking at the foundation or the overhang? I am assuming your new roof coming off the front is going to be tucked inside the overhang?

D. Rydell - Correct.

J. Hallett - So, it is not going to stick out past the sidewalls of the house?

Page 9

D. Rydell - Correct.

J. Hallett - If we are looking at that birds eye, and considering the overhang, it would be in a foot or so. So, we are looking at 4ft.

E. Bott - Yes, that's a good point.

L. Moorhouse - Yes, that is a good point. If you are going to tuck it under the overhang.

D. Rydell - Yes, it wouldn't be so far out.

E. Bott - That's why we have these conversations.

D. Rydell - I am learning something here too. Jesse is doing a better job defending me, than I am.

L. Moorhouse - So, that is going to decrease the size of the variance.

E. Bott - And, also it doesn't make it bad or any worse than it currently is.

D. Rydell - I agree, we are all too close down there.

E. Bott - Ok, what we do next, is we will vote as long as you are all set with this being your final application. We will vote to accept it as is and last time we voted not to accept it because we wanted to get some more information. Once we accept, then you are locked in and then we vote on the variance. Two steps, one is for approval or disapproval of the application, then the other part is on the variance itself.

L. Moorhouse - There is one thing we have to straighten out, the variance is less than 7ft. now.

E. Bott - It's 6ft.

There was discussion between the board members on the measurements and the actual variance request.

D. Horning - Now, you know why we needed you to be here.

D. Rydell - I understand it better myself now.

L. Moorhouse - Ok, we will close the public part of the hearing. Do you have any other

questions for us?

D. Rydell - No, I understand it.

Page 10

E. Bott - Made a motion to accept the application as it stands, D. Horning seconded, all in favor.

Roll Call Vote to accept or deny:

L. Moorhouse, **YES**, D. Horning, **YES**, Ed Bott, **YES**, Jesse Hallett, **YES**

L. Moorhouse - 1. Yes, 2. No, 3. No, 4. No, 5. Yes - **YES**

D. Horning - 1. No, 2. No, 3. No, 4. No, 5. Yes - **YES**

Ed Bott - 1. Yes, 2. No, 3. No, 4. No, 5. Yes - **YES**

Jesse Hallett - 1. Yes, 2. No, 3. No, 4. No, 5. Yes - **YES**

L. Moorhouse - Ok, now you have your work ahead of you.

E. Bott - I am glad you came in. I will be honest with you, when we first looked at this and we talked about it, I wouldn't have granted that. But, the way you described how you are going to put it inside and actually reducing the amount and you trying to improve from what it is now. That was the change.

D. Rydell - I appreciate that.

E. Bott - We all wanted to talk to you about what you were actually doing here. We all just want to give you a fair shake.

D. Rydell - I appreciate that very much. I knew the other meeting was coming up and I thought I needed to be here and then I wasn't.

L. Moorhouse - That's ok.

D. Rydell - I'm going to wait now until the spring. Is it ok if I get the permit in the spring?

S. Smith - Once you get the permit, it's good for a year. I have all the information I need. It's not going to be enclosed at all, it's going to be an open porch?

D. Rydell - Yes, it's just going to have the roof over the top of it.

S. Smith - Approximately, 10 X 25?

D. Rydell - Correct.

L. Moorhouse - I have a question. In the future, if Mr. Rydell wanted to enclose that, is that a

problem?

S. Smith - Yes, he would have to come in for that. First it's a deck, then a porch, then a three
Page 11

season room, then an addition.

D. Rydell - That's a good question. So any change, like if I screened it in or put windows or
walls in.

S. Smith - If you screen it in, I don't have a problem with that. But, once you start putting in
windows.

D. Rydell - So, screening it in, I wouldn't have to come back.

S. Smith - Deck, porch, three season room, addition.

D. Rydell - When they put those water lines in last year, I was amazed at what was buried in the
ground. Those poor guys digging, were finding all kinds of stuff. Car parts, old lawn mower
parts, etc.

Public Hearing concluded at 8:05 p.m.

Old Business

E. Bott made a motion to approve the minutes from the November 10, 2021 meeting,
D. Horning, seconded, all in favor.

D. Horning made a motion to adjourn the meeting, E. Bott seconded, all in favor

Meeting adjourned at 8:15 p.m

Respectfully,

Stephanie Seeley, Secretary

