

**TOWN OF CHATHAM
JULY 26, 2012**

**ZONING BOARD OF APPEALS
FINAL MINUTES**

Members Present:

Adrian Ooms
Jeff Lick
Mitchell Khosrova
David Everett, Chairman
JP Henkel
Kary Jablonka
Bob Leary

Members Absent:

None

Public Present:

Karen Jacobsen Robert Jacobsen
Veronica Fuentes Dalia Eilat
Lauren Letellier Bob Elmendorf
Pamela Price Steve Seabury
Kim Seabury James A. Buckley

The July 26, 2012, Zoning Board of Appeals meeting was called to order by Chairman David Everett at 7:02PM. The Pledge of Allegiance was recited. Kary Jablonka moved and Jeff Lick seconded that the minutes from the previous meeting be adopted. This carried. Bob Leary abstained from this vote.

ROBERT JACOBSEN-REQUEST FOR A VARIANCE WHICH WILL ALLOW FOR A ONE-STORY ADDITION ON HIS RESIDENCE ON SHAKER MUSEUM ROAD THAT IS UNABLE TO MEET A SIDE SETBACK PUBLIC HEARING

Mr. Jacobsen reviewed his request. He had submitted the additional elevation drawings showing the alternative to the Board as well as a letter from his architect which stated that the alternative does not meet the applicant's needs. A 9'4" variance is being sought. Clarification was provided regarding where the construction would be. Chairman Everett noted the vegetation on the side and the fence, and wondered which property this was on. The 6' stockade fence is on the neighbors' property. Mr. Jacobsen stated that with the fence and vegetation he can't see the neighbor's house. Mr. Everett asked about the potential Home Occupation. The clerk explained that CEO Walt Simonsmeier stated that from what the applicant described to him, this permit would be given through the Building Department. The garage that he is proposing would be utilized to store anything from this business. Mr. Everett questioned whether the items currently outside would go into the garage, to which the applicant responded affirmatively. Mitchell Khosrova questioned which zone this property falls into. It is in an H-2 zone. Chairman Everett announced that two letters had arrived---one from the VanEggen and one that was signed by about 12 neighbors. Bob Leary questioned

whether the present house is suitable to live in. The applicant responded that it is, but it is small. It would be fine for one person, but the applicant and his mother plan to reside here.

The Public Hearing was opened at 7:13PM.

Pamela Price, who owns adjoining property on Albany Tpk., is opposed to the project. She feels that this is similar to adding another house, and that it is too close to the neighbors. The proposed garage is a huge structure. Mr. Everett explained that the applicant is entitled to an accessory building, he has a permit to build this and it complies with zoning regulations.

Veronica Fuentes is the neighbor on the side where the setback is not able to be met. She wondered about the original request for a carport, and whether the garage is in place of this, and whether both could be placed on the property. Mr. Everett stated that if the applicant decides to put a carport on this property, he would need to get a permit and be compliant to zoning. Ms. Fuentes continued by saying that requesting this variance is to satisfy an aesthetic issue, that this addition can be done within the zoning laws. Mr. Everett stated that the applicant's architect cited possible ice and water problems, plus the fact that a bathroom would have to be moved to achieve this. Ms. Fuentes countered by stating that the drawings only depict the outside of the house, so how can we be sure that the bathroom would need to be moved.

Dalia Eilat spoke to the fact that this is a design issue, and the architect cites awkward rooflines. She feels the diagrams are not a real representation. The debate of aesthetics cannot be argued with the drawings that have been presented. She feels that the addition, being built within the setbacks, would be adequate. She also pointed out that she, as a licensed architect, wasn't convinced that the bathroom had to be removed under the proposed plan, and she added that even if it does, she does not feel it would be a significant additional cost. The Board reviewed the diagrams from the original submission with the new ones. Mrs. Jacobsen stated that there will be a blank 10' wall if they were to utilize the new plans, which not only doesn't look right, but wouldn't function as well. It was also brought up that this request is asking to double the total square footage.

Bob Elmendorf, who adjoins this property to the west, stated that there is not enough documentation for the Board to understand both options. Most of the houses in this area are old, and if this is modified it will not keep with the rest of the homes in this historical neighborhood. There will be a large structure looming on the south. He also worries about the possibility of a carport and a garage. He stated that when additional land was deeded to Mr. Jacobsen in 2004, his property doubled, but the intention was that there would be no additional building.

Lauren Letellier wondered what would happen to the trees on the property line in the plotting of a new driveway. Dave Everett stated that this is not within the ZBA's jurisdiction. Dalia Eilat reminded everyone that the setback is the issue, not the design. Mr. Everett stated that the ZBA would be considering the hardship on the applicant. If the design is changed, moving the bathroom might create additional hardship.

Kim Seabury asked whether the property values of the surrounding homes are considered. Mr. Everett said that the Board does not generally get into the economics. Ms. Seabury said that this is a residential neighborhood in an historic district, and any changes should reflect this so as to maintain the value of the neighborhood. Mitchell Khosrova pointed out that factor #1 in our determination is "undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties" and that any economic argument seems to be covered under this.

Ms. Fuentes wondered why the Board would consider the economics of moving a bathroom, but not the concerns of maintaining the neighborhood. Ms. Eilat added that renovations in any form are expensive.

Bob Elmendorf asked that the Board consider the past history of this applicant, who has started work on the present house and not completed it over the span of 10 years, and who has a large pile of junk in the back. Since no one else in the audience wished to be heard, the Public Hearing was closed at 7:42PM.

Mr. Everett asked the applicant what his plans were if this variance was not granted. Mr. Jacobsen said he did not know.

The Board considered the factors in granting a variance:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties- most of the neighbors foresee this as a detriment due to the past history of the applicant. Mrs. Jacobsen stated that the intention is to remodel the old part of the house and make it look good, too.
2. Whether the benefit sought by the applicant can be achieved by some other method-it is possible to add an addition and remain within the setbacks. It is more of an aesthetic issue to utilize the plan needing the variance, and different architects would have different opinions on this. However, moving the bathroom may create a problem for the applicant. It also has been pointed out that the applicant has agreed to clean up the back and to construct a garage rather than a carport. There also is sufficient screening on the side where the variance would be needed.
3. Whether the requested area variance is substantial-the Board feels that doubling the living space is substantial. The amount of the variance requested is about 35%.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood- no
5. Whether the alleged difficulty was self-created- the Board feels that this is more so because there is an alternative that could be followed. It was pointed out by one of the Board members that if the neighbors were OK with this variance, there would not be a problem, but this is not the case.

Kary Jablonka moved that this request be denied because there is sufficient evidence that there will be a detrimental effect to the neighborhood because of the expansion being almost doubled. This does not fit into the character of this neighborhood. It is so close to the neighbor where setbacks can't be met that it compromises privacy. Also, the project can be done with no variance; although it was pointed out that it is a subjective decision as to what would be more attractive. Some felt, including the applicant's architect, that the variance is necessary for esthetic purposes, but the neighbors who must see this every day did not agree, so the Board had conflicting thoughts on the esthetics.

It is almost a 40% expansion, which is substantial, and it is self-created because there is a viable alternative. This was seconded by Mitchell Khosrova. Chairman Everett announced that a SEQRA review is not needed. The motion carried with a vote of 4(Henkel, Jablonka, Leary, Khosrova) to 3(Everett, Ooms, Lick).

Mitchell Khosrova moved, and Kary Jablonka seconded that the meeting be adjourned. This carried and the meeting ended at 8:04PM.

David Everett, Chairman

Respectfully submitted,

Marilyn Cohen, clerk