

**MINUTES OF THE COHOES ZONING BOARD OF APPEALS HELD IN THE
COMMON COUNCIL CHAMBERS OF COHOES CITY HALL ON WEDNESDAY,
APRIL 26, 2023 AT 6:30 PM**

MEMBERS PRESENT: Mr. Greg Mollnow, Chairperson
Mr. Anthony Kusaywa, Vice Chair
Mr. Mark Cotch
Ms. Carolyn Dion
Ms. Jacqueline DeChiaro

MEMBERS ABSENT: None

ALSO PRESENT: Joseph Seman-Graves, Planner
Sharon Butler, Administrative Assistant
Tess Drauschak, Assistant Planner

Chairperson Mollnow called the meeting to order at 6:30PM.
Roll Call taken; No members were absent

CONSIDERATION OF THE MINUTES FROM THE JANUARY 25, 2023 MEETING

Chairperson Mollnow; first order of business is the consideration of the January 25, 2023 meeting minutes. Is there a motion to approve the minutes.
Member Cotch; made the motion to approve the minutes as printed 2nd by Member DeChiaro
All in favor, motion carried unanimously

| | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|---------------------|-------------------|------------------|-----------------------|
| Greg Mollnow | X | | |
| Mark Cotch | X | | |
| Anthony Kusaywa | X | | |
| Carolyn Dion | X | | |
| Jacqueline DeChiaro | X | | |

CONSIDERATION OF AN AREA VARIANCE AT 6 RUDOLPH COURT

Chairperson Mollnow; next on the agenda is the area variance application for 6 Rudolph Court. The applicant requests 3.5 feet of relief from the required 30-foot front setback for the construction of a new front porch on a single-family dwelling in the R-1 Zoning district. The proposed front porch has measurements of 18' x 6'.
The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered: The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;
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 variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Whether the alleged difficulty was self-created.

Chairperson Mollnow then asked the applicant Mr. Schnapp to approach and give more details about the project.

Mr. Michael Schnapp approached and said they are in the process of putting on an addition which they already have a building permit for and they decided to put on a small front porch 18 x 6 and they don't meet the setbacks.

Chairperson Mollnow asked if any of the board members had any questions about the project, no members had any questions.

Chairperson Mollnow asked if what was on the drawing was approximately what the porch is

Mr. Schnapp stated yes

Chairperson Mollnow it doesn't take up the whole front of the house?

Mr. Schnapp no

Joe Seman-Graves told the board that they do have 30 feet of pavement to the porch but with the City ROW that is why the variance is being requested.

Chairperson Mollnow then asked if any public comments were sent in, being none he then opened it up to public comments for anyone in attendance. Being none public comment section was closed, he then opened it up to the board for any discussion.

Member DeChiaro asked Joe about the property which Joe explained the road, sidewalk, and City ROW.

Chairperson Mollnow asked for a motion on the application Member DeChiaro made a motion to approve the application 2nd by Vice Chair Kusaywa motion carried unanimously.

| | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|---------------------|-------------------|------------------|-----------------------|
| Chairperson Mollnow | X | | |
| Mark Cotch | X | | |
| Vice Chair Kusaywa | X | | |
| Carolyn Dion | X | | |
| Jacqueline DeChiaro | X | | |

Joe Seman-Graves told the applicant that Planning would inform the Building Dept. that the variance was approved so it could be added to the existing building permit.

CONSIDERATION OF AN AREA VARIANCE AT 19 ELIZABETH COURT

Chairperson Mollnow; next applicant is at 19 Elizabeth Court for an Area Variance. The applicant is requesting 7 inches of relief from the 10-foot side setback from the eastern property line for the construction of an accessory building in the form of a detached carport in the R-1 Zoning district. The applicant appeared before the Zoning board in August of 2022 with an application for an Area Variance for the placement of a carport on his property. However, in the original application, the proposed carport structure was intended to be attached to the main dwelling. Therefore, the application was held to the requirements for Single-Family homes in the R-1 district which

requires a side setback of 12 feet. The applicant requested a relief of 26 inches and was denied. The proposed carport structure will not be attached to the home; therefore, it is considered an accessory building. Members of the board, I have a letter from the neighbors at 18 Elizabeth Court who have expressed concerns regarding the following; excessive water runoff onto neighbor's property, infringement on the shared property line, and belief that the carport will detract from the value of the neighbor's house if/when they seek to sell. The appeal under consideration is one for an Area Variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered:

The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

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 variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Whether the alleged difficulty was self-created.

Members of the board do you have any questions regarding the meeting from back in August that you want to bring up? Being none he then asked Mr. Taylor to approach and give a brief on the new request.

Mr. Cliff Taylor approached he brought up the first request that was denied and asked if the comments still held for this request. He then addressed the comments from the first request, stating that there is speculation that this carport would have an effect on water, storing oil drums on the property and having a car repair business on the property. None of these are true. He would like to address the neighbor's concern about excessive water run-off. There is no excessive run-off from his property except what is collected at the swale. He stated that as of last August to date there have been no issues with water or snow in the swale area. He stated that he swept the snow off the concrete pad into the swale on his side of the property and there were no issues. He then brought up the concern about it being a detriment if they wanted to sell, and that he discussed it with several realtors and was told that the only way it would be a negative obstruction is if the construction was bad or it was in disrepair and not fixed.

Chairperson Mollnow asked Tess to bring up the photo of the nearby carport. He then asked the applicant if he was looking to do an attached carport

Mr. Taylor stated it would be stand alone. There was a discussion regarding the materials to be used for construction.

Chairperson Mollnow asked the members of the board if they had any questions about the application.

Member DeChiaro asked about the roof line if it would be slanted like the one in the picture

Mr. Taylor stated that it would slant away from his house towards the swale area. He told the board that he does have drainage in the concrete pad the length of the concrete pad and it runs to the back of the pad.

Chairperson Mollnow; members of the board any other questions on the application.

Member DeChiaro asked if the roof would go past the concrete pad area 6 inches

Mr. Taylor explained the roof line would stop at the west side of the pad

Tess then asked if the variance was for the roof

Mr. Taylor stated no it was for the first post as that is what falls beyond the setback allowance. He stated that it is more like 5 inches but he is asking for 7 to be on the safe side.

Chairperson Mollnow members of the board any more questions for the applicant?

Member DeChiaro I'm trying to understand, is the property line at an angle?

Mr. Taylor from the front of the property line to the back of the property line, yes it is, so the first post doesn't fall within the 10-foot setback.

Chairperson Mollnow looking at the screen stated that he can't tell if the property line is skewed or the driveway is skewed.

Mr. Taylor explained that the front of the property to the back of the property is not a true 90-degree perpendicular line that is why he is requesting the variance, which make the first post not fall within the 10-foot setback requirements, the other posts do meet the setbacks. If the property was a true 90-degree perpendicular line I wouldn't need this request. He stated that the concrete pad is shorter in the front than in the back.

Chairperson Mollnow asked the applicant how long the carport is from front to back

Mr. Taylor; 23 feet.

Chairperson Mollnow if you shorten it to 18 feet would you not need this variance

Mr. Taylor the length of it is the same no matter what, it's the distance from the house to where I put my first post.

Chairperson Mollnow what I'm saying is if you shortened it, pulled it back, made the carport shorter

Mr. Taylor oh you mean the overall length and put my first post further back? I would have to cut at least 6 feet off of it. But again if I have to do that, I would shorten up the width by 5 inches and build it out from there.

Chairperson Mollnow asked if the members of the board had any other questions.

Member Cotch asked about the letter from the City Engineer

Chairperson Mollnow then read the letter from Engineer Nathan; "it would appear that the proposed carport roof area would be very similar to the existing concrete slab which slopes away from the house and should not have an impact on the neighbors. Also please be aware that the land slopes to a swale line between the two properties which carries stormwater away". He then asked if members of the board had any other questions or comments for the applicant. Being none he read the one public comment that was sent in from Dan and Janet Harris at 20 Elizabeth Street opposing the project stating that it is the applicants desire to run a used car business on the property. He then asked if any other comments were sent in, being none he opened it up to public comments for people in attendance.

Mr. William Kowalski from 18 Elizabeth Court approached. He is opposing the project because of the potential water issues on his property. He stated that he had a contractor come and dig out an area so the water would run off in that direction to the storm drain. He stated that until the City fixes the road there will be an issue with the water, he also said that the water stands against his foundation and is deteriorating his foundation. Mr. Kowalski brought up the other carport shown earlier and said that carport is 20 feet from the next property, this is right next to his property and it is slanted towards his house and all water, melting snow etc. would be going right towards his house. He also pointed out that when the carport goes in the edge of the driveway would be built up which would make the water issue worse. He then asked if it was approved who would be liable for damage to his property. He stated that with the metal roof the water would shoot off the roof and go towards his property.

Chairperson Mollnow replied that he didn't want to speak for the engineer, but he was saying that the carport would have no additional adverse effects than the concrete pad has right now with the water.

Mr. Kowalski he doesn't live there so he doesn't know, how can he judge unless he's there and sees what's going on

Chairperson Mollnow replied to Mr. Kowalski that he understands his point and frustrations, to me it sounds like there are issues with the road, at the last meeting we talked to Joe and he got in touch with someone about the road issues, I'm just saying that the engineer is saying that the carport roof won't do anything additionally adverse than what the concrete slab is doing right now, and that's the information that we have right now. We can take your comments and concerns I just don't want to push you off but we want to keep the meeting moving along so unless you have other comments.....

Mr. Kowalski asked if he could show them pictures of the water issues. Mrs. Kowalski showed board members pictures on her phone from December.

Joe Seman-Graves then explained that that area is one of the last ones to have the storm and sewer separated and it is over capacity. The City is in the process of going out for RFQ's for the design of the separation project. But the water issue is because of the storm and sewer being combined there and not separated.

Mr. Kowalski stated that when he first moved there, there was an issue with water and when he had the end of his driveway cut and curved the water would go to the road, but when the city repaved the road it re-created the problem with standing water.

Joe Seman-Graves asked Mr. Kowalski if there was a downspout installed on the carport would it alleviate the issue

Mr. Kowalski said yes as long as it goes way to the back of the property—he pointed it out on the screen. He then stated that with the garage in the back Mr. Taylor put a gutter up but not on his side of the property so the water comes off that roof and with water coming off the carport roof would just create more issues with water against his foundation. He said they were out with shovels and brooms pushing the water away from their foundation. He just wants to know who is going to be responsible for the damage to his property if this is approved.

Joe Seman-Graves stated that would be a question for a lawyer.

Mr. Kowalski said they are trying to stop this before it creates damage to his property.

Chairperson Mollnow; as Joe said he's not a lawyer, I'm not a lawyer to decide who would be responsible. Mr. Kowalski any other comments?

Mr. Kowalski no

Chairperson Mollnow any other public comments? Being none he closed public comments. Board members any other comments, questions

Member Dion asked if they could have the applicant put a gutter on it

Chairperson Mollnow stated that they could make it a requirement. I personally think that if you look at the 3rd point of what should be considered for a 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; Mr. Taylor has said he'd rather narrow the carport than shrink it to make it so he wouldn't need the variance and that he would still be within the requirements, my personal thought is if he can make that narrower and not need the variance then that is the route he should take.

Vice Chair Kusaywa; my thought on it is whether he needs a variance for 7 inches or not, if he builds it the way he wants to build it there is going to be the same amount of water. You've got a

concrete slab that slants in that direction and inch of rain is an inch of rain whether it's coming off a roof or coming off a slab it is still going to the same place.

Chairperson Mollnow any other comments or concerns? Would anyone like to make a motion? I will make a motion to DENY this based on the 2 points I made. Considering the benefits of the applicant if he can do this without a variance and the last point whether the difficulty was self-created, this is a self-created issue, there is not any city zoning that created this conflict, so my opinion I want to make a motion to DENY this variance because the applicant said he can make it work without the variance.

Joe Seman-Graves; can I make a comment before the board votes?

Chairperson Mollnow; yes

Joe Seman-Graves; at this time you have the opportunity to require downspouts if he does change the design and doesn't need an approval

Chairperson Mollnow; would anyone like to make a counterpoint to Joe before we vote? Ok we have a motion by the Chairperson and 2nd by Member Dion motion carried unanimously to **DENY** the variance requested.

| | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|---------------------|-------------------|------------------|-----------------------|
| Chairperson Mollnow | X | | |
| Mark Cotch | X | | |
| Vice Chair Kusaywa | X | | |
| Carolyn Dion | X | | |
| Jacqueline DeChiaro | X | | |

CONSIDERATION OF AN AREA VARIANCE AT 24 MONTGOMERY STREET

Chairperson Mollnow; moving on to the next application this is for 24 Montgomery Street. The applicant is requesting 10 feet of relief on the required 10-foot side setback from the northeasterly property line for the construction of an accessory building in the form of a garage in the R-1 zoning district. Considerations regarding the property; the northeasterly side of the property (the location of the requested variance) does not neighbor any homes or buildings, but instead neighbors a wooded area. The building is to be placed with no setback from the northeasterly side property line, though the owner of the home maintains the lawn beyond his property, the northeasterly property line. The garage intended to be placed upon the property line in question will measure 24'x25'x8'.

The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered:

The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

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 variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Whether the alleged difficulty was self-created.

Chairperson Mollnow asked the applicant Mr. Retzlaff to approach and give details on the project. Mr. Mark Retzlaff approached and explained that at his house he has an existing driveway and the intention is to cut out a 24x24 pad and have an Alaskan slab put in place and then place a metal building on that. On the north side of my property I don't have the 10-foot setback, so this would be pretty much right on the property line and that is a wooded area.

Chairperson Mollnow asked who owned the property to the wooded area

Mr. Retzlaff stated that it is a paper street and beyond that is City lots

Chairperson Mollnow asked if the board members have any questions on the application. He then asked if any public comments were sent in, being none he opened it up to public comments for people in attendance. There were no public comments so public comment session was closed. It was then opened up to members of the board for any other comments or questions.

Member Cotch verified that it is a paper street and was never used as a street.

Chairperson Mollnow asked Joe Seman-Graves if there were any plans of using that as a street

Joe Seman-Graves stated no as it would go onto private property, so there is no future of it being used as a city street, and he explained the process should the city decide to sell.

Chairperson Mollnow asked if there were any other questions or comments being none asked for a motion on the application.

Motion made by Member Cotch to approve the application 2nd by Vice Chair Kusaywa motion carried unanimously.

| | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|---------------------|-------------------|------------------|-----------------------|
| Chairperson Mollnow | X | | |
| Mark Cotch | X | | |
| Vice Chair Kusaywa | X | | |
| Carolyn Dion | X | | |
| Jacqueline DeChiaro | X | | |

CONSIDERATION OF AN AREA VARIANCE FOR 47 CONLISS AVENUE

Chairperson Mollnow; moving to the next application, this is for 47 Conliss Ave. the applicant request a 2-foot relief from the required 10-foot side setback from the northerly property line for the construction of an accessory building in the form of a garage in the R-2 zoning district. Considerations regarding the property; the proposed new garage has measurements of 24' x 12'. The property owner plans to mitigate any drainage impacts of the new garage with the placement of a gutter. The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered:

The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

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 variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Whether the alleged difficulty was self-created.

Chairperson Mollnow asked Mr. Willi to approach and give brief description of the project.

Mr. John Willi approached and explained that when you are looking at his house, the driveway come up and there's a side door and a 3-foot sidewalk by that sidewalk is where I want to place the left side of the garage, the right side of the garage will be 8 feet from my neighbor's property, so I need the 2-foot variance in order to place it on the property.

Chairperson Mollnow and you want to place this on an existing driveway?

Mr. Willi yes

Joe Seman-Graves explained the property lines and distances

Mr. Willi stated that he spoke to his neighbor and they didn't have a problem with the garage they did request that Mr. Willi place a gutter on their side to alleviate any water issues.

Chairperson Mollnow asked if any board members had any questions regarding the application. Being none asked if any public comments were emailed in, with none he opened it up to public comments from the people present. Being no public comments, public comment session was closed. It was then opened to the members of the board for any comments or discussion

Member DeChiaro asked if the board could put on that the neighbor asked for a gutter to be placed on the garage, can we put it in there?

Chairperson Mollnow yes we can make a request like that. Are there any other questions?

Vice Chair Kusaywa made a motion to approve the application 2nd by Chairperson Mollnow **with the requirement that a gutter be placed on the building on the neighbor's side of the property** (the setback side of the property) motion carried unanimously.

| | YES | NO | ABSTAIN |
|---------------------|------------|-----------|----------------|
| Chairperson Mollnow | X | | |
| Mark Cotch | X | | |
| Vice Chair Kusaywa | X | | |
| Carolyn Dion | X | | |
| Jacqueline DeChiaro | X | | |

CONSIDERATION OF 8 AREA VARIANCES FOR 9 CHARLES STREET

Chairperson Mollnow now on to 9 Charles Street. The applicant is seeking 8 area variances from the tow family dwelling bulk requirements in the R-2 zoning district for the purpose of conforming the lot to the existing structures. The area variances requested are as follows; minimum lot size requirement for a 2-family dwelling is 7,500 SF and the proposed lot size is 1,825 SF (5,675 SF relief), minimum lot width requirement for a 2-family dwelling is 50' and the proposed lot width is 36'5" (13'6" relief), minimum lot depth requirement for 2-family dwelling is 100' and the proposed lot width is 50' (50' relief), side setback is required to be 10' from the property line and the current northeasterly set back 8'8" (1'2" relief), side setback on the side of the building is required to be 10' and the current southwesterly setback is 0 (10' relief), rear setback is require to be a minimum of 20' and the current setback is 1'5" (18'5" relief), front setback is required to be a minimum of 5' to 10' and the proposed setback is 0' (10' relief) and the maximum allowable lot coverage requirement for a 2-family dwelling is 50% and the current lot coverage is 90% (40% relief)

The property neighboring 9 Charles to the northeast is 28 Wilmer Ave. these neighboring properties were once owned by the same person, who built a nonconforming porch in the side yard

between the two. Now the executor of the properties is attempting to separate the two into sellable lots with no overlapping exterior features. The applicant will appear before the Planning Board in May with a subdivision application to finalize the lot, if approved for variances by the zoning board. Though 2-family dwellings require a special use permit in the R-2 zoning district, the 2-family dwelling on the lot at 9 Charles Street is considered legal nonconforming as it has been grandfathered in. That being said, should this suffer catastrophic damage, it could not be rebuilt as a 2-family dwelling without obtaining a Special Use Permit.

The appeal under consideration is one for an area variance. For an area variance to be legally granted pursuant to Section 81 of the General City Law, the following issues must be considered: The benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant;

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 variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

Whether the alleged difficulty was self-created.

Joe Seman-Graves told the board that both of the lots are nonconforming but 48 Wilmer is not impacted at this time. He pointed out on the screen where the property lines are currently.

Chairperson Mollnow asked the applicant Mr. Flatley to approach and if there is anything they can add

Mr. Kevin Flatley approached and said everything was covered, as they are requesting every variance they possibly can. It is simply to make the parcel sellable.

There was a discussion on where the property line is, which runs through where the porch was built.

Member DeChiaro asked the applicant if the structures were going to remain as is

Mr. Flatley replied yes

Chairperson Mollnow to Joe Seman-Graves; the only reason they are going for these variances is so that they can go and get planning board approval for lot line adjustment.

Joe Seman-Graves responded that the applicant had to get this done first before going to planning and then it would go to the county to be recorded.

Chairperson Mollnow asked the applicant if one or all of these were not approved what would you be able to do with the property?

Mr. Flatley we couldn't sell them

Chairperson Mollnow not as 2 properties?

Mr. Flatley stated they would never be able to get title insurance, or anything on 28 Wilmer because of the encroachment. I don't see any other alternative.

Chairperson Mollnow; I just wanted to ask the question. Members of the board do you have any questions about this application?

Member DeChiaro wanted clarification on if something happened to 28 or 9 even if this was granted then 2 family could not go back on those properties unless they got a special use permit.

Joe Seman-Graves explained that the 2 family on 9 Charles is grandfathered in if that is destroyed it would be grandfathered in. He told the board that they are only looking at 9 Charles with these variances, if something happened with 28 Wilmer that would be looked at in the future.

Chairperson Mollnow asked if the members of the board had any other questions or comments about the application. Being none he asked if there were any public comments sent in, being none he opened it to public comments being none closed public comment period. He then opened it up to the board for any discussion.

Chairperson Mollnow stated that he believed that the variances should be approved because as the applicant said the only thing you can do, because of the way the lots are orientated and the structures have been built it would be a substantial cost to get these to conforming lots.

Member DeChiaro stated that when she first looked at the application and saw what the requests were, she thought it was substantial but then when she read about the property, she understands that the property is existing and they are just looking to adjust the property line so it can be looked at as 2 different parcels. And I liked the part that said if something were to happen they wouldn't be able to just replace it, because they are nonconforming they would have to come back to the boards and be reviewed and get something on that parcel. With all of those stipulations, I agree and I think it is reasonable to ask for what is being asked.

Chairperson Mollnow asked if there were any other comments, being none Chairperson Mollnow made a motion to approve all of the variances, all being in one resolution 2nd by Vice Chair Kusaywa motion carried unanimously

| | <u>YES</u> | <u>NO</u> | <u>ABSTAIN</u> |
|---------------------|------------|-----------|----------------|
| Chairperson Mollnow | X | | |
| Mark Cotch | X | | |
| Vice Chair Kusaywa | X | | |
| Carolyn Dion | X | | |
| Jacqueline DeChiaro | X | | |

There was a discussion regarding the application for 19 Elizabeth Court.

With no other business to discuss Chairperson Mollnow made a motion to adjourn the meeting at 7:25 PM.