

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
November 25, 2013**

MEMBERS PRESENT: Mr. Sarni, Mr. Hammond, Mrs. Galante, Mr. Lippencott, Mr. Powell
MEMBERS ABSENT: Mr. Stachura

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, November 25, 2013 at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Chairman Powell in accordance with the Open Public Meetings Act. The flag was saluted and roll call taken.

Certification for the September 23, 2013 meeting was submitted by Mr. Hammond.

MINUTES

Mr. Sarni made a **motion** to approve the minutes of November 25, 2013, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Hammond, abstain, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

HEARING

Theresa Martin, Block 3305, Lot 6, Cal. No. 585 – Addition to Existing Garage

Theresa Martin and Andy Martin were present. Both are still under oath. Certification was submitted by Mr. Hammond for the September 23, 2013 meeting.

Mr. Martin reviewed the following report by Mr. Rodman, dated 11/22/13:

This application is to build a 24'-0" x 40'-0" garage addition on an existing garage in the R-5 Zone. This is a corner lot and therefore has two front yards fronting on Fredon Road and Cedar Ridge Road. The definition section of the Ordinance states that front yard for a corner lot is on the side the driveway is located. The driveway for this lot is located on Cedar Ridge Road. The existing garage is located in the front yard fronting Cedar Ridge Road. The addition would make a non-conforming condition more non-conforming.

The new survey shows a front yard setback of 3.27" (I assume this should be feet) for the proposed new addition to the garage. The wall will be "0.7" clear" and I assume that is of the right-of-way. The existing garage encroaches into the Cedar Ridge Road right-of-way by 1.8 feet. See additional comment #6 below.

Lot coverage calculations were not provided. The ordinance states for areas of lots less than two acres (this lot is 0.45 acre) maximum coverage is 15%. This still has not been provided. I believe this may require another variance.

The applicant has indicated that this garage addition is for storage of seasonal items and parking of the owner's personal vehicles. The applicant has indicated that because of recent flooding, their basement can no longer be used for storage.

It appears that construction has started on this project. The Zoning Officer has informed me she issued a "Stop Work" notice, pending any approval of a variance request.

Arlene Fisher, the Zoning Officer, has deemed this application complete with waivers on August 8, 2013. The applicant has provided a certified list of adjacent property owners within 200 feet. Also, certification of paid taxes has been received.

A hearing commenced on September 23, 2013 and was carried to the November meeting.

The following **additional comments** are made at this time:

1. This application seeks variance relief from Section NJSA 40:55D-70C of the MLUL. The applicant should provide testimony stating why the benefits of this deviation would substantially outweigh any detriment.
2. Certification of paid taxes has been received.
3. We have received an engineering certification for the wall prepared by KSM Engineering, dated October 25, 2013, prepared by Jack E. O'Krepky, P.E. Since this retaining wall affects a Township Road, we have forwarded this certification and plan to Mike Vreeland, Township Engineer, for his comments and review. Mr. O'Krepky certifies that the wall "meets New Jersey requirements for safety." After discussions with Mr. Vreeland, it is recommended that Mr. O'Krepky provide certification after construction is complete that the wall was built according to the approved plan. In addition, he shows a proposed 70 linear foot guiderail in the Township right-of-way. We would recommend that a design engineer provide a certification that this guiderail meets NJDOT requirements regarding length and end-treatments. I assume these guiderails will be installed at the applicant's expense. The certification and installation of the guiderails could be a condition of receiving a C.O.
4. The application form states that this building is for the "storage and enclosed parking spaces for the residence". Since there is not garage door, I assume that the existing garage will be used for vehicle storage and this building will be used for just storage.
5. The height of the building is shown as 12'-6" in the title block of the original application. No dimensions are shown on the drawing. The drawing also shows a cupola. There was some discussion whether the cupola was included in the 12'-6". This should be resolved. Section 240-104G(10)(b)[2] limits the height of garages to 15 feet. This section 240-104G(c)[5] also states that garages shall contain no more than three motor vehicles.
6. The survey shows that the existing garage encroaches 1.8' over the property line onto Cedar Ridge Road right-of-way. The survey also shows the proposed building will be 3.27" (I believe he means feet not inches) "clear of the line". I assume that is the right-of-way line. Section 240-107D(4) prohibits accessory buildings in the front yard and gives a minimum setback of 50 feet from the street line. The Board Attorney should advise if proper application and notice have been provided for this variance.
7. The existing driveway is inadequate. It has poor sight distance. However, since there will be no increase in vehicles, Arlene Fisher, the zoning official, said she would not require improvement of this driveway.

In response to #5 and #6 of Mr. Rodman's report, Mr. Martin indicated no cupola would be installed and the setback to the building is 3.27 feet, not inches. Mr. Morgenstern provided a document from Mr. O'Krepky indicating the setback was 3.27 inches. The Board determined this setback would need to be clarified.

Mrs. Martin testified the size of the garage has been reduced to 24' x 30' and the building is clear of the property line; the setback is 3.27 feet. Mr. Powell felt there were two setbacks that needed to be clarified: the southeast and southwest corners of the proposed structure, which is not clearly depicted on the survey provided.

Mr. Martin provided a lot coverage calculation of 11.55 percent. Mr. Rodman indicated all impervious coverage must be included and after further review Mr. Rodman determined the lot coverage was 15.9 percent and would require a variance. The applicants asked for approval to move forward with the wall construction at this time. Mr. Rodman stated he and Township Engineer Mike Vreeland had approved the wall. The triangular portion of property shown on the survey between the right-of-way and the property line was questioned and the applicant stated it was owned by the township. Mr. Powell noted that since the right-of-way and the property line diverge away from each other, the wall is technically located in the side yard.

Side yard setback: .7' proposed; 25' is required.

The installation of a guide rail was discussed and Mr. Rodman recommended an engineer certification that the guide rail meets NJDOT requirements regarding length and end treatments. Mrs. Martin expressed concern on installing a guide rail on property that she does not own. Mr. Powell stated township approval would be necessary. Mrs. Martin expressed concern with her neighbors being able to access the right-of-way for their lawn maintenance, which they will not be able to do with the guide rail installed. Mr. Powell felt the guide rail could be run along the property line to address this issue, and he informed the applicants they would be responsible for the cost of the guide rail. Further Board discussion was held on the matter, and the Board determined the guide rail would be installed as per the recommendations of the Township Engineer in coordination with the applicant's engineer Mr. O'Krepky.

Mr. Morgenstern reviewed the variances necessary for the garage and wall:

1. Garage – accessory structures are not permitted in the front yard
2. Garage addition – front yard setback “to be determined”; 50' is required.
3. Garage addition – side yard setback “to be determined”; 25' is required.
4. Garage – maximum size of an accessory structure: 1,223 sq. ft. is proposed; 1,000' is permitted.
5. Maximum lot coverage – approximately 3,100 sq. ft. proposed; 15% /2,969.1 sq. ft. permitted.
6. Wall – side yard setback: .7' proposed; 25' is required.

Mr. Morgenstern reviewed the suggested conditions for the wall:

1. Location, design and materials to be approved by the Township Engineer following review of a proposal by the applicant's engineer.
2. Guide rail to be installed and maintained by the applicant.
3. Access to lane to be coordinated with the Township Engineer.
4. Drain pipe to be installed by the applicant shall not discharge on to the property of others.
5. Permission for grading shall be obtained from the owners affected.
6. Building permit shall be obtained from the Construction Official.
7. Zoning Board Engineer shall review all submittals to determine satisfaction of conditions. The applicant can apply for a zoning and building permit once the conditions have been satisfied.
8. Certification by the applicant's engineer that the wall is constructed in accordance with the plans submitted.

Mr. Lippencott questioned the 6" PVC pipe noted on the plan from the French drain to the swale. Mrs. Martin indicated the pipe will be installed across her property and will dump water to the ditch along Fredon Road. The drain will be installed in conjunction with the wall. Mr. Powell suggested a condition that the water cannot discharge on any property other than the applicants. Mr. Rodman commented that Mr. O'Krepky's note indicates grading on other lands would require an agreement with the affected parties. It appears it will affect Lot 7 and should be a condition of any approval.

At this point, this portion of the meeting was opened to the public at 8:35 p.m. There being no one from the public wishing to speak, this portion of the meeting was closed at 8:35 p.m.

Mr. Lippencott made a **motion** to approve the side yard setback variance, conditions applying, to construct the wall, seconded by Mr. Sarni.

Roll Call Vote: Mr. Hammond, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

Mr. Sarni made a **motion** to allow the applicant to waive her right to wait to receive the resolution as she requested, at her own risk, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Hammond, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

Mr. Hammond questioned if water entered the basement during the flooding last year. Mrs. Martin replied that it had entered the basement but not the existing garage and explained this is the reason for the garage addition for additional storage.

The Board asked the applicant to obtain the setback from the existing corner of the garage to the right-of-way and to the property line; and from the proposed corner of the garage addition to the property line. Mr. Powell circled the areas in question on the survey and provided it to Mr. Martin.

Mr. Morgenstern reviewed the suggested conditions for the garage:

1. The use of the a garage is limited to uses permitted by ordinance 240-104(g)(10) – maximum of three vehicles to be stored in the garage; limited to residential storage.
2. The garage will not be used for human habitation or business.
3. Taxes and fees to be paid.
4. Comply with all laws, rules and regulations.
5. Building plans to be submitted to the Construction Official and permit obtained.
6. Sussex County Planning Board approval or letter of no interest.
7. Variance expires within 9 months unless building permits are obtained.
8. If roads are damaged during construction, applicant must repair the same to the satisfaction of the Construction Official or building permit can be revoked or CO rescinded.
9. Garage shall be constructed no closer than _____ to the right-of-way of Cedar Ridge Road.
10. Garage shall be no higher than 15 feet; no cupola to be installed.
11. The restricted covenant runs with the land and is binding on the grantee, heirs, successors or assigns.
12. All deeds and easements shall be reviewed and approved by the Zoning Board Attorney.
13. Comply with the Township Engineer's report.
14. No permanent CO until all conditions have been met.

Mr. Morgenstern reviewed the garage variances as follows:

1. Garage – accessory structures are not permitted in the front yard
2. Garage addition – front yard setback “to be determined”; 50’ is required.
3. Garage addition – side yard setback “to be determined”; 25’ is required.
4. Garage – maximum size of an accessory structure: 1,223 sq. ft. is proposed; 1,000’ is permitted.
5. Maximum lot coverage – approximately 3,100 sq. ft. proposed; 15% /2,969.1 sq. ft. permitted.

At this point, this portion of the meeting was opened to the public at 9:01 p.m. There being no one from the public wishing to speak, this portion of the meeting was closed at 9:01 p.m.

After first making a motion to approve the variances for the garage with front and side yard setbacks to be provided, Mr. Lippencott amended his motion as follows:

Mr. Lippencott made a **motion** to authorize the Board Attorney to draft a resolution for the garage with accurate setbacks to be provided by the applicant, seconded by Mr. Sarni.

Roll Call Vote: Mr. Hammond, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

Mr. Powell explained to the applicant that the setback dimensions would need to be drawn on the survey and six copies would be required, signed and sealed.

Mr. Sarni made a **motion** to cancel the meeting scheduled for December 23, 2013, and reschedule the meeting to December 30, 2013, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Hammond, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

Mr. Sarni made a **motion** to carry the Martin application to December 30, 2013, no further notice being necessary, seconded by Mr. Hammond.

Roll Call Vote: Mr. Hammond, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

BILLS

Mr. Sarni made a **motion** to pay the following bills, seconded by Mrs. Galante:

<u>Dolan & Dolan:</u>	General – October	2013	\$ 77.50
	Escrow – Martin		\$ 77.50
	Escrow – Martin		\$ 38.75
Escrow Refund:	Mueller		\$289.35

Roll Call Vote: Mr. Hammond, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mr. Sarni, yes, Mr. Powell, yes

Correspondence: NJPO Planner

At this point, this portion of the meeting was opened to the public at 9:16 p.m. There being no one from the public wishing to speak, this portion of the meeting was closed at 9:16 p.m.

Mr. Hammond questioned if the Nextel project was still moving forward. The Board had no information indicating otherwise.

Mayor Gross - Committee Liaison Report: No Report.

There being no further business, Mr. Hammond made a **motion** to adjourn the meeting at 9:18 p.m., seconded by Mr. Powell. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Eric Powell, Chairman