

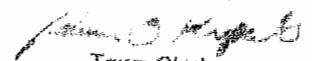
NEWINGTON ZONING BOARD OF APPEALS

Regular Meeting

August 4, 2022

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IN NEWINGTON, CT

2022 AUG -9 AM 10:31

  
Town Clerk

**I. ROLL CALL**

Commissioners Present

Commissioner Bachand  
Commissioner Bechter'  
Commissioner Hutsvagner  
Chairman Pane  
Commissioner Sharon Dunning-A

Commissioners Absent

Commissioner Connelly-excused  
Commissioner Michael Karanian-excused

Commissioner Dunning was seated for Commissioner Karanian

**II. PUBLIC HEARING**

- A. Petition 22-2022-02: 70 Broadview Street; Variance request from Section 4.5 (Table A) to allow the construction of a second floor addition to be 5.5 feet from the side property line where 10 feet is required. Zone R-12 Map/Block/Lot: 21/061/000. Applicant: Michael N. Macke

Chairman Pane: Before we begin, let me just explain about the ZBA and how it is usually run. There are two parts to the meeting. The first is the public session where the petitioner will begin by stating their name and address and explain what their hardship is. After the petition has been heard, anyone from the public may speak, expressing whether they are for or against the petition. After all of the public participation is heard the public session of the meeting will be closed. During the work session, the public may stay, but cannot comment. If the petitioner does stay for the work session, that is no problem at all. If not, they can call the building department in the morning and they will let you know what the decision is.

Michael Macke, 70 Broadview Street, Newington: I'm looking to add a second story addition to the house. This addition would just be going straight up, we wouldn't be adding anything to the side of the property. We would just like to go straight up with it. We're not changing the footprint at all.

Attorney Kelly: Good evening, my name is John Kelly and I'm the attorney for the applicant and also with the applicant is his wife Samantha Macke. Just as Mr. Macke indicated, there are just minor revisions proposed to the house. The house is in an R-12 Zone and when the house was

built there was the requirement of 70 foot frontage, which is what the case is, and the Mackes would like to explain to you what the proposal is, and what the proposed changes are going to be, so if I may, I will ask them to explain the proposal.

Samantha Macke: We currently live in just the one story family house, and we are just looking to add on a second story addition, so we want to be going up within the footprint of our existing home. We wouldn't be going past any of the existing boundaries that there are right now. When the house was built I believe there were five and a half feet between our house and the property line which were the zone regulations back then, this was like back in 1956, 1960 when the house was originally built. We would just like to add a second story addition. It kind of fits in with the rest of the neighborhood, we're only one of maybe three houses on our street that are a single floor, everyone else pretty much has a second story addition. We are just looking to do that and not change any of the original footprint of the house, just going straight up. Not encroaching on any other property lines or anything like that.

Michael Macke: Our family has grown significantly, we actually have a five month old and a three year old now so we kind of want to stay in Newington and be able to raise our family here.

Chairman Pane: Okay, is there anything else? Anything you would like to add, or if there is any other Commissioners that would like to ask any questions?

Commissioner Dunning: I have a question. The diagram is hard to read, but I was just curious what the dimensions of the second story are. Is it more like a second bedroom kind of thing.

Erik Hinckley: I can't speak for the applicant, but I believe they are putting a complete second story addition on.

Michael Macke: Yes, we're just stacking in on top of what is there.

Attorney Kelly: As Samantha Macke indicated, there would be no going beyond the current footprint, it would just be a straight up second story.

Samantha Macke: The existing house is currently 44 feet by 24 feet.

Erik Hinckley: I do have one comment. As we all probably realize, he says he wants to go straight up and that is correct, my guess is depending on the design, that the roof, the roof line will probably encroach with the eaves more than the existing building does now, probably by a foot or something like that, that would be all part of the construction.

Chairman Pane: I have a question, what is your hardship, or reasoning for putting a second story on? I didn't see a hardship in there, so I'm wondering what is the hardship for wanting to get this.

Attorney Kelly: I will point out to the Commission that under the regulations of the zoning board of appeals this is not a condition that they created when the house was built. The frontage and the requirements were, they met them at 70 feet, and now that has changed in the R-12 zone and the change that they are proposing is not a change that is going to be different from the character of the neighborhood. As the applicant indicated, they are one of a few single story units in that neighborhood, the vast majority of them are multi-story, at least two stories, and there is no special privilege here or anything, this is the kind of thing that has been approved by this Commission in the R-12 Zones in other applications. Obviously there was an application that was approved at your June meeting in a similar situation, and the design and the work that is proposed would be in harmony with the regulations and consistent with the character of the neighborhood.

Chairman Pane: I understand that, but I want to make it clear that each application and each petition is actually different from everything. We don't go with past precedent and honest, not for nothing, the hardship for the neighborhood being a multi-family and two story home is not technically a valid hardship. In the regulations of Section 8.6, I'm just trying to really figure out what the hardship is in my own point of view. The June meeting, or whatever it was, that has nothing to do with this application and it shouldn't be brought up, it was a special thing and we all voted on that, with a specific ordinance and that should not be brought up at this meeting for reasoning behind this application.

Attorney Kelly: Your regulations do indicate that the Commission must consider the zone that the applicant is in, and so when the committee factors in the zone, the previous application was also an R-12 zone, and obviously the regulations include references to the R-12 zone and what is permitted in the R-12 zone, and again, these restrictions on the property is not anything that this particular applicants had anything to do with, this is what was required before the regulations changed. The hardship is that they cannot maximize the use of their property, which is a consistent use, it is still going to be a residential property, a single family residential property and they are just looking to conform to the regulations that they currently conform to, but just to be able to go to a second story which again is consistent with the vast majority of other properties in that neighborhood.

Chairman Pane: Okay, any questions from any of the Commissioners? Would the applicant like to add anything at all?

Commissioner Bachand: I have something. If I understand correctly, it is just another situation where originally it was a five foot side yard, now it's a ten foot side yard is that correct?

Attorney Kelly: Yes.

Commissioner Bachand: The minimum requirement was changed at some point after the house was built. So, I think it was valuable information that Erik shared with us today, what is required of the application. Did they not list the hardship in the application, is that what we are saying?

Erik Hinckley: I believe the Chairman had some questions and I don't necessarily see a lot of discussion and they really haven't come up with a direct hardship other than what Mr. Kelly just stated, that they can't maximize their use of their property.

Commissioner Bachand: What I'm saying, is there a requirement to list it in the application, it has to be written?

Chairman Pane: No, not at all. There is no requirement, correct?

Erik Hinckley: Well in the packet we give the applicant there is a briefing on a hardship and what a hardship is, and that is, under state statute, Section 8.6, ZBA variances must state the hardship with the land, and that is the way it is supposed to be viewed.

Commissioner Bachand: I thought that was valuable information that you provided and some day we should go over that and see if we have a consensus on each point, but I'm not advocating for the applicant, but I believe I heard a hardship when he stated that he has a growing family and there is no more room in the house and it needs to be made bigger. I don't know if that qualifies as a hardship, but it sounds like a hardship to me.

Chairman Pane: It is not technically.

Erik Hinckley: It is not supposed to be personal or financial. They are supposed to demonstrate some hardship with the land.

Commissioner Bachand: With the land?

Erik Hinckley: Yes, like an odd sized lot, like we had on the corner lot a couple of years ago.

Chairman Pane: I think years ago, they were supposed to do a railroad on Connecticut Avenue, there was a railroad proposed, because they had such a big frontage, and that was the only reason they couldn't put anything in the front, and there was no railroad going to be put into the road there. That was an odd hardship, and it goes with the land.

Commissioner Bachand: So I guess the question is there room on the land to must make it an addition, but then if you follow the side yard of what is there now, like we did with a recent applicant, then you would still be within five feet, just making a bigger footprint. I'll listen to some more answers or some more comments and see if I have any more questions.

Attorney Kelly: I would say that going up is the way, if the Commission agrees is going up to a second story is the way to keep the property most in compliance with existing character of the neighborhood and existing zoning regulations and the frontage issue is the thing that creates the development of the hardship here, so that is the issue, but that is what was approved by the town years ago when this house was first approved.

Commissioner Bachand: I don't think it is the frontage, it's the side yard that is the issue. Correct me if I'm wrong, but it's the side yard.

Attorney Kelly: The frontage comes into it in the definition of how much side yard is required, that is the regulation.

Chairman Pane: I have a question for the applicant. The roof line is going to go over the side setback as well, even though you are going up. Are you going to be able to put a jog in, because it is going to be less conforming now than what it is, I think it was five and a half feet, so now I'm assuming at least a half a foot for the roof, if not a little bit more. Is that going to be jogged in for that, because now you are going to have more nonconformity.

Samantha Macke: Just the front and the back of the house, just the front will have an overhand, but the side of the house, on either side is not going to have anything.

Chairman Pane: There is not going to be anything, no jog out, it's just going to be flat?

Samantha Macke: Yes.

Attorney Kelly: And the front is well within the requirements anyway. So that is not anything that is going to be outside of the requirements anyway.

Chairman Pane: Any other questions from any other Commissioners? Is there anything else from the applicant or anyone who would like to speak or say anything, for or against?

Commissioner Bachand: Erik, were there any neighbor complaints or any neighbor concerns?

Erik Hinckley: I got no contact from any neighbor, either for or against.

**III. PUBLIC PARTICIPATION**

None

**IV. WORK SESSION**

Chairman Pane: Anyone have any comments, want to say anything?

Commissioner Bachand: In my opinion, I still think we should go over that information that Erik shared so that in the future we are a little more in unison in our interpretation of it, but I see a hardship still because the zone was changed and it created a non-conforming, so someone might argue for or against that opinion, but I still think there is a shadow of a doubt that is a hardship that they did not create.

Commissioner Dunning: I'm just curious because we can revisit time to time, that can be sent back to the Planning and Zoning because the structure, the original structure was built in the '60's so obviously people are locked into a certain zoning restriction or setback or could they modify that area so that people could do different things with modifying their property to conform with 2022 or going forward.

Erik Hinckley : I can speak to that. You have zoning regulations in place, the town Planning and Zoning Commission cannot vary or change a zoning regulation like this. That is what the ZBA is for. If you, like the mechanicals that we recently altered and changed, if you continue to get applications like this, you could request that TPZ make some modifications to the regulations and change the regulation.

Commissioner Dunning: That is what I was meaning to imply, if they were to change the regulation down the road, but I do understand that it follows a set regulation as it stands.

Commissioner Bachand: On that same line, it was the TPZ that changed the zone, correct, after the property was built, after the neighborhood was developed.

Erik Hinckley The zone didn't change, the setback requirements changed within the zone.

Commissioner Bachand: So it was always R-12?

Erik Hinckley: To my knowledge, yes.

Commissioner Bachand: The setbacks for the zone changed at some point. Not on an individual basis, but on.....

Erik Hinckley: It does come up, many people work around it if they can, others come before you, again, the main reason is we don't have a clear definition of what to do with a vertical expansion as other towns have in their regulations, we don't. I don't know of often this has come up in the past, this is my first one with a second story, I don't know if you remember any?

Commissioner Bechter: Looking at Section 8, Appeals, 8.1.3.5, A-5. If we agree that the variance will be in general harmony and intent of the zoning regulations.

Erik Hinckley: It would appear to, the majority of the houses out there are two stories, whether those two story homes have side yard setback issues I don't know. They would be.....

Chairman Pane: They could have been built that way originally.

Erik Hinckley: Correct, they could be perfectly fine and all within the setbacks. I don't know that, I'm not aware of any requests like this for Broadview or any where else in town.

Chairman Pane: Anything in the work session that anyone would like to talk about? We will close the work session.

**V. MINUTES OF PREVIOUS MEETING**

Commissioner Dunning: I would like to correct the record to show that my last name is D-U-N-N-I-N-G. It says Denning in the minutes.

Erik Hinckley: You can accept the minutes with that change.

Chairman Pane moved to accept the minutes of the previous meeting with the change of Commissioner Dunning's last name. The motion was seconded by Commissioner Bechter. The vote was unanimously in favor of the motion, with five voting YEA.

**VI. COMMUNICATIONS AND REPORTS**

Erik Hinckley: The only communications I have is that as you know, we have been working on the mechanical unit setback. That regulation was just changed by TPZ. It will have an effective date of August 17<sup>th</sup>, so we shouldn't see any more of these. It now gives that a little more latitude with a five foot setback.

Chairman Pane: I think generators also were included.....

Erik Hinckley: All mechanical. As we all know, they are a lot quieter than back in the old days, and in a neighborhood like this, it works out a little better, it doesn't make people make an extra long electrical run or something that they have to tuck it around a corner in the back or something.

Commissioner Hutsvagner: I have a question. The recent legislative change about the accessory buildings, what is the town's stance on that? Have we opted out or opted in?

Erik Hinckley: I believe they just had the public hearing on that, and the Town Council chose to opt out.

Commissioner Hutsvagner: Thank you. I was not at that meeting, I was on vacation.

Erik Hinckley: TPZ recommended that they opt out.

Commissioner Hutsvagner: I know it's a big hot topic in Connecticut right now.

Erik Hinckley: If we do opt out, it will give TPZ a chance to make their own regulations, maybe less stringent than the State, or however they decide to do it, but still allow it. We do allow it

now, but some of our regulations don't necessary gibe with what the state came up with, so they will have to rework some of that stuff.

**VII. NEW BUSINESS**

- A. Petition 22-2022-02: 70 Broadview Street; Variance request from Section 4.5 (Table A) to allow the construction of a second floor addition to be 5.5 feet from the side property line where 10 feet is required. Zone R-12 Map/Block/Lot: 21/061/000. Applicant: Michael N. Macke

Chairman Pane: I'll make a motion to not approve. I don't see where there is a valid hardship in this application. I don't know if there is anyone else that wants to make another one, or whatever you would like to do. If you would like to take a vote, we can.

Commissioner Bechter seconded the motion.

Erik Hinckley: And this is a vote to not approve the petition.

Commissioner Bachand: If I might say one thing first, I don't know if it is too late, I was leaning towards approving so does that mean I would have to make my own motion. I'm not trying to go against the consensus of the Commission.

Chairman Pane: let me ask Erik if he makes his own motion or does he vote No.

Erik Hinckley: There should just be one motion on the floor and you should act on it.

Chairman Pane: So John, if you were against the motion, you would just vote No. This is a motion to deny. You would say yes if you were denying, vote no if that is how you feel. After a roll call vote, the vote was two in favor (Bechter, Pan), with three opposed, (Bachand, Dunning, Hutsvagner). The motion was denied since approval needed four votes.

Commissioner Bachand: I was just wondering, where does that leave the applicant, since it was denied, can they reapply or.....

Erik Hinckley: Their option is to appeal to the courts. Or they can alter their plan.

Chairman Pane: They can alter the plan to go into the side setback.

Erik Hinckley: To not go into it, or put a rear addition on, they have other options. It will be up to them.

Commissioner Bachand: So with this Commission, we need at least four.

Erik Hinckley: You always need four. Not a simple majority, it's four votes. That is why we give the petitioner, if there are four Commissioners an option to postpone the meeting because they don't think they are going to have four votes because it is not a simple majority, it's four votes because you are varying the regulations, and that is by state statutes.

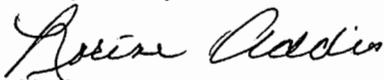
**VIII. OLD BUSINESS**

None

**IX. ADJOURNMENT**

Commissioner Hutsvagner moved to adjourn the meeting. The motion was seconded by Chairman Pane. The meeting was adjourned at 7:35 p.m.

Respectfully submitted,



Norine Addis,  
Recording Secretary