

ZBA Minutes Meeting of April 22, 2009 – Silva

Members Present: Robert Cadle, Chase Duffy, Harris McWade, Alison Manugian, Mark Mulligan

Chairman Cadle convened the Silva variance hearing by reading the Legal Notice.

Bartlett Harvey and Mark and Karen Silva were present. Mr. Harvey noted that he had prepared the application and that he was not an attorney, but incidentally involved.

Mr. Mulligan asked whether a variance from setback was the only thing asked for.

Mr. Harvey said that that was correct.

Chairman Cadle asked for clarification about the application asking for a three-car garage and accessory apartment.

Mr. Harvey said that the apartment is being created as a by right two family.

Chairman Cadle noted that there was a detailed application submitted, but no detailed plans of the actual project. He said that he wanted clarification regarding the two family vs. an accessory apartment attached by a porch.

Mr. Harvey said that he can submit plans.

Discussion ensued regarding how the garage is being attached to the house: the applicant noted that it is by a permanent porch with a roof that will also have a handicap lift, along with open sides and a paved walk. Discussion also ensued regarding whether would this would qualify as an accessory apartment or a two family dwelling. Mr. Harvey said that the application was filed this way on the advice of the Building Inspector.

Mr. Silva said that if there is some problem, he could address it, although he was led to believe that this was okay.

Mrs. Duffy noted that this is hardly a duplex.

Chairman Cadle said that a two family is a duplex and needs to look like a single building vs. two separate structures attached by a walkway.

Mr. Mulligan said that a two family can be created if not significantly differently than a single family, and here, there is a big garage attached with an apartment on the upper floor.

Chairman Cadle said that he feels there is a distinction between this and accessory apartments.

Discussion ensued about some of the differences.

Mr. Mulligan said he feels that this will look like a house with a garage.

Chairman Cadle said the he feels it will look like two structures.

Mr. Harvey asked whether the garage could be built with a great room instead of an apartment and have the Board be okay with it.

Mr. Mulligan thinks that would be okay, as does Mrs. Duffy and Ms. McWade.

Chairman Cadle said that he was not so sure.

Discussion ensued, with the applicant noting that there will be a lift for his handicapped wife and housing over the garage is for aging parents.

Chairman Cadle asked what about cooking, septic, etc., particularly since the Board does not have structural plans.

The applicant noted that there is a new septic system that will accommodate the one bedroom and one bathroom apartment .

Chairman Cadle asked about the maintenance of this septic system.

Mr. Silva said that there is a brand new system replacing a 1982 system because this is now considered a four bedroom home and the old system needed to be replaced. He said that there is a limited area where can the system/garage can be located due to wetlands and they have found a place.

Chairman Cadle asked about Cons. Comm. requirements.

The applicant said that they were there last week and are returning next week, based on the ZBA's decision. He said that he needs to provide the chain of events during construction, etc.

Chairman Cadle asked whether the septic plan has been approved.

Mr. Harvey said that it has not because additional pieces regarding the placement of the garage need to be firmed up.

Mr. Silva said that the new system will be about 20 feet further away from the lake and more efficiently designed.

Mr. Harvey said that the existing yew trees will remain.

John Deitzman, 25 Ross Road spoke in support of the application.

Mrs. Manugian asked why the garage couldn't be moved forward.

Mr. Harvey said that this is visually the best location and the best utilization of the yard.

Mr. Mulligan asked whether except for need for a variance from setback, was everything else okay with the BI.

Mr. Silva noted that the BI suggested this route.

Mrs. Manugian asked whether the applicant would need a construction easement from the abutting neighbor.

Mr. Deitsman said that he has no problem with that and would have done a land swap except for Title 5 issues.

Mrs. Duffy said that the plan didn't make sense until she drove by and now it does. She said that she also likes that the Silvas are here for the long term.

Mr. Mulligan said that he likes that the BI would approve the project, except for the setback. He said that because of the BI's approval, the two family

issue is moot. He noted that under the use guidelines, the proposal is a semi attached garage with living space over it.

Mr. Harvey said that the applicant wants to side the garage with matching stucco like materials.

Chairman Cadle said that he questions whether this is really a two family and that the variance has the classic uniqueness of topography, etc. as criteria to grant. He said the big question is whether this is an accessory apartment or a two family.

Mrs. Duffy said that plantings could tie everything together.

Mr. Silva said that there will be a continuous roofline and a farmers porch that doesn't currently exist. He said that the porch will stop to accommodate the lift but the roof will continue to the garage.

Chairman Cadle questioned how to handle the accessory apartment/two family under the by-law and discussion ensued. He noted that the BI recommended the two family by-right route but he at least wanted to discuss whether the by right two family needed to be addressed, and suggested that the Board votes on whether it is a two family dwelling or an accessory apartment. He said that the Board could find that it has been represented as a two family attached dwelling, per the BI and that the BI okayed going the two family route. The rest of the board all felt that that route was acceptable.

Discussion ensued regarding the abutter's location and what setback is being asked for.

Mr. Harvey said that the garage will be one foot from the lot line, noting that originally they wanted be four feet over but would then be over the lot line and on abutting property. He said that when the property was surveyed, the garage was moved.

Chairman Cadle asked about wells. Of note: the dwelling is serviced by town water.

Discussion ensued regarding lot size, etc.

The Board moved to grant the petitioners' application for a variance of 14 feet, allowing the construction of an attached three car garage with above living space, based on the shape of the lot and with the topography making it impossible to build under the current zoning bylaws. Further, the Board found that the project does not derogate from the intent of the zoning bylaw. The motion was seconded and passed unanimously.

The meeting adjourned at 9:00 pm.