

**ZONING BOARD OF APPEALS  
MONDAY, FEBRUARY 24, 2014**

Members Present: Susan Marteney, Scott Kilmer, Mario Campanello, Ed Darrow, Deborah Calarco, Matthew Quill, Stephanie DeVito

Staff Present: Andy Fusco, Corporation Counsel; Brian Hicks, Code Enforcement

**APPLICATIONS APPROVED:** 35-37 Wadsworth St.

**APPLICATIONS TABLED:** 217 Grant Ave

Ed Darrow: Good evening. Welcome to the City of Auburn Zoning Board of Appeals. I'm Board Chairman Edward Darrow. Please silence all cell phones. Tonight we will be hearing 35-37 Wadsworth St., 217 Grant Ave and any other matters that may come before this board.

First off do the board members from past feel they can vote on and adopt the minutes of the August session? Any additions or corrections or deletions to the August minutes? Hearing none, seeing none they shall stand approved as read.

Do the board members present from the November meeting feel we can adopt the minutes from the November meeting? Any additions or corrections or deletions to those minutes? Hearing none, seeing none they shall stand approved as read.

Do the board members present from the December meeting feel we can adopt the minutes from that meeting? Any additions or corrections or deletions to the December minutes? Hearing none, seeing none they shall stand approved as read.

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**35-37 Wadsworth St.**

Ed Darrow: 35-37 Wadsworth St. please approach and tell us what you'd like to do. Please go to either podium. Give your name and address for the record. Please pull the microphone up. And if I could remind all board members to please speak into the microphones so we can have it recorded.

Steven Warner: We bought the house in 1990 and right off the bat we had woodchuck issues and they undermined the garage. I have photos of how I tried to get concrete slabs underneath it. In a nutshell the weight of the building has been ever since leaning forward. In order to shore it up into even a respectable manner everything would have to be pulled out and put in storage. My hopes were to put the new garage in, to start anew basically. What else do you need to know?

Ed Darrow: Is there anything else you'd like to add to that?

Steven Warner: I didn't have anything written down for you to see here. Just a host of tools and equipment I've acquired over the years. The issue was at one point the size of my property and I've merged the two properties, 35 and 37, which gave me better than double the property that the existing garage was on. Right now the way the garage is that it would be virtually impossible to be able to pull a vehicle in and that's what I was hoping for was to have some breathing room, trying to better myself.

Ed Darrow: Understandable. Are there any questions from board members?

Susan Marteney: Where you are wanting to put the new building is where it's staked out, kind of catty-wompered to the house?

Steven Warner: Yes, it's kind of off center.

Andy Fusco: On the map that's the 30 by 40 proposed building? Is the building already erected?

Steven Warner: No.

Andy Fusco: Is the existing garage already demolished?

Steven Warner: Negative. I was hoping to build the new one then I would raze the other one.

Andy Fusco: Were this board to grant this variance tonight you would have no objection to them conditioning upon it the demolition of the existing garage?

Steven Warner: No, I would be happy with leveling it. I think it would benefit my neighbors because the way it's situated the garage is behind my house. This way it'll be to the far side of my house which would open up their lane of view. Just from what I know of my neighbor directly next to me it's right off her kitchen window, it would open it up, she'd be able to see far more than just the side of my garage.

Susan Marteney: It was interesting finding your property.

Steven Warner: You did a drive by?

Susan Marteney: You bet. You have to go one way at the end. I have my map. Your neighbor checked me out, I was sitting the driveway with my stuff, they were watching. That entire area is very lovely.

Steven Warner: It's very scenic. I'd love to dig into it and be able to 'scape it but it's all City property down below me.

Scott Kilmer: Once you get there you're house certainly stands out. The color is...

Steven Warner: I've been meaning to go across the outlet to Wheeler to take a picture of my house but I forget.

Susan Marteney: You can tell that you're really taking care of it.

Steven Warner: Thanks. Btw Brian I have to put those steps in on the front porch. Don't mean to be shirking my duties.

Ed Darrow: Be careful what you're saying, everything's a matter of record.

Mario Campanello: The current garage you plan on demolishing, what's the square footage of that, do you know, roughly?

Steven Warner: I can give you, I measured, I want to say it's around 39 by 14.

Mario Campanello: So you're looking around seven something.

Steven Warner: That would stand to reason. I've got a 24 cubic foot freezer in there, I've got a full refrigerator, riding lawn mower, push lawn mower; I've got two table saws, work benches, 14 and twelve foot work benches and it just seems like every time I go in there I've got to pull half of the stuff out in order to be able to set up the table saw. There's trash cans, I've got two wheel barrows that have been sitting out in the weather for years now that could be better served by being under cover.

Mario Campanello: You mentioned also in your application of projects that you do. Is that just hobbies?

Steven Warner: Yeah, basically, I don't do anything like a second income, nothing like that.

Scott Kilmer: I have a question Mr. Warner, were these properties just recently merged into one parcel.

Steven Warner: Yes.

Scott Kilmer: Maybe Brian can answer, having had those two properties merged does that make the area variance a moot point or is it still necessary?

Brian Hicks: Still necessary.

Ed Darrow: Any other questions? You may be seated, sir, but we reserve the right to call you back. Is there anyone present wishing to speak for or against this

application? Seeing none and hearing none I shall close the public portion so we may discuss it amongst ourselves.

I truly believe, and I have for years, that our City code is a little bit back in the time with 750 square foot when you consider a two car family, lawn equipment, I completely understand the need for something a little larger than that.

Scott Kilmer: If you look to the left of that property there's absolutely nothing that it will encroach on.

Susan Marteney: And there will never be anything built there if it's all City property along there.

Steven Warne: I believe that area is below the flood plain and I don't know if anything can be built there.

Ed Darrow: I think his request is reasonable considering the size of the lot and what he's looking to do and what he's replacing. He's more than willing to raze the current structure.

Deborah Calarco: It's a betterment to the entire property.

Ed Darrow: Absolutely. I know I personally could never survive with a garage 14 by 32.

Deborah Calarco: Neither could I.

Ed Darrow: Any other discussion amongst the members? Chair will entertain a motion.

Susan Marteney: I move to approve the area variance for Steven and Nancy Warner of 35 Wadsworth St. as they request an area variance of 450 square feet over the allowed 750 square feet maximum for construction of a new 1200 square foot garage because the applicant has proven the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion, is there a second?

Scott Kilmer: Second.

Ed Darrow: We have a second. Roll call, please.

All members vote approval.

Ed Darrow: Congratulations, your variance has been approved. Please see Code Enforcement for any permits before you do anything.

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## **217 Grant Ave**

Ed Darrow: 217 Grant Ave? Have we heard anything from Grant Ave, Brian?

Brian Hicks: [inaudible]

Ed Darrow: Okay, well as customary if they don't show the first time we generally allow an automatic table for the second meeting so the chair puts forth a motion that we table 217 Grant Ave to our next regularly scheduled meeting. All this in favor? Opposed? Motion carried.

I have a couple things under housekeeping particularly for the new members. It goes for any other of the members who may not have done it yet. Please do stop down with your signed letter that you took your oath office to the ID Bureau at the Police Dept. and get a City ID card. It's important to have that because it's also important to view the properties. That way you can identify yourself as a member of the Zoning Board of Appeals. You can view all the properties from the outside, you cannot ask to go inside a property. If you are invited in that's up to you, I've never accepted an invitation to go in the property.

Also, if you're going to be absent either e-mail myself or Corporation Counsel or call my cell or Corporation Counsel.

Also under housekeeping I spoke with Dr. Kilmer and he has agreed to be vice-chair should I become ill or miss a meeting. I'll be honest it was a lot of arm twisting but he said don't get sick, don't get hit by a bus, just be here every meeting.

I have one other question and this is for Corporation Counsel and I hate when I ask questions I already know the answer to but I'm going to ask it anyway. I had a person contact me and it was in the paper once about a variance we granted for Dunkin' Donuts on Grant Ave. There was a person making an illegal left turn which resulted in a fatality, of a person being struck. The person who contacted me was because of the belligerence of a driver trying to make the left hand turn in front of him, the illegal left, and my question being; considering that it is flagrantly and always seems to be illegal left hand turns going on there, and I understand that's part of the Police Department, and unfortunately there was a fatality there, is there anything we can do to repeal the variance we gave for that drive through.

Andy Fusco: No, because a variance runs with the land. I wasn't the attorney for this board when that variance was granted so I don't recall, I've not looked at the file, so I'm going to defer to you, Ed, as opposed to whether the no left hand turn requirement was a condition of the variance or whether it was a condition of the site plan by the Planning Board. I've heard both things and the record speaks for itself. The easier answer is to the first question that you asked, when we grant a variance it's what's called runs with the land and even some of the members who've been on this board prior to me being here didn't realize that. It's permanent, it doesn't go away. What you're doing when you grant a hardship, or when you grant a variance, is you're curing a hardship that's inherent to the property, as you'll find in the more complicated cases we get, the use variance cases, the hardship is that it can't be used for a permitted use under the Code, the only way I can get out of this by breaking even or making a buck is if I put my property to a use that is not permitted in the Code. In other words there's a hardship inherent with the property that requires a quasi-judicial cure. The same thing, although not obviously to that great of an extent, with an area variance; there's something about the layout of the property that creates a hardship for the applicant that can't be resolved any other way but for the granting of the area variance. Obviously the examples that I used earlier tonight, the use variance is a far greater hardship, far greater burden of proof. The area variance need not be as great of a hardship and the burden of proof is not as difficult as well. But in either one of the two circumstances your determination to grant a variance has the same force and effect as if you put a covenant in the deed, it run with the land forever. So too in the rare case that we have when we're going to have to make an interpretation. That becomes precedent for not only the seven of you to follow during the balance of tenure on this board but for other Zoning Boards of Appeal to follow in years to come as well.

Ed Darrow: So basically there's something that was in our variance or in Planning's site plan that was a requirement that is not being adhered to that it can be looked at?

Andy Fusco: No, I didn't say that at all, no. Quite the contrary. I don't know because this is before my time with the City, I don't know how that left turn came about. It came about by one of four methodologies, it would have to had been a legislative act eventually. That no left hand turn there would have been an act, a legislative act. You could have made it a condition of your variance, although I'd be surprised if you did, it would be really rare. It could have been more likely a condition of site plan but still it would require a legislative act. The Planning Board would not have the unilateral authority to be able to say not to make a left hand turn there. Under the City code all traffic control devices have to be a legislative act by the City Council on Thursdays.

Ed Darrow: I was thinking more along the lines of how it unexpectedly changed the character of the neighborhood on that corner.

Andy Fusco: What I would do is call Doug up tomorrow and say if you want to balance the budget put a cop down there and write tickets because it's violated more than not.

Ed Darrow: Next question: do we need to vote on the Merriman Housing Project to give lead agency to Planning tonight?

Andy Fusco: No, have we received a letter from planning?

Ed Darrow: I did and I believe we've all received paperwork on the Merriman St. Project. All they're looking for at this point is Planning wants to be declared lead agency as far as SEQR review goes.

Andy Fusco: If you do nothing within 30 days they automatically do that. So you don't have to affirmatively say we don't mind if the Planning Board is the lead agency.

Ed Darrow: In their letter they declared intent to take lead agency.

Andy Fusco: If we absolutely do nothing then in 30 days they become lead agency. For the three new members, that is something that will come up from time to time for this board, the word SEQR, that's an acronym for State Environmental Quality Review Act. It's a State law that requires us to consider the potential environmental impacts of what we do. In the case of an area variance, about 99 percent of the area variances we get are exempt from SEQR so we don't have to worry about that. In the case of interpretations and in the case of a use variance we will have to do a SEQR review. Usually they're fairly simple, one of the pragmatic problems we have in this building is that our go to guy who had done those in the past resigned and he hasn't been replaced yet by City Council. So we're laying the requirement of complying with SEQR as far as the applications go on the applicants just because we don't have enough warm bodies anymore on the second floor to be able to do the applicant's job for them like we did in the past. But we'll worry about those things when the time comes and with tonight's meeting, since we had two area variances, SEQR obviously wasn't an issue as area variances are general exempt from SEQR.

Ed Darrow: Anything else under housekeeping?

Deborah Calarco: Just to let you know I will not be available next month.

Ed Darrow: So noted. Motion to adjourn?

Scott Kilmer: So moved.

Ed Darrow: We are adjourned.