

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

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

Absent: Deborah Calarco

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

APPLICATIONS APPROVED: 21 Grove Ave, 33 E. Genesee St.

APPLICATIONS TABLED: none

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 21 Grove Ave and 33 E. Genesee St. and any other matters that may come before this board.

First off have the members received the minutes from the January 27, 2014 meeting? Any additions or corrections or deletions to those minutes? Hearing none, seeing none they shall stand approved as read.

21 Grove Ave. – area variance for front yard parking.

Ed Darrow: Please approach.

Sue Marteney: What about February minutes?

Ed Darrow: We just received them tonight and no one has had a chance to review them. We'll do that at the next meeting.

If you could please give your name and address and tell us what you'd like to do please.

Nicholas Wilmot, 5269 Silver St. Rd.: I'd like to receive a variance for the property at 21 Grove Ave for the driveway.

Ed Darrow: Could you explain what the variance is for? What happened and how it all came about?

Nicholas Wilmot: I bought the house at auction and I did not know that the driveway was in violation. The former owner did not disclose this to me and it wasn't until

after I bought the house that I realized there was a section of the driveway that was in violation and that I would need a variance to correct that.

Ed Darrow: Do you realize what the variance is that you're asking for?

Nicholas Wilmot: Yes.

Ed Darrow: It's for front yard parking.

Nicholas Wilmot: I was under the impression that, at first when I talked with Mr. Hicks I thought that it was not for front yard parking. The parking on the satellite map that he showed me shows the parking in the back of the house where the pool is so I was under the impression that the whole driveway was illegal. After going there a few times he told me there's a permit upstairs, there should be a copy of a permit I can get you which is also in the application. The person who issued the violation, he said that the problem was the permit didn't match what he did in the driveway so the driveway was approved to be put in in the front yard, it wasn't put in according to the sketch which I have pictures, it's all the way in the back and I dotted the section that is different from the sketch which is also in the application.

Ed Darrow: According to our paperwork you're requesting an area variance for front yard parking which was installed not as per the permit. Now do you contest that is not what your variance is for?

Nicholas Wilmot: You're saying that section...

Ed Darrow: It constitutes the front yard, where that is.

Nicholas Wilmot: Okay, yes.

Ed Darrow: So you do agree that that is the reason you're before the board or are you looking for an explanation from Mr. Hicks at this time?

Nicholas Wilmot: I thought it was just because the section didn't match the permit. I didn't realize it was because it was considered front yard parking.

Ed Darrow: Yes, that is considered your front yard.

Nicholas Wilmot: Okay.

Ed Darrow: So your area variance is actually for front yard parking. You do understand that?

Nicholas Wilmot: Okay, yes.

Ed Darrow: Are there any questions from the board members?

Susan Marteney: I'd like some clarification. What is it? That little section that's dotted on the photographs? It could not hold a car. There's a planting area with a tree and then there's a paver area but a car could not fit in that particular space that's rounded off.

Brian Hicks: That's correct.

Susan Marteney: So where is he needed front yard parking?

Brian Hicks: The only way we address it in the code is front yard parking because it's done in front of the structure, it doesn't meet the stipulations of the code to extend the proper distance past the front of the house so anything that's created in front of the house is classified as front yard parking. Even though it won't hold a car.

Susan Marteney: Okay.

Brian Hicks: This is in lieu of removing it.

Scott Kilmer: So really it's kind of a technicality by description.

Brian Hicks: That's true.

Ed Darrow: Correct me if I'm wrong, Brian. If the portion where that stampcrete driveway is, if the rear bumper of the car did not protrude past the front of the house, if he was able to pull back further, if that little jog off the house wasn't there, it would not be considered front yard parking, correct, because he would be behind the front parallel of the house.

Brian Hicks: Well, along the side of the house.

Ed Darrow: Yes, because he would be along the side. It's just the fact that the driveway is technically at the side of the house but he can't pull past the front of the house which constitutes front yard parking.

Brian Hicks: Yes, we need to maintain one space past the front edge of the house.

Ed Darrow: Thank you. I just wanted to clarify it for the new members so they would understand what we were speaking of.

Susan Marteney: But that little addition in the back doesn't constitute the front of the house.

Brian Hicks: The addition in the back, you mean in the front?

Ed Darrow: No, the front façade of the house constitutes the front. You have to imagine an imaginary line going all the way across.

Susan Marteney: There's not enough room between the front corner of your house and the little, perhaps it's a kitchen?

Nicholas Wilmot: It's a laundry room. There's enough room to get a car in there it's just there's a pole on the left side so I think that's why he had that little swing, it helps you swing into the driveway.

Susan Marteney: [inaudible] enough room for him to pull into his driveway past the front corner of the house. You're talking about something he's, it has nothing to do with the real driveway, correct? It's this piece.

Ed Darrow: On the left hand side.

Mario Campanello: What we're concerned about is according to this picture, is this correct? It says just this portion is in violation?

Brian Hicks: Just that very front portion.

Scott Kilmer: And even though you can't park there it constitutes a driveway which constitutes front yard parking.

Brian Hicks: Whether you use it or not it's still front yard parking.

Susan Marteney: It's not what we would call a driveway that we're worrying about right now. It's that little hunk in the front that we're calling a driveway that's not usable as driveway.

Brian Hicks: Unfortunately by the code there is no other way to term it.

Susan Marteney: Okay, got it.

Matt Quill: And that's the violation, just that portion?

Brian Hicks: That's correct.

Susan Marteney: That's what I was wanting clarified. It's just that little rounded area in front of the tree between the tree and the sidewalk.

Brian Hicks: Yes.

Ed Darrow: Sir, you have a couple of estimates in here and is one of those estimates to remove that small piece of stampcrete and put grass back in there.

Nicholas Wilmot: I'm sorry, that was before, when I first talked to him I was under the impression it was the whole driveway so no, that is the whole driveway, it's not that section.

Ed Darrow: Okay. You do realize this board is charged with giving the least amount of variance permissible by law and in this instance all that you really need to do is remove that section of stampcrete which is not being used as driveway and put top soil and seed back in there to plant grass. You understand that?

Nicholas Wilmot: All right. Yes.

Matt Quill: Brian, if he does that he'll be complying with the code, correct? If he takes out that little section?

Brian Hicks: Yes.

Nicholas Wilmot: Wouldn't that have to go all the way to where the curb cut out is?

Brian Hicks: No, to the sidewalk and the sidewalk out to the curb.

Nicholas Wilmot: The sidewalk to the curb would have to be ripped out too?

Brian Hicks: Yes.

Nicholas Wilmot: It would shorten that curb and probably not be wide enough to get a car in there. If you have to take that all the way to the road I don't think you'll have enough room to get a car in there.

Brian Hicks: You're allowed a two foot flare from the curb line.

Ed Darrow: I was just going to say you're allowed a flare on the curb.

Nicholas Wilmot: So it would not have to be removed then.

Brian Hicks: From the sidewalk until you pick up the flare to the curb so that you can turn in and back out. Just as it is on the driveway application. You're showing a 15 foot width in there and the normal driveway, the rest of the driveway may be ten feet wide.

Nicholas Wilmot: I'm just making sure I don't have to remove the curb cut out to that section.

Brian Hicks: Yes, it's showing eight feet three inches, if you add two foot flare for each side of it now you're at twelve-three.

Nicholas Wilmot: Okay. So there's no way to get that approved so I can, isn't a variance to a violation so that it okays it, that little section?

Ed Darrow: I'm not understanding your question completely.

Nicholas Wilmot: There's no way that the variance doesn't grant you to have that section?

Ed Darrow: I'm saying a variance would if this went forward and the variance was approved it would grant you relief in this instance. All that I'm saying is we're required to give the least amount of variance possible and in this instance I personally, I can't speak for the others five board members present, I personally see a solution that is very minor where you wouldn't need a variance. But again I can't speak for the other members.

Nicholas Wilmot: You'd have to have saw cut that. I mean it's not, it's still a decent project. I'm just asking for some leniency.

Ed Darrow: Maybe what you may want to do, because your estimate for removal is for everything, maybe you may want to table it and bring back some estimates of what it would take to remove that or maybe you just want to go forward. I'm not your counsel I'm just telling you some different avenues you may want to look at or just go forward.

Nicholas Wilmot: I'd like to go forward. I have letters from surrounding neighbors that they're okay with it. I feel it doesn't affect anybody really.

Ed Darrow: Okay, no problem. Any other questions from board members?

Scott Kilmer: I'd just like to tell you that we get submitted a lot of maps and such and your hand drawn map was really a good one. The pictures really explain a lot here. I really, it's more like a standing pad to me, even if you wanted to park something on it you'd bang your tires into the curb every time you came around it. Thanks for the pictures and the map, they made things a lot easier.

Nicholas Wilmot: You're welcome.

Ed Darrow: Any other questions or comments from board members? You may be seated sir but we reserve the right to recall you. Is there anyone else present wishing to speak for or against 21 Grove Ave? Hearing none, seeing none I shall close the public portion so we can discuss it amongst ourselves.

Thoughts? Concerns?

Susan Marteney: There are three letters of support for it so whether or not the neighbors are here there's still no neighbors opposed to it and they're all in favor

of it. In fact somebody wrote a very long letter about it that it looks good, he thinks it's good and it certainly wasn't fair that the past owner didn't disclose the problem with it.

Scott Kilmer: I don't think it's all obviously not self-created. It's a nice looking piece of concrete and it really is more like a standing pad. You'd be hard pressed to put a vehicle on it.

Ed Darrow: Yes, it's not an eye sore. Not by any means.

Susan Marteney: It's a sidewalk extension. Well maintained property.

Scott Kilmer: If you got out of the car and you put your feet on the ground and that pad weren't there you'd have a bunch of dirt, you'd get out the car often enough you wouldn't have grass, you'd have dirt.

Stephanie DeVito: I agree as well. I think seeing that he didn't have prior knowledge to the situation, it's kind of unfair to him to have to foot the bill out of his pocket in order to make it right.

Ed Darrow: Any other thoughts? Chair will entertain a motion.

Susan Marteney: I move to approve the area variance for Nicholas Wilmot of 5269 Silver St. Rd., Auburn for the property at 21 Grove Ave 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 area 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: Roll call please.

All members vote approval. Motion carried.

Ed Darrow: Congratulations. Your variance has been approved. See Mr. Hicks for any paperwork.

33 G. Genesee St. – use variance to expand a pre-existing, non-conforming use.

Ed Darrow: Next we have 33 E. Genesee St. Please approach, give your name and address for the record and tell us what you'd like to do.

Richard Pierce, Principle with Pierce Engineering, Syracuse, Engineers of record for Mavis Tire/Cole Muffler. With me tonight is Chris xx, the regional manager for Mavis who is available to answer any questions you may have about the operations of the store. We are asking, first let me show you what we're planning to do. The first presentation I'm showing just for comparison. This is a store in Webster, NY that was converted last summer. It's roughly similar to the store here in Auburn, just to give you a flavor for what a completed store looks like. The store at 33. E. Genesee St. was built by Cole Muffler approximately 30, 35 years ago. It's my understanding that since then the zoning has changed so this has become a non-conforming commercial property in the area which is the reason we are here tonight. We have drawn up plans to convert the store as we've been doing with many of the others around upstate NY. Convert it over to a more modern motif to show a more straight up, clean façade and signage. In this particular store we have the opportunity to expand out the back with an 'L' shape. *points out areas on map* In doing so we are not encroaching on any setbacks. However, like I said, since we're non-conforming anyway. In the process going before the Planning Board we have presented a drainage plan which will be an improvement to the present drainage on to John St. We are planning to put in a subterranean detention piping system and bury some piping from our downspouts so we stop some of the water runoff from the asphalt. In addition, also we have presented to the Planning Board, and I can show you a plan tonight if desired, new landscaping and curbing which will augment the area. Presently there are two mature trees on E. Genesee St. front and that's about it. Our plan calls to add shrubbery, flowers and curbing. A line of green grass along the front. [inaudible – moved away from mic] The new showroom will be reglased. Overhead doors will be replaced. So that's the improvements and the build out we are seeking from your board and the Planning Board.

Ed Darrow: I have one question of Mr. Hicks; is Planning declared lead agency and are they doing a SEQR review on this?

Richard Pierce: They are doing a SEQR with Mr. Fusco. It was thought that both the ZBA and Planning would do a SEQR.

Ed Darrow: There's no need for us to do a SEQR review if they are because if it was the intention to do a short form we don't have it before us and without that we can't go forward so that's why I didn't want to waste any more time going forward because we don't have a short form before us.

Richard Pierce: I did submit a short form at the request of the Planning Director.

Ed Darrow: We'll just assume that it's before Planning and any motion we make we'll make it upon negative declaration on the short form SEQR review by Planning, okay?

Richard Pierce: That's fine.

Ed Darrow: Any questions from board members?

Susan Marteney: I think it looks like a great improvement that there's not going to be egress kind of willy-nilly on the whole corner there.

Richard Pierce: Thank you, that's our intention. I think we always leave the improvement better than we found it. They're in the business of selling tires and you have to attract the public to do that and that's the intention. It also improves the community neighborhood too.

Susan Marteney: There's certainly going to be some changes taking place on John St. in the coming months, years.

Ed Darrow: Any other questions from board members?

Scott Kilmer: I think I know the answer to this question but the parking spots that you have behind the building that are perpendicular to John St.,

Richard Pierce: They're parallel.

Scott Kilmer: Okay, the lot goes perpendicular but the cars are parked parallel, are those going to be about at the same point they're at now? They're not going to go any further into the property line?

Richard Pierce: No. That's not going to change. Right now there's quite a bit of wasted space back there which is why we're taking the opportunity to expand the building, to get more storage. Inventory's the name of the game in this business. The more tires you can inventory the better you are to make sales.

Scott Kilmer: Going to be a nice looking building.

Ed Darrow: Any other questions from board members? You may be seated. Is there anybody present wishing to speak for or against this application? Seeing none, hearing none I shall close the public portion so we may discuss it amongst ourselves?

I mean I agree, it's a great improvement, they're going to be doing the same thing they've been doing ever since they've been there.

Any other discussion? When we make the motion it really has to be contingent upon a negative declaration on SEQR review from Planning.

Mario Campanello: Brian, what is the C2 district? I'm looking at the reasons you can have and number two says consumer service establishment. What is the difference between that and what they're doing now?

Brian Hicks: In the C2 downtown district what you have in front of you is the listed allowed uses since the zoning code has changed and with this type of use with the auto repair aspect of the muffler, the change of tires, I don't believe there's going to be any oil changes or anything like that but it's still a vehicle repair center and that was removed years ago from the zoning code so even though it seems like a consumer services item it may also fall under what we classify as business goods. With our definitions that we have in place today it doesn't fit.

Mario Campanello: Thank you.

Ed Darrow: If there's no other discussion the chair will entertain a motion.

Susan Marteney: I move to approve the use variance for Mavis Tire of 3975 Amber Road in Syracuse for the property at 33 E. Genesee St. contingent upon a negative declaration of SEQR from the Planning Board because the applicant has proven the following four elements:

- The applicant has shown that he cannot otherwise realize a reasonable return on the property unless the use variance is granted and this has been shown by competence financial evidence.
- The hardship shown by the applicant is unique to the subject premises and not general to the neighborhood.
- The use variance will not alter the character of the neighborhood.
- The applicant's hardship is not self-created.

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

Matthew Quill: Second.

Ed Darrow: Roll call please.

All members vote approval. Motion carried.

Ed Darrow: Congratulations, your use variance has been approved. Thank you.

Is there any other business to come before the Zoning Board at this time? Anything under housekeeping? Yes sir? Please approach, give your name and address.

John Montone, Allied Sign Co., representing Rue 21.

Ed Darrow: Okay, so this is in reference to 217 Grant Ave?

John Montone: Yes.

Ed Darrow: We did table it last meeting. It was not listed on our agenda. I didn't bring my paperwork, none of us brought our paperwork for it due to the fact that it was not listed. I'm sorry, none of us even looked at the property, sir. All I can do is apologize that somehow when it was tabled it was not carried over to our agenda so therefore none of us reviewed the property or anything so unfortunately all I can do is beg your forgiveness and ask that you reappear at our next meeting next month. Is that possible.

John Montone. Okay, I guess I have no choice.

Ed Darrow: The meeting will be April 28th, Monday, at 7:00 p.m. right here. I do apologize.

John Montone: Okay, it is what it is.

Ed Darrow: Thank you very much.

Ed Darrow: Any other business? Motion to adjourn?

Scott Kilmer: So moved.

Ed Darrow: We are adjourned.

Recorded by Alicia McKeen