

**ZONING BOARD OF APPEALS
MONDAY, MAY 18, 2015**

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

Absent: none

Staff Present: Brian Hicks, Code Enforcement; Chad Hayden, Corporation Counsel

APPLICATIONS APPROVED: 25 Havens Ave, 1 Arterial East, 148 Grant Ave

APPLICATIONS TABLED: None

APPLICATIONS DENIED: None

Ed Darrow: Good evening. Welcome to the Auburn Zoning Board of Appeals. I'm board chairman Edward Darrow. Tonight we will be hearing 25 Havens Ave, 1 Arterial East, 148 Grant Ave and any other matters that may come before this board.

Has everyone had a chance to read the March minutes? Any additions, corrections or deletions? Seeing none, hearing none they'll stand approved as read.

25 Havens Ave. R1 zoning district. Area variance for garage in excess of the maximum allowed square footage. Applicants: Timothy and Wanda Sincebaugh.

Ed Darrow: 25 Havens Ave please approach. Give your name and address for the record and tell us what you'd like to do.

Tim Sincebaugh, 25 Havens Ave: I'd like to build a garage and have it be a little bigger than the standard size for storing basically all of our stuff. I want to have, the dimensions I want are 30' x 36' which puts it 11 feet longer than what the standard allowable size would be. That would give us room to store all our outdoor patio furniture, an ATV and that kind of stuff. I currently don't have room for them. I guess that's it.

Ed Darrow: So the variance you are looking for is 330 square feet over the allowed 750 square feet. You also are requiring a variance of six feet 3 inches over the allowed maximum height of 15 feet. Is this going to be two-story or one-story?

Tim Sincebaugh: One-story. There might be storage above the rafters.

Ed Darrow: What pitch roof will be on it?

Tim Sincebaugh: I believe it's at 10/12. The house now is 12/12 so just to match everything.

Ed Darrow: Questions from board members?

Scott Kilmer: I think in your application it says an existing shed/garage will be coming down, right?

Tim Sincebaugh: Yeah, absolutely. There will be one building.

Ed Darrow: Any other questions from board members?

Deb Calarco: This will all be sided and designed to match the house and blend in?

Tim Sincebaugh: We'll put vinyl siding on the shed. Currently the house has older style tile siding on it. We're going to put vinyl siding on the shed and plan to re-side the house in a couple years.

Ed Darrow: Any other questions from board members? Sir, you may be seated but we reserve the right to recall you.

Is there anyone present wishing to speak for or against 25 Havens Ave? Is there anyone present wishing to speak for or against 25 Havens Ave? Seeing none and hearing none I shall close the public portion so we may discuss this amongst ourselves.

Thoughts? Concerns?

Scott Kilmer: I don't have a problem with it so much as the footprint but I'm glad he explained, I was a little concerned with the height. I know we've approved other buildings that are higher but it would probably be better to get close to the existing pitch of the roof on the house.

Ed Darrow: It makes sense aesthetically. From the drawing we have an elevation view only so we really can't tell if they were planning a second story with knee walls or not. It's just going to be the trusses so obviously not.

Susan Marteney: Coming up more often that people don't have room for their belongings.

Scott Kilmer: I think the code is insufficient in regards to the size of the garage because people do have two cars.

Susan Marteney: Even concerning sheds also.

Ed Darrow: We've agreed on that in the past. 750 is a little on the small side when you consider what one has for possessions today along with two cars that they want to store. It's something left up to Council to change. All we can do is give relief by the variance here.

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

Susan Marteney: I move to approve the area variance for Timothy and Wanda Sincebaugh at 25 Havens Ave, the two area variances to erect a garage at the rear of the property. The first area variance is for 330 square feet over the allowed maximum of 750 square feet for a total of 1,080 square feet. The second area variance is for six feet three inches over the allowed maximum height of 15 feet for a total height of 21 feet three inches because the applicant has proven the following four elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighbourhood or the properties in the neighbourhood.
- The benefit sought cannot be attained by a method other than an area variance.
- The area variance is not substantial.
- The area variance will not produce an adverse impact on the environment nor the physical conditions of the neighbourhood.

Ed Darrow: The chair has a motion, do we have a second?

Scott Kilmer: Second.

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

All members vote approval. Motion carried.

Ed Darrow: Congratulations, your variance has been approved. Please see Code Enforcement before beginning any work for proper permits.

1 Arterial East. C2 zoning district. Area variance for signage. Applicant: Western Regional OTB.

Ed Darrow: 1 Arterial East please approach. Give your name and address for the record and tell us what you'd like to do.

Paul Lattimore, for Western NY Off Track Betting Corp: I'm the Cayuga County representative for that. We have an application in for some signage and Brian can you explain it or is it me?

Brian Hicks: It's up to you.

Paul Lattimore: It is me. Okay. We have three existing fake windows on the north side of the OTB facility and we would like to put a plexiglass insert into each of those so we use it for advertising. We've brought the applications to Brian and we were sent here for the reasoning we have more linear footage on both sides of the Arterial plus North St. so it's the number of signs?

Ed Darrow: Correct. Number of signs over the allowed.

Paul Lattimore: What else can I tell you? I wasn't prepared to speak. I came in case someone wanted to hit me in the head.

Ed Darrow: You've done fine, Mr. Lattimore.

Any questions from the board members?

Stephanie DeVito: Verifies that it's three signs.

Susan Marteney: Asks if the yard signs will now no longer be used.

Paul Lattimore: Is that a covenant you would like? We only use yard signs for the Derby, the Preakness, or something significant like that. We don't have a reason not to do that. We would

like not to have to do that. We would still like to continue to use the yard signs and it's very seldom we do that. We put signs out for blood drives, things like that.

Ed Darrow: Brian, how do those removable yard signs fall into the code? 30 days?

Brian Hicks: Actually they're not an allowed use unless it's one day special event. The definition on those is not quite clear.

Ed Darrow: So we'll stay in the dark.

Susan Marteney: I was under the impression that not-for-profits that were doing some kind of special event like a blood drive had a different time frame than a for-profit organization.

Brian Hicks: That's part of the confusion.

Scott Kilmer: I'm a little confused on the dimension of the sign. Is this going to be like a face mounted side because it's four feet by four feet by ten feet.

Paul Lattimore: That doesn't sound correct to me.

Scott Kilmer: It says 'Please describe in detail the changes you plan to make on the premises'. Number nine. It's answered 'Install three signs of 48 inches by 48 inches by ten feet.'

Brian Hicks: It's a ten inch deep box, a shadow box.

Scott Kilmer: So it's ten inches not feet. And the signs would be interchangeable letters?

Paul Lattimore: We will take them off and put something inside of it.

Ed Darrow: More like a marquee from a theatre, correct?

Paul Lattimore: If we had a poster of a blood drive, for instance, we would put the insert in it. It won't be external lettering.

Scott Kilmer: Will it be back lit?

Paul Lattimore: Possibly. We haven't decided that yet.

Susan Marteney: Does that change anything, if they're lit?

Ed Darrow: Not in that zone. It's a commercial area.

Susan Marteney: As long as it's not moveable.

Ed Darrow: Attention getting is gone too now so you can have the reader board signs. They no longer fall under attention getting devices.

Scott Kilmer: I would've liked a more representative look at what the sign would look like.

Ed Darrow: If I could help you out. They're building the box of plexiglass and they will go where the windows are and they will open so they can change a sign or poster periodically to advertise whatever event they have coming up.

Scott Kilmer: Logos or letters?

Paul Lattimore: Letters, there will be no logos.

Scott Kilmer: Back lit letters.

Ed Darrow: Not back lit but light inside so you can see it.

Any other questions from board members?

You may be seated, sir, but we reserve the right to recall you.

Is there anyone present wishing to speak for or against 1 Arterial East? Is there anyone present wishing to speak for or against 1 Arterial East? Seeing none and hearing none I shall close the public portion so we may discuss it amongst ourselves.

Thoughts? For me, considering they have three sides of road there, they have a lot of frontage. I don't think what they're doing is lavish or outrageous.

Deb Calarco: It will add to it instead of just having this blank wall.

Susan Marteney: It will be more ornamental.

Ed Darrow: It's going to help them. It's not like they want twelve of them all around the building and they're going to resemble what a theatre would have out front.

Deb Calarco: Sometimes it's a little questionable what that building actually is and these will help define it.

Ed Darrow: Any other discussion? Then the chair will entertain a motion.

Susan Marteney: I move to approve the area variance for Western Regional Off-track Betting for the site at 1 Arterial East for an area variance for two signs over the allowed maximum of two signs per street front because the applicant has proven the following elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighbourhood or the properties in the neighbourhood.
- The benefit sought cannot be attained by a method other than an area variance.
- The area variance is not substantial.
- The area variance will not produce an adverse impact on the environment nor the physical conditions of the neighbourhood.

Ed Darrow: The chair has a motion, is there a second?

Stephanie DeVito: Second.

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

All members vote approval. Motion carried.

Ed Darrow: Yes, I feel the variance is not substantial for the area. Congratulations, your variance has been approved. Please see Code Enforcement before beginning any work for proper permits.

148 Grant Ave. C3 zoning district. Area variance for side yard setback. Applicant: Fast-Track Markets, LLC.

Ed Darrow: 158 Grant Ave please approach. Give your name and address for the record and tell us what you'd to do.

Matt Naparelo, site engineer for Fast Track out of Manlius: With me is Brett Hughes, a representative of Fast Track Markets themselves. What we are doing is a new development for Fast Track and replacing the old store that has since been demolished at the corner of N. Seward Ave and Grant Ave. This particular store will also incorporate an acquisition, a small triangle piece from the Harry's Tire Facility and a small triangle piece from the bank to our south. In so doing in this development of a Fast Track we do have on the screen here, it's going to be a larger, new store with five fuel dispensers. The store itself is going to be facing N. Seward. The fuel dispensers will be in this configuration with five dispensing locations and the canopies. In so doing providing proper circulation around the store and appropriate parking of this new development for the new age Fast Track and modern convenience store in the same realm as a Quick Trip or a Wawa. A very high end prepared food, convenience store with continuing service of the fuel service. In so doing this particular property even with the acquisitions become quite constrained. In the north to south direction from N. Seward back, over the course of time since the antiquated store which was really in this corner, this is the lot line of the old Fast Track, the square shaped lot. Harry's Tire is a vibrant business and as such they've been great to work with but we could not acquire any further property along the south edge. To get this particular configuration we're before the board for an area variance for rear side setback. The requirement is a 30 foot setback. Our particular plan is to show less than a five foot setback to Harry's Tire. We just acquired a digital letter from Harry's. *Reads letter into the record*

With that again, the rear setback is along this edge in which we have elevation difference from Harry's Tire down to us and we're providing the appropriate drainage and drainage collection. The ability to construct the new building but really to get proper egress and proper circulation in front of our store for our parking for the dispensers, it's really mandating we push this building as far south as we can. That's wat we're asking and seeking today.

Ed Darrow: Any questions from the board at this time?

Deb Calarco: You're building a retaining wall to take care of the elevation issues?

Matt Naparelo: Yes we are. There is a retaining wall along this edge and we have a grading plan before the Planning Board. We've done as best we can. When we grade a site we have to look at the grade at our points of intersection with the roads so we have a grade here on N. Seward,

a grade here on Grant Ave and as well to continue the access through Harry's Tire we have a grade here so the balance of these three points of intersection kind of set our grades. As such a retaining wall is required along this edge. I believe the highest point of the wall is about here which is about six feet high. Not huge but a retaining wall is required.

Deb Calarco: [inaudible]

Matt Naparelo: No there is not. We're actually holding the grade because of the access at that point so we're going to be...from Harry's Tire the building itself to the back of us is about three foot elevation drop but it's acceptable for his parking lot.

Chad Hayden: Have the designers of the layout determined that's not a risk, getting out onto Seward Ave in the northeast corner there? You have a six foot retaining wall to the left, you can't see beyond that retaining wall. Is that going to be enough?

Matt Naparelo: In association with the Planning Board we've done a site distance analysis as well as a traffic study. We've done the site distance analysis from this point looking in both directions to assure because beyond the potential obstruction at this point really the depth of this retaining wall is only two feet. It doesn't get higher until we push to the west.

Chad Hayden: Then on the western entry, the State is okay with the way you're entering?

Matt Naparelo: We've had discussion with the State since well before we came to the City earlier in the fall. Conceptually they have agreed to the right in, right out so that's not a full access, it's right in, right out only. We are currently are preparing a final traffic impact study to the State to meet their requirements but conceptually they were okay with it three months ago.

Ed Darrow: Any other questions? Sir you may be seated but we reserve the right to recall you. Is there anyone present wishing to speak for or against 148 Grant Ave? Is there anyone present wishing to speak for or against 148 Grant Ave? Seeing none and hearing none I shall close the public portion so we may discuss it amongst ourselves.

The setback that we're looking at is actually what I think the whole project hinges on. They really can't go any closer, they can't go any further out or they won't have their traffic ways and parking. Knowing that they're working with Planning and because NY 5 is a State route they have to work with NY DOT. But as they're saying, it's going to be a right in, right out which means they can only come in with a right hand turn and only a right hand turn going out. They'll have to go to the light to make any lefts.

Scott Kilmer: I have a question of the language for Brian. The gentleman who just spoke referred to a required 30 foot setback but on the application it says ten feet?

Brian Hicks: Ten feet for that zone for a side setback and that's what it actually is. It's the rear of the building but it's the side line of the lot.

Scott Kilmer: But in the chart it says side setback is 20 feet. So you have an issued of ten, 20 or 30.

Susan Marteney: The variance says it's ten feet also.

Ed Darrow: Brian, did you allude that the actual request is now six feet rather than five feet two and one-half inches?

Brian Hicks: I will tell you that this request came down from the Planning Dept. originally. [inaudible]

Ed Darrow: So what are we looking at tonight? Are we looking at five feet two and one-half inches or are we looking at six feet for setbacks?

Please re-approach.

Matt Naparelo: Since we made that application two weeks ago we took a look at some of the configurations in those drive aisles and it did change from five point two feet to four point two so we're actually a little bit less. I have revised plans.

Ed Darrow: Okay, four point two feet. Checking with Counsel seeing as it was advertised at five two and one-half and it's going to be less I don't think there's a problem with that.

Chad Hayden: Correct. Although even if you were increasing it I don't think this is a substantial issue. The purpose behind side setbacks is to avoid impact on neighbors and to allow for firefighting. This clearly the neighbor is in favor of it and it will not interfere with firefighting.

Ed Darrow: You may be seated again, sir.

Thoughts? Consideration?

Scott Kilmer: Just for clarification it should say 20 feet on the side?

Susan Marteney: No, ten.

Ed Darrow: Ten. Ten feet. It is a ten foot side yard setback even though it's the rear to their building because the front of the property is Grant Ave not Seward.

When you look, it's down to four point two feet now, that's...

Deb Calarco: That means they've worked to do it the least amount possible.

Ed Darrow: Yes, something we're required to look at, the minimal amount of variance possible.

Susan Marteney: And Harry's is working with them not only selling them the property but also in terms of grading the parking lot and they also have egress through. Everyone is working together and no one from Harry's is here to complain.

Ed Darrow: Plus they have the letter of approval. Any other thoughts or concerns?

Deb Calarco: Again it's a unique size and piece of property and that has to be looked at.

Ed Darrow: And it's my understanding to do what they could they've acquired from two different neighbors to comply with our Codes.

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

Susan Marteney: I move to approve the area variance for Fast Track Markets and Brett Hughes for the property at 148 Grant Ave for a variance of four point two feet of the required ten feet side yard setback to construct a new commercial building because the applicant has proven the following elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighbourhood or the properties in the neighbourhood.
- The benefit sought cannot be attained by a method other than an area variance.
- The area variance is not substantial.
- The area variance will not produce an adverse impact on the environment nor the physical conditions of the neighbourhood.

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

Deb Calarco: Second.

Ed Darrow: Roll call please.

All members vote approval. Motion carried.

Ed Darrow: Yes. I vote aye due to the fact that I feel the variance is very minimal when considering the size of the project and their willingness to work with both their neighbors in keeping the variances as low as possible.

Congratulations, your variance has been approved. Good luck with Planning.

Other Matters

Is there any other business to come before this board at this time? Please approach, give your name, your address and state your business.

Stacey DeForrest, attorney: I'm here on behalf of my parents who are also my clients tonight, Richard and Patricia Tamburino who are with me, and Chuck Marangola who is also here tonight and will be speaking. I actually wrote a letter to Brian Hicks that I think everyone should have a copy of and kind of gives a little bit of background to what we are requesting. To make a very long story short, we're asking tonight that the board make a motion to re-hear a determination that was made back in October. In September of last year Mr. Chad Axton, who is the neighbor of both my parents and Mr. Marangola, had requested...I should back up. The notice that was given to my parents and Mr. Marangola for an application made by Mr. Axton said that he was seeking an area variance to put up a detached garage. Sound simple right? A detached garage. That was the notice that was give. I put emphasis on that because what was put up was a huge pole barn that is commercial in nature. The issue we have is that my parents weren't given proper notice and neither was Mr. Marangola until this huge structure, that is commercial in nature, went up and basically in their back yards. So we have an issue. And come to find out that the application was submitted before this board was inaccurate. The facts in the application stated that he was seeking 590 square feet beyond the allowed 750 for an accessory structure building.

What was put up, I think we were talking about this right before this hearing started this evening, we had originally thought it was about 200 feet over but I believe now it's 45 square feet over. Regardless, the point is it's over what was granted by this board back in October. The main mistake in the application was that Mr. Axton already has an attached garage. He has a small ranch home with an attached garage on it. The attached garage was never listed in the application as an accessory structure so when he made the application he put in a variance for a little garden shed that he has and the actual pole barn but not...

Ed Darrow: If I may pause you for a second. Mr. Hicks, does an attached garage count as an accessory structure? It was my belief that it doesn't. An accessory structure is not attached.

Stephanie DeForrest: Mr. Hicks had told me it does.

Ed Darrow: My question was for Mr. Hicks.

Brian Hicks: Private residential garages, they are listed under the accessory structures and uses. So they've listed them under both of those parts; structures and uses. It basically states that a structure for storage is incidental and is permitted as a use. So is an attached garage an accessory structure or an accessory use? That's the question.

Ed Darrow: Perfectly clear now.

Brian Hicks: I thought that's what you wanted.

Ed Darrow: Thank you. Please continue.

Stephanie DeForrest: I'm actually...and then I have Chuck...why don't you, you want to state your name? I'm actually, that's the essence of the letter that I wrote, that's the essence of why we're here tonight.

Ed Darrow: My first question; what do you offer for evidence for the lack of notice? Or clarification of your notice?

Stephanie DeForrest: What I want to present to the board was the notice received by my client and by Mr. Marangola along with some pictures.

Ed Darrow: The notice is all we need for now.

Stephanie DeForrest: The notice and...I mean I think the comparison is what I'm driving at which is what you think of when you see this notice versus what actually happened, it's so drastically different.

Ed Darrow: That's exactly why we're going to take it one step at a time and make sure whether the notice was adequate or inadequate.

Stephanie DeForrest: *passes notice to board*

Ed Darrow: You may continue.

Stephanie DeForrest: I'm going to pass it over to Mr. Marangola and my father to actually expand on the points they wanted to make. I did have some photographs Mr. Marangola took to show the board.

Ed Darrow: If you'd like to pass those around that would be great.

Scott Kilmer: I have a question. Are you claiming that the notice was improper and also the structure that was put up was bigger than what we allowed?

Stephanie DeForrest: Both.

Scott Kilmer: So there's two problems.

Stephanie DeForrest: Yes. *distributes pictures* The pictures themselves are actually pictures of views from Mr. Marangola's and my parents' properties. I understand Mr. Axton is here tonight with his attorney and they have pictures as well but we actually all saw each other's pictures before coming in here so you'll see...what kind of made me laugh was the views when you're looking at my parents' property and Mr. Marangola's property the views are actually beautiful because they've invested all this money and energy into their properties so from Mr. Axton's point of view, yeah, the view is great but now this is what my parents are looking at. With that being said I'm going to turn it over to my father.

Ed Darrow: Sir, please give your name and address for the record.

Rick Tamburrino, 7 Crescent Ave: A few comments about the variance. Number one: the variance, I discovered, there was an error in the variance. The variance is based on false information. By my calculations they're over by 180 square feet. That may change depending on the measurements of this pole barn. Number two: this is a pole barn. There are no pole barns in this neighborhood. I've lived there 25 years and it's a commercial structure, it's metal, it's a pole barn, it's large, it's gray, it doesn't really fit with the neighborhood and it's out of proportion with the houses. We saw the original letter came through, it talked about a detached garage. We were envisioning a wood frame structure, painted white, shingles, siding, that type of thing. To give you perspective on the difference in the size, the massive pole barn, the garage and the attached garage, that's 103% increase over the 750 square feet allowed. 100% over. To me that's beyond the pale, it's just too much. Like I say you've got a small lot, Mr. Axton owns a small lot and he's crammed a lot of structure onto that lot. So that's the issue we have. It's really an aesthetic issue and what it does is it may bring down the property values as a result. Those are my comments. Thank you.

Ed Darrow: Thank you. Sir, if you could please give your name and address for the record.

Charles Marangola: I'm an attorney and my wife owns the house I live in and I'm representing her tonight. A couple things. The structure you had a question about what the use of the structures were, an attached structure. You're section 305-24D says: "Particular permitted accessory structures and uses. Accessory structures and uses include, but are not limited to, the following list of examples; provided, however, that each structure or use shall comply with the standards and requirements of Subsections A and B above.

(1) Private residential garages

(3) A structure for storage incidental to a permitted use, provided that, for a structure accessory to a residential use, the combined area of the accessory structure and an attached or unattached garage shall not exceed 750 square feet, and in no case shall an accessory structure exceed 150 square feet in gross area. No such structure which is accessory to any other type of principal building shall exceed 10% of the volume of such principal building.”

The reason why they don't want to do that is they don't want to change the character of the lot. In addition subsection E of this particular section says: “Structures accessory to residential buildings which are not attached to a principal structure shall not be higher than 15 feet or 1 1/2 stories and may be erected only within the required rear yard of a principal structure, provided that they conform with the following:” and they go through the particular details of the side yards. So what we have here is this, we have our house and Mr. Axton was behind us. Mr. Axton got his house, Vern Axton was his grandfather and when we moved there in 1984 and bought the house Mr. Axton's grandfather actually lived there, very nice man. He had the one story ranch. I'm on Lake Ave, Mr. Axton's on Throop Ave because the lots go all the way through. Mr. Tamburino is over here on the side of Mr. Axton and Mr. and Mrs. Tamburino have a view this way. The Losani's are on the other side of us, they own a lot not only on Lake Ave but also a lot on Throop Ave which is a building lot which they are interested in possibly selling. Mr. Losani couldn't be here this evening.

Susan Marteney: If I could, that's what is kind of a thicket area, undeveloped.

Rick Tamburino: Yes, it's underdeveloped and it's on Throop Ave and it's one of the last building lots in the City. He came over the house on Saturday and we asked him if he could come with us Monday but he could not due to a previous engagement but he said that he's with us 100% on this. What has occurred is that now we have this huge structure behind us, those pictures were taken from our property showing this structure and what has occurred is that it has changed the character from residential to commercial. That's why the law is pretty specific about 10% volume. They don't want accessory structures in excess of 10% of volume of the main structure because it changes the character of the lot. Mr. Losani and I were speaking on Saturday and we both agree he's going to have a difficult time selling his lot, a residential lot. Why? Because you have this huge pole barn which is right next to the line sitting right there. So for someone to come in and build a nice beautiful ranch or two-story house wouldn't make any sense. So we have that change in character. We have this other thing, and as well as putting a shed behind, it's like salting the wounds, there's a huge shed behind the barn and we see this so we basically have a commercial structure which has turned into a change in zoning for us, really. All I can think about is that I have an office in Moravia and an office here and all I can think of is when I travel down to Moravia and see a little mobile home sitting there and it has a huge pole barn next to it. That's exactly what you have in this situation here. You may ask yourselves, “Where were you in September?” We're neighbors, we get along, we don't cause any trouble for anybody normally, we mind our business, raise our family, etc. No one here anticipated that being built because it says in the notice that it was going to be a detached garage to be built. We all thought, he has a boat there, he brings the boat in in the summer and we know he has to put the boat and that kind of thing but this has completely changed the character. I find it interesting tonight that when you go through your findings on each of the different variances, one of the first things you have to say is if it is detrimental to the character of the area. It definitely is and it's hurt basically three properties. Whether we're here or not to say we should be for or against something, the board still has an obligation to look at these things because people don't know what's being constructed, how large they are, what the uses really are for them. As I said, we're

all neighbors and we try to get along best we can. There's one little thing I wanted to bring up in respect to this but can't remember. This is really not a good thing for us and it's going to be difficult in the future. We bought our house in 1984 from Mrs. Avery before we were married, my wife and I. We bought it for \$52,500 and it was a junker, it needed a lot of work. Over the years we've put upwards of \$300,000 into it. It's now assessed for a little over \$200,000. We've lost a substantial amount of money over the years on this and that unfortunately is what is occurring in Auburn over the years. Now with this building behind us it's going to be more difficult and the value be even less. We're asking you to open this up again for us to look at to have some idea of where this is going to go. I thank you very much for listening to us and hopefully we'll have it opened up.

Ed Darrow: Is there anyone else present wishing to speak for or against this matter? Sir, please give your name and address.

Dominic Giacona, 9 Court St.: I'm here on behalf of Mr. Axton. Thank you for your time, I do appreciate your giving me the opportunity to speak on behalf of Mr. Axton today. There's a variety of things that I would point out for the board's information here. Certainly both myself and Mr. Axton appreciate the points that were brought up by the other neighboring property owners. They're great points. And they're points that should have been brought up at the ZBA meeting back in September when this was initially heard. They brought up specific issues with the notice that was provided and they said that a detached garage wasn't proper notice to what Mr. Axton was going to build. If they had concerns with the type of garage or pole barn, however you'd call it, that Mr. Axton was going to erect they should have been here for that ZBA meeting to discuss these concerns. That's the purpose of the notice requirement of the ZBA. I'd like to point out to you, there's a standard to grant a re-hearing in ZBA decisions and that standard can be looked up in Article 81A of the board of appeals procedure law. If you look at section A, subsection 12 of that, in order for the board to grant a re-hearing, first of all the board must unanimously agree to have to a re-hearing. But what the board also requires to overturn a previous decision is that the board must find that there are no rights vested in persons acting in good faith reliance upon a prior order. That's exactly what happened here. Mr. Axton relied, good faith reliance, upon the decision of this board and thereafter spent nearly \$35,000 to erect this structure. I've heard from the other side say that Mr. Axton misrepresented what he was going to build. I submit to you that Mr. Axton exactly what he said he was going to build. Actually, let me correct that, he built a structure smaller than what he asked the ZBA to approve. An examination of the meeting minutes from the September 22nd ZBA hearing will clearly show Mr. Axton pursued a 1200 square foot area variance to erect a detached garage. The issues that were very appropriately brought up by the neighboring property owners were weighed by this ZBA. Mr. Axton submitted an application for an area variance in accordance with Code Enforcement's direction and the direction of this board. In that application there's attached a plot plan for building permit. And that plot plan for building permit showed the area of the house, its square footage along with the detached garage that was proposed to be built as well as the attached garage that was there. I find this issue of whether or not an attached garage is an accessory structure or a non-accessory structure quite humorous because what the neighboring property owners have said is that Mr. Axton has not acted in good faith when he pursued this variance. It's quite clear that he did not know, nor should he have known, that he was supposed to disclose the square footage of his attached garage and yet he did in that parking lot plan. I can only assume from reading the meeting minutes that at least one member of this board, ZBA, went to the residence in order to investigate the property and I know that Mr. Hicks also went to the premises to inspect to the property prior to issuing the building permit. The fact there was an attached garage on the

property was clear and apparent to anybody who would go there. And Mr. Axton's disclosed it in his application to the ZBA. We have receipts that show that in good faith he relied on the ZBA's decision and spent over \$35,000 to erect this structure. I can appreciate the points that were brought up by the neighboring property owners of how this structure is several hundred feet than the zoning code allows, that is the exact reason why Mr. Axton pursued an area variance, to get permission. Permission to deviate from the Code's particular requirement.

The last point I would make I alluded to in the beginning of my argument, is that the building that was erected is actually smaller than what the ZBA provided for. If you look at the permit that was issued on this specific structure it was for a size of 28' x 38' and that's 1,064 square feet. What was actually granted by the ZBA was 1,200 square feet. I respectfully direct your attention to a letter from the Thurston law firm dated 5/8/15 in which they provided a depiction of the amount of square footage this property is actually over. If you look at the bottom of the first page they put forth this structure is 180 square feet over the total area variance allowed. Again it's important to take note that the pole barn that was actually erected is 1,064 SF not 1,200 SF. That means this structure is an overall 44 SF bigger than what was discussed at this meeting. If you take into account the attached garage, which Mr. Axton didn't know was of particular importance. I'd also like to respectfully submit some pictures for the board's review. *distributes pictures* Although the obtrusiveness of the structure truly is not a consideration that the ZBA needs to use in order to grant a re-hearing, I will still address that for the board. I do take some issue with the pictures provided before. I believe the Tamburino property has a rather large view of the structure in question from their family room and I believe they submitted a picture to represent that. In my opinion that picture I don't believe it's from the family room but from outside the structure closer towards the pole barn in question. I've submitted pictures to you marked exhibit A and exhibit B showing the view from the south side of the garage as looking at the Tamburino property and the Marangola property. You can see that this structure is guarded by trees surrounding the property. Certainly during the winter months when the leaves are not on the trees certainly you can see the pole barn, I recognize that. I don't believe the obtrusiveness of the structure should be a consideration at this point for this decision however I thought I'd address it and I would be happy to answer any questions the board may have.

Ed Darrow: Are there any questions from the board? Any questions? You may be seated, sir, thank you.

Is there anyone else present wishing to speak for or against this? Ma'am, please give your name and address for the record.

Patricia Tamburino, 7 Crescent Ave: I have a couple quick things to say. I know I've seen both sets of pictures and if you come into my family room and sit down on the couch and look out one side, boom, you've got a pole barn. I can't say any more than that. I know that one picture looks great but our property is taken care of well and so is Mr. Marangola's and so is Chad's but now it's got a huge pole barn to it. When I first saw the letter, and I did call Brian, and we discussed again, we saw it first and said it's a garage, okay, didn't think anything of it. I don't know the measurements and then when I saw it going up I went 'Oh my gracious' and I called Brian and we talked. I just had a couple things to say about it. We put on this family room and everybody that comes in looks out the window at this. There's even a security light at night so that the back is all lit up. It's a pole barn, not a garage.

Is there anyone else wishing to speak for or against this application? Yes sir, please approach and give your name and address for the record.

Mike Feltz, 80 Throop Ave: I happen to live right across the street from Chad. It's a big structure which when I got the letter knew exactly what it was going to be and didn't have any concerns because I knew what it was and it wasn't misrepresented to me in any way that it was going to be bigger and that's why he went for the variance because it was going to be bigger. From what we can see from our house to and I don't think it distracts from anything knowing what the structure is intended for.

Is there anyone else present wishing to speak for or against this? We've already heard from you Mr. Marangola, there's no rebuttal in this. Is there anyone else present wishing to speak for or against this? Seeing none and hearing none I'm going to close the public portion so we can discuss it amongst ourselves.

Looking at point one: notice. Reading what was on the paper was very vague. I personally, if I'd received a notice like that and in my back yard I'd have a very large structure. I'm not saying if it's wrong or right, not calling it a pole barn or garage; a pole barn is a type of construction, that's it. Typically pole barns have metal siding but a pole barn is a type of construction. I do think, it is my opinion and we have to be unanimous here so I'm looking for everybody's opinion, but I do feel that notice was very vague. The notices should at minimum, in something of this nature, state the size of the area variance being looked for. Your thoughts on point one.

Deb Calarco: I don't necessarily disagree with the fact that we should be giving more information but I also know that this is exactly what we have been doing for a very long time. So it's not like this was intentionally vague.

Ed Darrow: This isn't our information but what was given to the residents.

Deb Calarco: I understand that. Seeing these types of notices, I've been the recipient of these kinds of notices, and this is what they are. So is the error in the fact that we have always been giving inadequate information to all people who get these notices or...I don't know if I can find fault with something that we've been doing all along and now we have one case that feels like it was inappropriate or not enough. I don't disagree that maybe we should be giving more information in the future but I don't know that I'm going to find fault with something that we've been doing for as long as I've been on this board. So yes, can they use more? Absolutely. Is this any different then what has been done in the past? No.

Ed Darrow: Other thoughts on the notice.

Susan Marteney: I'm looking at what the variance was and I have questions about the nomenclature that we use.

Ed Darrow: First I want to look at this and I want to focus on the notice whether we feel it was adequate.

Susan Marteney: I don't have a copy of the notice so I can't speak on it.

Ed Darrow: It was passed around.

Susan Marteney: Let me read it again then. There were many things being talked about.

Ed Darrow: Read the highlighted line because this is the first line that I want to focus on. If there was adequate notice given.

Susan Marteney: It's vague.

Ed Darrow: Any other input as far as the notice goes? If not then I as chair put for as motion for unanimous consent to re-open the hearing of 77 Throop Ave meaning everyone has to vote 'Aye', one 'No', it fails.

Chad Hayden: Mr. Chairman, as your Counsel I want to advise you the standard by which you can decide to re-hear a case is one in which you have to determine that the applicant's rights have not been prejudiced, that is, he relied upon...let me put it differently, if he expended a lot of money based upon his approval received by this board that's called detrimental reliance. And you have to determine that in fact he has detrimentally relied on that and if he has detrimentally relied then there's really no basis for a re-hearing.

Ed Darrow: I understand that and it's also something that must be unanimous.

So all those in favor of re-opening 77 Throop Ave due to the fact that the notice was inadequate please say 'Aye'. That motion has failed. Therefore our finding is notice was adequate.

Moving on to step two which would be the consideration of the garage square footage as accessory structure or not. Am I in the right ball park on that, Counsel?

Chad Hayden: I see what you're doing, you're parsing into each individual element and you want to address them.

Susan Marteney: Can we look at what the motion was?

Ed Darrow: Absolutely. Would you like it read back?

Susan Marteney: No, I have the minutes. It says there were three area variances to construct a 30' x 40' x 20' garage. So my first question is; what's a garage? Brian?

Brian Hicks: I don't have a definition.

Susan Marteney: Is a pole barn a garage?

Chad Hayden: I think the chair has stated in terms that a garage is a function or use and a pole barn is description of the type of construction.

Susan Marteney: Okay. I'm asking Brian to tell me that; what it says. Is a pole barn a garage, is a garage a pole barn?

Brian Hicks: I can only give the definition that's used in the code. Pole barn is not addressed.

Susan Marteney: So the answer is maybe.

Chad Hayden: I think the answer would be all pole barns are garages but not all garages are pole barns.

Ed Darrow: Exactly. Because it could have been built post and beam construction and still have similar looks. It could have been stick built and still have a similar look. It's what you put on the outside for the siding that gives it that look. And there was metal siding put on which is associated with pole barns because you so commonly see metal on pole barns. Pole barn is nothing but the way it's constructed.

Susan Marteney: Can we ask Mr. Axton to approach?

Ed Darrow: Mr. Axton please approach, give your name and address for the record.

Chad Axton, 77 Throop Ave:

Susan Marteney: What is the size and height of your garage?

Chad Axton: 28 x 38 x 20.

Susan Marteney: And that has been verified? Because we gave him an area variance to construct a 30 x 40 x 20 garage. I'm just looking to see if he has done what he was given permission for. He actually built a smaller garage, a pole barn. In our discussion that night you never mentioned that it would be a pole barn, you said a garage.

Chad Axton: It says right in the application 'a pole barn construction'.

Susan Marteney: Do we have a copy of the application?

an application is distributed

On the front page of the application itself it says garage and what you wrote says 'Construct detached *garage*'. You have a lot of 'no information'. You also say there are a lot of *garages* in the neighborhood, some are smaller some are larger. 'The look of the property will be improved by storing and boats in a *garage* rather than the yard and driveway.' There's no place in this that it says a pole barn. It just says garages throughout. It says 'proposed garage'. There's also a picture of it and while you were talking you never say the words pole barn.

Chad Axton: Okay, it's not there but I do remember going to the Code Department twice and asking the question of construction.

Susan Marteney: But you never brought it up during the hearing. You didn't say pole barn, you said garage.

Chad Axton: It is a garage. It's just a pole barn construction.

Susan Marteney: Well this is the problem the neighbors are having with it.

Chad Axton: I'm sorry to hear that. I wish they had come to the meeting as that was the purpose of the meeting. And furthermore I asked the Codes Department also about roofing materials and I also asked about siding on the garage. I asked if there was any preferences for roofing or siding materials. I was totally indifferent to any of them.

Ed Darrow: That structure could have been built out of 2x6s on a footing and he still could have used metal roofing. There are houses in Auburn now that are putting metal roofs on. He still could have used metal siding. I hate to see the members stuck on those two words, pole barn, because pole barn is strictly a type of construction of a structure.

Chad Axton: One of the standards that you all look at is the impact it's going to have on the neighborhood and because the Code doesn't require a structure be built in a particular way, however it's built it has to be built according to Code. But since we're not addressing an appearance, you don't have an appearance code like the Historic Preservation area where appearance matters, the issue has not come up. You cannot add a standard that's not in the code and if the standard is how the building looks you'd be hard pressed address that in an approval or disapproval of an area variance. What you have to do is determine if the appearance has to do with a measure of impact on the neighborhood, that's that standard. You would have to say that the appearance, if it were clapboard sided it would have less of an impact on the neighborhood. You may be able to do that but it was not done in this case and it's not been done in the few prior cases I've looked at so I think there's an issue that it's hard pressed after the fact to adopt a standard that's not specifically in the ordinance.

Deb Calarco: It is a question I usually ask but I was not here.

Ed Darrow: Are there any other questions for Mr. Axton? You may be seated sir.

I'll entertain a point of order but you need to approach.

Charles Maringola: When you talk about the area, the volume of the structure do you also talk about...when you measure volume you have to measure length, height and width? But you have the pyramid on top which needs to be measured as well?

Ed Darrow: Our current code goes by square foot not cubic foot so therefore we don't go building volume.

Chad Hayden: We do have a building height limit.

Ed Darrow: Yes, we have a building height limit which is 15 feet. But that doesn't take cubic feet into play.

Charles Maringola: But you do have a 10% volume so you do have to take into consideration...

Ed Darrow: Yes, 10% volume of the other structure.

Charles Maringola: Right. You have to measure that to get to the volume because you have a standard of no more than 10% of the principal residence.

Ed Darrow: That I believe, the 10% volume of the residence refers to the square footage. The square footage of the structure cannot exceed 10% of the square footage of the residence. Not the cubic feet of the residence.

Charles Maringola: I think the section, I think that's one of the reasons why and to my knowledge there was no variance granted for that.

Chad Hayden: Brian, then do we measure at any time or do you require the applicant to give you the volume of the structure?

Charles Maringola: There's a section that says no such structure was accessory to any other type of principal building shall exceed 10% of the volume of such principal building.

Chad Hayden: We've been there but the question is how would we know what the volume is unless we have the applicant tell us what the volume is?

Brian Hicks: I have addressed this in the past, it's been quite a long time and I was told that we don't need to go there so I've asked why it's not removed from the code.

Chad Hayden: I think that answers another question we had internally about volume and what the applicant has to show us.

Ed Darrow: I've sat on this board for 22 years and I've never seen anything come across with volume or cubic feet.

Susan Marteney: I haven't either.

Charles Maringola: Well it's in your code and there wasn't a variance for it.

Ed Darrow: Thank you for your point of order. Other discussion?

Deb Calarco: It meets the 20 feet of the variance, it was given.

Ed Darrow: Personally I still don't think the five foot in height was substantial. When you're only talking 15 high to the peak, unless you want to have a 2/12 pitch roof how often will you be able to meet that in a two car garage. That creates a problem there in itself.

Scot Kilmer: I have a question. Chad, you had mentioned earlier about detrimental reliance, can you explain that in more detail?

Chad Hayden: Yes. In other words if the parties proceed in good faith and they have an agreement, in this case the grant of a variance and therefore the grant of a building permit pursuant to that variance, then if one party then goes ahead and expends and changes his position either by spending money, in the cases there's all kinds of actions that one party can take because they're relying on having reached that agreement or having received that permission and so if they got the permission, which is the variance, in good faith and they spent some 35,000 dollars according to the testimony then they have relied upon that approval and they have expended that money and expended it to their detriment if you went back and rethought your decision because they wouldn't get that money back. You can't take it down and

return the materials for a refund. So if they have relied upon it to their detriment that's the only standard mentioned in the general city law with respect to reviewing or redeciding these kinds of things. As counsel for one of the petitioners said earlier, the didn't want to litigate this but the only way to litigate this was within 30 days following the approval of the variance that they could bring an Article 78 proceeding to Supreme Court to review everything that was encountered here. Otherwise once that time period has gone by the only way you have to go back and redo this matter, and rehear it, it doesn't commit you to make a different decision, but to rehear it, in order to get there you have to determine that Mr. Axton is not going to be hurt by the rehearing, he is not going to be damaged. It's the concept of detrimental reliance: you rely on something to your detriment that you received in good faith.

Ed Darrow: Any other discussion? Anyone feel warrants to be reheard: that we were misrepresented, misconveyed? Any information? What one of the main points we have to think of, and this is one that's put forth to us as Brian has stated, the attached garage, does that count, the square footage, toward the accessory structure. And I think that's what Brian was trying to be perfectly clear about, we need to make that decision or consider that while making our decision.

Deb Calarco: I don't think we can because I don't think it's definitive whether it is or it isn't.

Ed Darrow: That's why we're asked to make that decision because there is that grey area. It's what each of our definitions of an accessory structure is. Because the maximum square footage of an accessory structure is 750 square feet. We're looking to each other for the determination if your garage is attached, in your mind, does that mean the square footage in there be used for storing a car or boxes, is that square footage an accessory structure.

Brian Hicks: In that paragraph that Mr. Maringola recited earlier, it is clearly defined as far as the attached and unattached and it does say that will be considered, but as far as the garage definition whether that's an accessory use or structure that's not clearly defined. But the square footage is a consideration as a total of the use and the structure. That's clearly defined in the paragraph and that is in the paragraph that is labelled with the top sheet for that area variance. It is denoted in there and that was the part that we have for the variance application that should have been read that evening prior to the decision being made.

Ed Darrow: Are you saying that wasn't read?

Brian Hicks: It was there in the application.

Ed Darrow: So it was up to each member to read it when we read our applications?

Brian Hicks: Yes, it was part of the definition of one of the variances requested.

Ed Darrow: Okay, thank you. So hearing that, that makes that one issue a little clearer.

Deb Calarco: It should have been decided then and there. We all should have had that information, should have read that information and should have known.

Ed Darrow: It is our responsibility to review our applications, to inspect the property, and to come to the meeting with the knowledge of what the application is about. I'm not going to start making

sure everyone else does their homework. Putting that side, do the members feel if there was a motion for you, you have enough information right now to decide whether or not we would grant a rehearing based upon the facts that the square footage or the fact that the volume were not addressed, which unfortunately, everyone one of us know, volume in cubic measurements of structures have never come before us? I thank Mr. Maringola for bringing that forward. Are we steadfast in making a decision here?

Stephanie DeVito: No doubt in my mind.

Ed Darrow: Then as chair, I put forth the motion for unanimous consent that we rehear said property at 77 Throop Ave and reopen the case due to lack of information and misrepresentation of information given to us. All those in favor 'aye'. None. Opposed, 'nay'. All. Nay. Therefore record the board's findings.

Chad Hayden: Mr. Chair, I think you really have to address the issue of why you're denying it in terms, in other words the detrimental reliance issue.

Ed Darrow: My nay vote was that I feel we were given proper information in our packets, the square footages to where I saw they were not misrepresented. I don't feel that Mr. Axton misrepresented what he was going to build. We had the sizes, we had the height, we had the length and width. It is the, in my opinion, the metal siding and roofing that makes everybody want to call it obtrusive and a pole barn and not proper for the neighborhood. And that is something we have never addressed; the siding or roofing that goes on a structure. Are there any others who would like to put their thoughts?

Susan Marteney: He actually made a garage that's smaller than what he was granted. And I agree, with everything he submitted in his application this is what we made the determination on. I don't think there's misrepresentation on any of it. What was asked for we knew exactly the what, when, where and how. Again, siding and roofing was not addressed and is seldom if never addressed.

Scot Kilmer: I think the announcement may have been a bit vague but that's the way they are and maybe it's time to look into changing that. I also agree that it is less square footage than we approved. And after having detrimental reliance explained to me I think that there would be a big detriment to Mr. Axton if we were to rehear this.

Alicia McKeen: Concerning announcements, they are given as they are because if I put exactly what the variance is for and you guys change it on the floor they're going to have to be tabled to do another public hearing announcement.

Ed Darrow: That's why I always question it, if we ever change anything I always question it because if it's substantial enough to reschedule it.

Alicia McKeen: I asked that of Andy once and that was his reasoning. But that is the reason, if I get too particular about what I put in there and you guys don't actually vote on what's there we're making people who come here wait another month until we can do another public hearing.

Ed Darrow: If you please record it then that the action asking us to reopen 77 Throop Ave has been denied unanimously. Thank you for your time. Sorry the results weren't different.

Housekeeping

Ed Darrow: Anything under housekeeping?

Scott Kilmer: In reference to this last case it might not be a bad idea to start to get a little more inquisitive to what the structure will look like on the outside.

Ed Darrow: Yes and no. Where we can but there is nothing in our code that allows anything out of our South St. Historic District to dictate.

Scott Kilmer: But you can flavor that like what we did with the pitches of the roof tonight. We should take a closer look at what it's going to look like.

Ed Darrow: I agree. I feel metal siding in a vertical manner in the City is completely out of line.

*** general discussion on aesthetics ***

Ed Darrow: Next meeting is June 22. Meeting adjourned.

Recorded by Alicia McKeen