



Chair Bush read the criteria for an area variance as follows:

**AREA VARIANCE TEST**

New York State criteria:

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- 1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- 2) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- 3) whether the requested area variance is substantial;
- 4) whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
- 5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chair Bush read the applicable section of Village Code as follows:

58-8A(5) Unless otherwise regulated, accessory structures and garages which are necessary to a residential use and located in a side yard shall meet the same front and side yard requirements as established for the principal building, and accessory buildings and structures entirely within the rear yard

shall be placed not less than three (3) feet from a side lot line or from a rear lot line, except that a structure which is accessory to a dwelling erected and occupied prior to the date of the enactment of this ordinance may be placed in the rear thirty (3) feet of the lot, not less than one (1) foot from the side lot line. No accessory building shall exceed fifteen (15) feet in height.

Correspondence submitted for the record, but not read at the meeting:

May 22, 2006 from Dennis and Peggy Lynch of 35 Brockway Place to Michael & Kathleen Donahue of 31 Brockway Place:

“The following is a summary of our conversation and concerns regarding the rebuilding of our garage. First of all, thank you for your consideration and cooperation in this matter.

When I initiated the conversation, you asked if we got much water in our garage the day before (May 21), when you back-flushed your pool. I responded, “Yes” which was one reason we needed to talk with you. The side of our garage nearest your property is sinking as a result of the erosion caused by the water running down into our property and through the building, all of which you did not dispute. I then mentioned the need to rebuild the garage.

In order to rebuild, we need you to remove all of your belongings from our property (fence, pump, heater, electric, gas, skimmer, decorations, etc.) and relocate them to your own property. This will allow us access to our property without damaging any of your equipment/belongings. You talked of turning things so they would be on your property, and I responded as long as it was within your property boundaries. The conversation ended with your acknowledgement that you would see what you could do.

This letter is to act as notification that the above must be taken care of on or before July 5, 2006. In addition, we do not expect any future back-flushing to be directed toward or affect our property.”

June 9, 2006 from Michael and Kathleen Donahue of 31 Brockway Place to Dennis and Peggy Lynch of 35 Brockway Place:

“We have received your certified letter and want to respond before implementing any changes to our property.

First, we do not dispute your claim that backwash water from the pool has flowed into your property. However, in 10 years of pool operation with you as our neighbors, even you have admitted that it has occurred less than 10 times (i.e., less than 1x per year). Thus, we do dispute the implication that runoff

from our pool backwash is a primary causal agent of the deterioration of your garage. From our perspective, a sub-standard foundation and the presumed lack of drainage tiles around the structure are

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the principle causes. We assert that the deterioration of your structure began before our pool was installed and even before we purchased our property. We are confident that the previous owners of your property would verify this assertion.

Second, we are surprised at the implication you made in our conversation that we had appropriated your land while constructing our pool. Since you were not yet the owner of your property, any assumptions on your part would seem speculative. In fact, a non-standard fence was already in place in the same configuration when we purchased our property. The strip of land that is technically on your side of the line had been used and maintained by the previous owners of our property for years. We merely replaced the existing fence with a code-compliant fence with the approval of the previous owners of your property. We then continued to maintain and improve that strip of land as if it was our own.

Third, we are disappointed in some aspects of the handling of this situation. As I mentioned in our conversation, the pool equipment sits idle for 8 months of the year, but you chose to raise the issue just as we were opening the pool for this summer season. In addition, you mentioned in our conversation that you wanted to be able to get to your side of the garage because you intended to fix it, and would not determine the extent of the rebuilding task until you got in there and inspected the damage. Why we had to discover from the code enforcement inspector that you are actually planning to tear down the existing structure and replace it with a new structure is a bit baffling.

Finally, we will make every effort to comply with your request, but the deadline of July 5 may be difficult to achieve. We have travel plans during this time, must coordinate with four different contractors (pool, electric, plumbing, and fencing) in order to complete the move, and account for the unexpected additional expense to our normal budget.”

Chair Bush welcomed everyone to the public hearing and invited the applicants to make a presentation.

**Applicant Presentation:**

D. Lynch said they bought the house 9 years ago and the garage was in bad condition. The condition has worsened and the southeast wall has sunk 6 inches, the sill has rotted and the roof is bad. He said they decided that there is no sense in re-roofing a sinking garage. It is currently 16' x 22', one story and sits 2 feet off the property line. They would like to tear it down and build a new 20' x 24', one and a half story detached garage that would sit 5 feet off the property line. The upstairs would be used for storage.

**Public Comment:**

Chair Bush invited the public to comment and asked for their name and address for the record.

Michael and Kathleen Donahue of 31 Brockway Place submitted the following in writing and read it into the record.

“Thank you for giving us the opportunity to speak. If it were not for enforcement of building codes, we would not have known of the size of the proposed garage next door to us. As it is, we only discovered that a new garage was replacing the current structure during an earlier conversation with Scott Zarnstorff.

A garage 21' in height would be approximately 8' taller, or 60% higher, than the existing structure. Such a garage would be out of character with any out buildings in surrounding properties in the neighborhood.

More relevant to our property, the amount of sunlight that our backyard receives from the west during the peak hours of the afternoon would be reduced, affecting our quality of life with respect to our swimming pool and gardens.

Therefore, any effort to lower the garage height or move the structure farther away from our property line (to the west) would be preferable.”

Dorothy Hermance of 39 Brockway Place said she lives on the other side of the applicants. She said there is no one behind them and they have almost a double lot. She said she does not see where sunlight has anything to do with this and that there is no reason not to grant the variance.

Hearing no further public comment, Chair Bush called for a motion to close the public hearing.

⇒ Member Hamlin moved, Member Borryayo seconded, unanimously carried that the public hearing be closed and the regular meeting be reopened.

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**Continued Board discussion on application:**

Member Hamlin asked the applicants why they need 21 feet height. He said this represents a significant percentage for a variance since 15 feet is what is allowed. He said he understands they would like additional room for storage, but the garage itself will be quite a bit bigger. He said it appears they would use it for one car, so that leaves a lot of storage space. D. Lynch replied that he needs room

for his workshop and gardening equipment on the first floor and yard supplies and furniture upstairs. Member Hamlin asked where these things are stored now. D. Lynch said some is lofted to the garage ceiling, some is in the basement of their house, which is fairly wet and some is in the attic, which has one of those pull down ladders, which is not very convenient. The garage would have an actual set of stairs. Member Hamlin asked the proposed height of the first floor. D. Lynch said 9 feet. Member Hamlin asked why they need 12 feet on the 2<sup>nd</sup> floor. M. Lynch said it would be 12' (21') at the peak. Member Hamlin asked if they would consider height of 18 feet instead of 21 feet.

Chair Bush asked the current peak height. D. Lynch said he was not positive. M. Donahue said he thinks it is 13 or 14 feet, but did not measure it. Chair Bush said floor level is not shown on the drawings that were submitted. D. Lynch said it is 9 feet from the floor to the collar tie. He said the contractor recommended an 8/12 pitch. F. Aloï commented that it is not old style barn construction. M. Lynch said it would be a much nicer looking building, regardless of the height. Member Manitsas said you need 9 feet for the garage door.

D. Lynch said there is a two story barn at 33 Adams Street and a large new one on Maxon Street that was granted a variance a couple of years ago. M. Lynch said she does not know what to say about diminished sunshine since they are being accommodating and moving the garage over, further from the Donahue's.

Member Keiser said there are some larger barns and garages. Many are nestled in the rear yard and already in the shade. This proposal shows it to be located almost to the middle of the property. M. Lynch said that location will be fine and will prevent many trees from being cut down.

Member Borryayo suggested taking a brief recess to contact the contractor to ask him if 19' height would work for this plan instead of 21'. D. Lynch said 19' is fine with him.

Member Hamlin noted that there was no short form environmental assessment form on file.

M. Lynch said she doesn't really understand the Donahue's issue. She said the Donahue's have a 3 story home that towers over theirs. She said they have made a point of making a very tasteful choice for their car and storage needs. She does not see what a few feet would matter. The contractor recommended the 21' height. A lot of consideration has gone into these plans. It meets their needs.

Member Hamlin said part of the ZBA's responsibility is to grant the smallest variance possible that will accommodate the applicants' needs and not negatively impact others. It is not purely aesthetics.

Chair Bush said their properties are very well kept. He asked the applicants if having the contractor change the pitch from 21' at its highest to 19' at its highest would be a problem. He said it would be a compromise.

Member Keiser said he does not object to 19'. He said the applicants had the right to apply for the 21' and part of the process is hearing the impact on others. D. Hermance said that's why there are variances. She said the proposed garage would not block or interfere with a single thing. Member Keiser said with all due respect, it may not impact her, but someone else is stating that they will be affected. Their opinions cannot be discounted.

Member Keiser asked the Donahue's if they would be comfortable at 19'. M. Donahue said they stated at the beginning that they would hope they could find a way to lower the proposed height. He said the yards are quite wooded and they have to heat the pool as it is because there is not much sunlight. He said what sunlight they do get is very precious. Chair Bush said when he made a site visit it was a sunny day and he didn't see much sun in the Donahue's rear yard because there are so many trees.

Member Manitsas said it would likely increase costs to the applicant to have their contractor re-draw

the plans. They will also lose some space. Chair Bush said they would not lose floor space, but some head room on the sides.

M. Lynch said she appreciates that some Board members paid a site visit and that some stated that they don't think it would have any impact. She reminded all that they are already moving it over.

S. Zarnstorff stated that if he received a building permit application for a new home instead of a garage, they could go as high as 35 feet at a 10 feet setback. This would block even more sun. K. Donahue said they can trim trees and bushes, but they can't trim garage height. She said they would like to reach

a compromise. The codes are there to protect everyone. She said yes, their house is tall, but its position does not affect their sunlight or their pool. They wish to enjoy their backyard.

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Chair Bush asked the applicant again if he would be willing to compromise at 19' height instead of 21'.

D. Lynch said yes. Member Keiser said 2' lower does not seem like much of a compromise. He said he

would have liked to see 18', which is halfway between what the code allows and what was proposed.

Chair Bush called for a motion regarding the area variance.

⇒ Member Manitsas moved to grant the area variance as applied for at 21-foot height. No second. Motion died.

⇒ Member Borrayo moved, Member Hamlin seconded, Member Manitsas in favor, Chair Bush in favor, Member Keiser opposed, CARRIED 4 to 1 that an area variance be granted at a height of 19' rather than the 15' the code requires and the 21' the applicant requested.

**Adjournment:**

➔ Chair Bush moved, Member Manitsas seconded, unanimously carried that the meeting be adjourned at 7:50pm.

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Leslie Ann Morelli, Village Clerk