

Effingham Zoning Board of Adjustment
Meeting Minutes July 2, 2014

5 Present: Jory Augenti, Tim White, Mike Cahalane, Jim Pittman, Paul Bartoswicz
Guests: Carol and Andy Spezzano, Rebecca Boyden, Knute Ogren
Minutes prepared by Barbara Thompson

The meeting was called to order at 7:02 pm.

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Approval of Minutes:

Tim moved and Jory to accept the minutes of June 4 with changes. The motion passed.

Line 10: Paul moved and Mike seconded.....

15 Mike moved and Paul seconded to accept the minutes of the June 18th public hearing as presented. The motion passed.

Correspondence: A Right to Know workshop in Manchester August 22nd. No one is going.

20 Public Comment: Knute Ogren introduced himself and talked about his application. He asked to stay and see how a public hearing is run so he knows what to expect.

Public Hearing 7:15 PM

Case #075

25 **Carol A. Spezzano Rev. Trust**
Application for Variance
Tax Map 103, Lot 23

30 Jim opened the hearing with roll call, an explanation of the procedure the board will follow and a reading of the application. Mr. and Mrs. Spezzano are looking for relief from the 10% rule in order to keep an 8' x 12' shed put up in violation of the zoning ordinance.

Public Comment

35 In opening comments Mr. Spezzano explained the history of his lot since 1946. He explained he is looking for the variance because the shed is the only place he has to store his outside equipment and it would be a hardship not to have it.

40 Jory commented to Rebecca that she denied the shed based on density, but it also is in violation of the setback. Further only one accessory building per lot is allowed in the setback. Mr. Spezzano's garage is his accessory building. Rebecca acknowledged the setback violation, but felt that any accessory building could be in the setback, not necessarily the primary one. She pointed out that the garage met all setback requirements when constructed at the same time as the house plus it is too large to meet the setback
45 exclusion.

50 This exchange led to a lengthy discussion regarding the lot density discrepancy between the tax card and claims by Mr. Spezzano relative to the lot size. In the end, the original lot line adjustment survey was obtained from the Town files and the lot size was verified to reflect Mr. Spezzano's figures. All agreed they were different than the figures on the tax card and to proceed on with the hearing. Jory commented that the figures should be rectified on the tax card so the records are accurate.

55 Mike brought up the point that under section 402.1 a building less than 100 SF can fall in a setback and that some exceptions to the rules are allowed. It was established the shed is 96 SF. Mr. and Mrs. Spezzano thought it would be better to ask for forgiveness of the whole amount rather than a portion, as the overage of the 10% rule was less than 96 SF.

60 Rebecca commented that the measurements of the buildings done by the assessors are also incorrect but that a variance of a few inches one way or another does not affect the value of the property. She said she has found the assessors tend to round up when listing figures, which can throw off the actual square footage. After some discussion of property footprints, the figures given by the applicants carried.

65 **Motion**

Mike moved and Paul seconded to close the public comment section of the hearing. The motion passed and public comment closed at 7:55 pm.

Deliberation

70 Jim brought up Section 402.1 allowing structures less than 100 SF being allowed in a setback. He asked the members for input as to whether they felt this was relevant, since the violation is for the 10% rule.

75 Tim commented that if you ignore the 10% rule there would be no question of the placement of the shed as it would qualify under 402.1. It's a matter of how concerned the members are about the 10% rule.

80 Paul felt the 10% rule wasn't much of an issue. He expressed the belief that the Board should accept what is presented by a Rebecca as she is working in the interests of the Town.

85 Jim revisited Section 402.1 because he felt the spirit of the ordinance allows for accommodation of situations where the impact is minor and where there seems to be a common interest in this sort of structure, even though the denial was based on the 10% rule.

Tim asked if there was a clear statement relating to the overage.

90 Jory said that depending on which figures were used it was somewhere between 40 SF and 120 SF.

95 Jory asked Rebecca why the Board did not receive a notice of violation. She replied that when a homeowner is willing to work with her she does not issue the violation but has them fill out the application for variance. It is when she gets no response from the homeowner that she issues the notice of violation. Jory questioned for the record why Mr. and Mrs. Spezzano would knowingly put up a structure in violation of zoning as they have been here for many years and know that zoning is in effect.

Motion

100 Mike moved and Paul seconded to call for a vote. Tim felt that an informal polling of the criteria could result in discussion that might shape people's thinking prior to a vote. Mike conceded the point and withdrew his motion. Paul withdrew his second. Tim moved and Mike seconded to have an informal poll to help focus discussion prior to a decision. The motion passed.

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Poll of Criteria

1. Not contrary to public interest. All voted.
2. Not contrary to the spirit of the ordinance. All voted yes.
3. Granting variance will do substantial justice. All voted.
- 110 4. Value of surrounding properties is not diminished. All voted.
5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship.
 - a. Jory: They already have a garage and knew the restrictions of the lot to begin with. He did not see it as a hardship. No vote.
 - 115 b. Tim had an issue with them putting up the shed in violation. He did not feel this met the criteria of hardship. No vote.
 - c. Mike felt it met a reasonable use of the property. The amount at issue with the 10% is very small. The fact that the lots prior to zoning were so small as to make it a hardship in itself. What they are asking fits within our ordinances. Yes vote.
 - 120 d. Paul also felt the use is reasonable and will increase the value of the property. Yes vote.

Tim: Having registered his reservations how this was done, Tim agreed with Mike for various reasons. This was why he wanted to have the straw poll so the issues could be discussed. Now he is reconsidering his vote.
 - 125 e. Jim: By strict definition he did not believe there is a hardship. There is nothing unique to the property to create a hardship. He returned once more to Section 402.1 where small accessory buildings are given special treatment in terms of setbacks. The spirit is that these buildings hold a special place in the ordinance. Plugging that into the hardship case is difficult as it isn't a clear erasure of the hardship. In this case the numbers are so close it starts to get into the realm of arbitrary. Clear definition is this is not a hardship. However, in a case like this the literal enforcement does not work. He was willing to let the hardship go because he felt this case was in a grey area. He did not feel that justice would be done by denying the variance. Yes vote.
 - 130
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Approved _____
Approved with changes _____
Unapproved _____

Based on the informal poll, there was adequate approval to grant the variance.

140 **Motion**

Jory moved and Tim seconded to proceed to the vote. The motion passed.

Vote on Criteria

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1. All voted yes.
 2. All voted yes.
 3. All voted yes.
 4. All voted yes.
 5. Four yes votes and 1 no vote by Jory.

150 The variance was approved. Jim will prepare the Notice of Decision and have it available within 5 business days.

Motion

155 Paul moved and Tim seconded to close the hearing. The motion passed and the hearing closed at 8:30 pm.

Jim suggested putting off work on the Rules of Procedure to a future meeting.

160 The Board reviewed the application submitted by Mr. Knute Ogren to put in a hot tub. All paperwork was in order. Jory asked Mr. Ogren if he would give permission to the members to view the site on an individual basis. This was agreeable to Mr. Ogren. Jory moved and Mike seconded to accept the application as complete and case #076 was assigned. The public hearing will be at the next regular meeting of the Board on August 6th no sooner than 7:15 pm. The motion passed.

165 Tim moved and Paul seconded to adjourn the meeting. The motion passed and the meeting adjourned at 8:55 pm.

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These minutes are considered draft until approved at a future regular meeting of the ZBA. Any changes or corrections will be noted in the next meeting minutes.