

Effingham Zoning Board of Adjustment
Meeting Minutes September 26, 2014

5 Present: Jory Augenti, Mike Cahalane, Jim Pittman, Paul Bartoswicz, , Tim White
Absent: Fran Marchand (alternate)
Guests: Leslie and Louis Grasso, Henry Spencer (Selectman), Rebecca Boyden (Code
Enforcement Officer)
Minutes prepared by Barbara Thompson

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The meeting was called to order at 7:08 pm.

Public Hearing 7:00 PM

Case #074

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**Leslie & Louis Grasso
Application for Variance
Tax Map 107, Lot 3**

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The hearing began with introductions, a review of procedure for the hearing and a reading of the application. At issue is the construction of two decks without permits; a front 8x12 deck (A) and a side 10x16 platform/deck (B).

Discussion

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Mr. Grasso opened the discussion by explaining that deck (B) is not attached to the house, that it is in two pieces and that it is taken down at the end of the summer. It is only used for 3 months for the screen house. Deck (A) was built as an entryway to accommodate two sliding doors, one of which is yet to be built.

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Jory explained the Deck B is constructed and is a structure, sits above the ground and therefore is in violation of the 10% rule. Alternative landscaping options were discussed such as filling in with pea gravel, filling in with loam and mulch, laying of bricks, patio blocks, etc. If any of these methods were to replace the platform Rebecca would have no objection and Jory would feel comfortable to say that it is not under the 10% rule.

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Rebecca brought up that there is no definition as to whether a patio is a structure or not thus leaving this a gray area and suggested this be taken up by the planning board. She also suggested the planning board might address the issue of how to deal with movable structures (decks) with regards to Section 708 (10% rule).

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Mike asked if there is an infringement on the setbacks as Mr. Grasso's map and the tax card do not match for measurements. He also asked if there is any reference to impervious surfaces as he questioned whether the restrictions for the Province Lake District and Shoreland Protection regulations had an effect on the property. Rebecca responded no as it isn't attached to the house and the Shoreland Protection does not affect

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the property.

Jim mentioned that the lot is one of the smallest in the area.

50 Tim raised the issue of the timeline of the constructions. There are two different decks at different times but coming under one violation. He feels this is basically immaterial because they are both illegal but may have an effect during deliberation.

Jim closed public comment at 7:55.

55 **Deliberation**

Jory began by saying he would like deck B dismantled. Deck A squares the footprint of the house making no further encroachments. It is a reasonable use where they are planning to put in another sliding door. He agrees this is a small lot and in the Province Lake District., so it comes under the same jurisdiction as any other lot in the area.

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Paul wanted to discuss each deck separately. Tim agreed as this is the first time for this type of case. There could be a split decision. Procedure was discussed.

Deck A

65 Paul agrees with Jory that it is in keeping with the appearance of the building and the whole area. Mike didn't see how the public benefits by the removal of the deck and agrees that on the whole the deck is not a problem. He would like to make a condition that the railing and stairs be made to meet state construction requirements.

Tim and Jim also agreed that there was no problem with the deck.

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Deck B

Tim would prefer to see some type of patio.

Jory agreed it is a small lot and the house is over 10% to begin with. They have another means to use the screen house that doesn't infringe more on the 10%.

75 Paul felt that as a structure it was not obstructing any view but is just another way to level the ground. It isn't permanent. Jory re-emphasized that it is a structure by zoning ordinance definition.

Mike argued the lot size restriction makes the 10% rule arbitrary and does not allow a reasonable use of the property. It is not doing any harm to the public that outweighs the property owner's rights and it is not obstructing any view.

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Jim reminded everyone that this case must be decided on the rules of the zoning ordinance currently in force, and that if Mike feels there needs to be changes made to Section 708, the proper place to take that up is with the planning board.

85 Jim asked if the deck interfered with the septic. Mr. Grasso explained the septic in the back of the house and not anywhere near the deck. Jim liked the idea of a deck better than trying to level the ground with gravel. It would be difficult to anchor the screen house. The deck's low profile makes it more functional. He didn't see any impact to the area especially in the winter when the deck would be buried in snow and not even visible. In his opinion there is very little collateral damage to the neighborhood.

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Tim summarized. Everyone had come to terms with Deck A. Any division is on Deck B. Jim asked that collectively all would vote to grant the variance for Deck A and the

95 answer was yes. Two conditions were discussed; 1. The decks cannot be enclosed. 2. Improvements must be made to Deck A. Jory didn't think the board could make the second condition as the zoning board has no jurisdiction in that area. This resulted in the only condition to be made would be not enclosing the decks.

100 Discussion turned to criteria 5: Hardship. Jim felt the major factor in favor of the variance is the lot size which is very small in relation to the neighborhood. If this applies to one deck will it also apply to the other? Jory felt that the property is not such that it forces the use of a deck. There is another alternative. Tim had difficulty meeting Jory's solution as it fell into the realm of demanding a lot of anyone making this adaption compared to anyone else in the area, thus a hardship. The condition of the lot re: the trees and root systems could make it a hardship to change the deck to a patio. Mike felt
105 the building itself is a hardship. Taking the spirit of the ordinance re: the public as a whole versus the property owner, he didn't see how this is a negative impact to anyone in this area of town. He reiterated that the property is out of state control re: Shoreland Protection requirements.

110 **Motion**

Paul moved to vote separately on the decks. Jory seconded. During discussion of the motion, procedure again came into play as this case is an after the fact single violation of the construction of two decks at different times. Jory withdrew his second. Further
115 discussion resulted in the following.

Motion

Paul moved to have a straw vote on Deck B. Mike seconded. The motion passed.

- 120 Criteria 1. Not contrary to public interest. All voted yes.
Criteria 2. Not contrary to the spirit of the ordinance. Four yes votes and Jory voted no.
Criteria 3. Granting variance will do substantial justice. Four yes votes and Jory voted no.
Criteria 4. Value of surrounding properties is not diminished. All voted yes.
125 Criteria 5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. Four yes votes and Jory voted no.

Discussion

130 Jim announced that the vote was 4 out of 5 unanimous yeses in support on all criteria. He asked if all would vote to grant the variance. Jory said no. If Deck B is granted he would change his vote on Deck A. His thought was to grant Deck A and dismantle Deck B because there are other means available for the screen house placement.

135 Tim commented that the illegality of the structures and the way in which they were done doesn't have a bearing on their allow ability. If a permit had been filed conditions could have been set, but since that is not the case and the decks are there, it's not out of the realm to just leave them there. Tim said the magnitude of replacing the current deck is

Approved _____
Approved with changes _____
Unapproved _____

onerous and possibly construed as arbitrary compared to the rest of the neighborhood.
Jim cautioned that a vote should not be punitive.

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Motion

Paul moved and Tim seconded to vote to see if a variance would be granted for both
decks, 8x12 and 10x16, with the condition that neither deck be enclosed. Tim seconded.
During discussion of the motion the board decided it was not necessary to revote the
criteria for Deck B. The motion passed.

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Motion

Mike motioned to vote for granting or denying the variance. Paul seconded. The motion
passed.

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Result: There were 4 yes votes and Jory voted no. The variance was granted.

Rebecca told Mr. and Mrs. Grasso they now must file for a building permit for both
decks. They can get the application online without having to come to her office. She
instructed them to include a copy of the Notice of Decision with the application.

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Tim moved and Paul seconded to adjourn the hearing. The motion passed and the
hearing adjourned at 9:09pm.

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180 *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.*