



TOWN OF WARNER

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Zoning Board of Adjustment NOTICE OF DECISION

Date of Decision: April 10, 2024

Application for a Variance

Case: 2024-03

Applicant: James McLennand

Agent: Derek D. Lick, Attorney, Orr & Reno

Address: 225 Couchtown Road

Map/Lot: Map 15, Lot 053-3

District: R-3

Details of Request: Requesting a Variance from Article VII,C,1,b, to allow a 7-foot encroachment into the 40-foot setback.

You are hereby notified that on April 10, 2024 the Zoning Board of Adjustment voted to **APPROVE** a Variance to the terms of Article VII.C.1.b, to allow a 7-foot encroachment into the 40-foot setback in an R-3 district by a vote of 3 to 2.

The Board's decision was based on the following findings/criteria:

1. Granting the variance will not be contrary to the public interest because:

The board found that the public is not injured by the intrusion on the setback. The board acknowledged that it is undisputed that a violation exists in that the applicant failed to measure prior to building the garage. They found that seven feet does not represent a substantial intrusion, nor will granting this variance threaten the public health, safety or welfare. It is an unfortunate but minor encroachment, and the property is wooded on the abutters side.

2. By granting the variance, the spirit of the ordinance is observed because:

The board found the spirit of the ordinance was upheld as the 7-foot encroachment would not overcrowd the neighborhood and therefore would not harm the public.

3. By granting the variance substantial justice is done because:

The board found that substantial justice would not be done in asking the applicant to alter the building to remedy the infraction. While there was no harm to the public due to the 7-foot encroachment on a 40-foot setback, it would be a significant financial burden to the applicant. The encroachment represents 56-square-feet which represents roughly one-third of a small car parking space.

4. Granting the variance will not diminish the values of surrounding properties because:

The board saw no evidence that the 7-foot corner of the garage encroaching into the setback would represent a diminished value to the surrounding properties. Even if the 7 feet were removed, the remaining mass of the garage would still be visible to the closest abutter.

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:**

A. **Meaning that owing to special conditions of the property that distinguish it from other properties in the area:**

i. **No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision on the property;**

The board found that literal enforcement of the provisions of the ordinance would result in a significant financial hardship for the applicant. The intent of the ordinance was to prevent overcrowding. Seven feet of the back corner of the garage did not have a negative impact on overcrowding in a rural neighborhood resulting in no loss to the public. Literal enforcement of the ordinance would result in an unnecessary financial and emotional hardship for the applicant because the garage has already been substantially built.

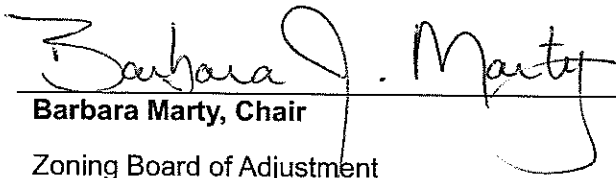
and

ii. **The proposed use is a reasonable one.**

[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use.]

The property has steep slopes and limited level area for cars to maneuver. The applicant sited the garage in line with the back of the house. While careful measurement of the setbacks should have been taken prior to building, the board understood that it is after the fact and found it reasonable to provide relief to the applicant from the terms of the ordinance.

Summary: Following a public hearing on April 10, 2024 the board granted a Variance by a vote of 3-to-2.


Barbara Marty, Chair

4.17.2024

Date

Zoning Board of Adjustment

Warner Zoning Board of Adjustment Note: The New Hampshire RSA 677:2: provides that the Board of Selectmen, any party to the action, or any person directly affected has a right to appeal this decision within 30 days after the date of the decision. This notice has been placed on file and made available for public inspection in the records of the ZBA.