

TOWN OF KIRKWOOD  
ZONING BOARD OF APPEALS  
January 04, 2016

A Public Hearing was held on January 04, 2016 at 7:00 p.m. at the Joseph A. Griffin Town Hall, 70 Crescent Drive, Kirkwood, NY on the application of Mahlon Shoemaker regarding property located at 12 Valley Vista Court, Kirkwood, known as Tax Map #178.04-1-13 and located in a Residential (R) District, for an area variance to permit the construction of a garage five feet (5') from the property line. In a residence (R) zone, fifteen feet (15') is required.

Present: Duane Travis, Chairperson  
Mike Maciak, Member  
Ed Egan, Member  
Cyndi French, Member  
Bruce Nemcek, Member  
Nathan VanWhy, Attorney

Absent: Jason Griffin, Associate Member

Chairman Travis called the meeting to order at 7:00 pm.

**APPROVAL OF MINUTES:**

Motion by Mike Maciak and second by Ed Egan to approve the minutes of the December 21, 2015 meeting as submitted. All voted in favor. Motion carried.

**PUBLIC HEARING – MAHLON SHOEMAKER**

Chairman Travis read the notice of public hearing. Chairman Travis commented that we have the affidavit of posting by the town clerk, notice to property owners within 500 feet of the project, affidavit of publication in The Binghamton Press & Sun Bulletin and County Courier, and affidavit of service by mail. We have the Broome County Planning Departments 239-m comments. A Short EAF has been filed. Broome County Planning Department has reviewed the above cited case and has not identified any significant countrywide or inter-community impacts associated with the proposed project. However we have the following comments, the site plan should show the garage and proposed setback. The Town Zoning Board of Appeals should ensure that the project would not encroach on the adjacent property or result in stormwater runoff impacts.

Chairman Travis opened the public hearing to public participation at 7:04 pm.

Chairman Travis stated I have a letter that was mailed in from one of the neighbor's; I will read it now, to have it entered into the records.

The letter was from The Oliva Family at 8 Valley Vista Court. They have concerns with this variance for a few reasons. We just received this notice and why has he not had to follow any of the Town ordinances. The garage is almost done being built without any building permit. The nice trees that acted as a boarder have now been cut down. With the construction of new garage, will we now have drainage problems? There are commercial trucks parked along side our small dead end road. This garage does not blend into our neighborhood and is a huge eyesore. The original letter is on file at the Town of Kirkwood.

Hearing no comments, Chairman Travis closed the public hearing at 7:08 pm.

Chairman Travis asked Mahlon Shoemaker to come forward and explain his project to the board. Mr. Shoemaker explained I began this process in September 2015 but was misinformed by the code department. I was told I needed a demolition permit and then a building permit; they would be mailed to me. With the cold weather approaching, I tore down old garage and started the new garage. I never received permits until late November. And I was told at that time I need to get an area variance. Chairman Travis asked Mr. Shoemaker is the size of the garage is actually larger then the original garage. Mr. Shoemaker said yes it is another bay and a half bigger. Cyndi French asked where it the property line, in the rear or on the side. Chairman Travis said if you were to look from the street in, it is on the right hand side of the property. Bruce Nemcek asked is the new garage any closer to the side then the old one. Mr. Shoemaker said the garage is bigger but it is still five feet (5') from property line. Cyndi French said so from the original footprint the new garage is still only five feet (5'), it is not changing? Mr. Shoemaker said yes correct it is not changing.

Mike Maciak asked if it is the same height as the original garage. Mr. Shoemaker said it is the same height as my house. Mr. Shoemaker came forward to with a print out to show the board. Ed Egan asked from the end of your existing garage, how far it will be to the end of your new garage. Mike Maciak said the original garage was 12' x 20'. Nathan VanWhy asked is the garage as tall as the house. Mr. Shoemaker said yes. Nathan VanWhy stated code is not higher then sixteen feet (16'). Mr. Shoemaker said it's not higher than sixteen (16') feet. Mike Maciak asked didn't code ask you for a drawing when you went for your permit. Mr. Shoemaker said yes, I gave it to code. Chairman Travis said we don't have a copy of it, do you have a copy with you. Mr. Shoemaker said no. Cyndi French asked what the size of the new garage is. Mr. Shoemaker said 32' x 24' deep. Mike Maciak said he went wider, but he could have cut the size down or moved it over. Cyndi French said you are building twenty four (24) feet back on your own property. Mike Maciak stated yes, but five (5) from property line. After a short discussion, Mike Maciak stated someone from code should be here at this meeting. It sounds to me like code did not do there job. Ed Egan said the town informed Mr. Shoemaker it was ok to precede then took it back.

Chairman Travis asked if the trees that were cut done, were they on your own property. Mr. Shoemaker said yes. But there were five big pine trees that were hanging over into my yard. My neighbor and I split the cost and cut them down. Cyndi French said they were right on property line so now the neighbors can see everything. Mike Maciak said we all have neighbors that don't agree. Mr. Shoemaker came forward again with pictures on his phone to show the board. You can see from my phone how much has been built. I have the walls up and the tresses up. He also said as far as the commercial trucks, the truck is mine from my job.

Cyndi asked what you will be using this garage for. Mr. Shoemaker said for my toys. Cyndi French asked will you put electric in it. Mr. Shoemaker said yes eventually. Bruce Nemcek asked if he would have built a garage the exact same size as it was before, would we still be here for a variance. Nathan VanWhy said no, it's the same footprint. Chairman Travis stated it is the same distance from the property line as the old garage was. Chairman Travis asked the board if the had any more questions.

Hearing no more questions, Chairman Travis stated the board needed to review and answer the questions in Part 2 and Part 3 of the short Environmental Assessment Form filed. Nathan VanWhy, Attorney stated this is a type 2 action and therefore no further environmental review was necessary.

Hearing no more questions Chairman Travis asked for a motion to accept the SEQR as submitted.

Motion by Ed Egan and second by Bruce Nemcek to accept the SEQR Determination that the proposed action will not have a significant effect on the environment. All voted in favor. Motion carried.

Chairman Travis then stated we will now review the area variance criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: Yes – the building could have been moved in some fashion to remain out of the setback.
2. Undesirable change in neighborhood character or to nearby properties? Board: No – the building is similar to other structures in the area.
3. Whether the request is substantial? Board: Yes, it is. Rather than 15ft, it is 5 ft. However, after reviewing again the photos provided by Mr. Shoemaker, in which the original garage appears to have been setback approximately 9’ (and not 5’ as stated), and considering this application as an expansion of his prior non-conforming use from 9’ to 5’, then no.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: Yes.

Chairman Travis asked the board if anyone had any further questions. Hearing none, Chairman Travis asked for a motion to either approve or disapprove the area variance as submitted.

Motion by Ed Egan and second by Cyndi French to grant the area variance, with consideration of it as an expansion of his prior non-conforming use from the original setback of 9’, with the following condition:

- 1) The garage will not be used as a business or a living space.

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|-----------------|--------------|-----|
| Roll Call Vote: | Mike Maciak  | Yes |
|                 | Ed Egan      | Yes |
|                 | Cyndi French | Yes |
|                 | Bruce Nemcek | Yes |
|                 | Duane Travis | Yes |

Motion carried.

### **ELECTION OF OFFICERS:**

Chairman Travis asked the board to elect ZBA Board Co-Chairman and Secretary for 2016.

Motion by Cyndi French and second by Chairman Travis to nominate Ed Egan as Co-Chairman.

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|-----------------|--------------|-----|
| Roll Call Vote: | Mike Maciak  | Yes |
|                 | Ed Egan      | Yes |
|                 | Cyndi French | Yes |
|                 | Bruce Nemcek | Yes |
|                 | Duane Travis | Yes |

Motion carried.

Motion by Ed Egan and second by Mike Maciak to nominate Bruce Nemcek as Secretary.

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| Roll Call Vote: | Mike Maciak  | Yes |
|                 | Ed Egan      | Yes |
|                 | Cyndi French | Yes |
|                 | Bruce Nemcek | Yes |
|                 | Duane Travis | Yes |

Motion carried.

**OTHER BUSINESS:**

Hearing no other business or comments, Chairman Travis asked for a motion to adjourn.

Motion by Cyndi French and second by Mike Maciak to adjourn the meeting. The meeting was adjourned at 7:52pm.

Respectfully Submitted,

Lori A Garvey, Secretary  
Zoning Board of Appeals