

TOWN OF KIRKWOOD
ZONING BOARD OF APPEALS
June 19, 2017

A Public Hearing was held on June 19, 2017 at 7:00 p.m. at the Joseph A. Griffin Town Hall, 70 Crescent Drive, Kirkwood, NY on the application of Rory and Janice Maginley regarding property located at 2317 NYS Route 11, Kirkwood, also known as Tax Map #228.12-1-35 and located in a Residence (R) District, for an area variance for construction of a three (3) car steel garage.

Present: Duane Travis, Chairperson
Mike Maciak, Member
Cyndi French, Member
Bruce Nemcek, Member
Keegan Coughlin, Attorney
Chad Moran, Code Enforcement Officer

Absent: Ed Egan, Member, 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 Cyndi French to approve the minutes of the May 15, 2017 meeting as submitted. All voted in favor. Motion carried.

PUBLIC HEARING – RORY AND JANICE MAGINLEY

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 recommend the Zoning Board of Appeals withhold taking action on the project until the following comments are addressed. The project site is located partially within the Preliminary FEMA Special Flood Hazard Area. The applicant should be informed of the risk of placing the project in the Special Flood Hazard Area. See comments from BCHD about the proposed garage must not encroach on the state Right-of-Way. The site plan should be revised to include 2321 NYS Route 11 which the garage will occupy. The Broome County Health Department (BCHD) had no comments. The Binghamton Metropolitan Transportation Study (BMTS) has no comments. The New York State Department of Transportation (NYSDOT) commented the proposed garage may not encroach on the State Right-of-Way and the applicant should verify the proposed structure's location relative to the highway boundary prior to construction. Please direct the applicant to contact the NYSDOT Broome Residency for assistance in locating the

highway boundary. No other items may be placed within the State Right-of -Way.

Chairman Travis opened the public hearing to public participation at 7:06 pm.

Debbie Antonetti from 2309 NY Route 11 came forward to say the Maginley's have done a tremendous amount of work to this property since they have moved in. We live right next door to them and the property value of the home has increased which has helped increase the overall value of the surrounding properties. I ask that you approve this variance because the garage will only increase the value of the property more.

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

E.A.F. DETERMINATION – RORY AND JANICE MAGINLEY

Chairman Travis stated to the board there some questions on Part 1 that need to be answered.

On page 1: Question 3a should be answered .42 acres and question 3c should also be .42 acres. Question 4 Residential should be checked. Question 5a - should be yes and 5b should be yes. Question 6 should be yes. Question 8b should be no and question 8c should be no. Question 13b should be no. Question 14 should have suburban checked also along with urban. Question 16 should be yes and question 17b should be no.

Hearing no more questions, Chairman Travis read the questions in Part 2 and Part 3 of the short E.A.F. filed.

Part 2-Impact Assessment: The board answered no, or small impact may occur to all eleven (11) questions.

Part 3-Determination of Significance: The board determined the proposed action will not result in any significant adverse environmental impacts. This is an unlisted action for SEQR.

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

Motion by Mike Maciak and second by Cyndi French to accept the SEQR Determination that the proposed action will not have a significant effect on the environment.

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

Motion carried.

Chairman Travis asked Rory Maginley to come forward and explain his project to the board. Mike Maciak asked if the garage doors are facing the driveway, not the road. Mr. Maginley said yes. Mike Maciak said so you won't be backing up into the main road. Mr. Maginley said no. Mike Maciak said from the pictures, it looks like you're on a straight away. Will this obstruct any views of other vehicles coming down or them trying to see around the corner? Mr. Maginley said no. Mike Maciak asked on the side where the door is in the pictures, was there an old garage there? Mr. Maginley said it use to be a carport. But my wife has been thru a lot of surgeries and has health issues and as she gets older this new garage will make it easier for her.

Chairman Travis asked if where the concrete pad was poured is on the same property as the house or is it on the next property over. Mr. Maginley said it should be on the same property. We own the next one but on the deed for the property it is all one deed with one address 2317. Chairman Travis said but you own 3 (three) parcels, is that correct. Mr. Maginley said I own 2 (two) parcels everything was added together. Cyndi French said the County has three parcels listed with different tax map numbers. They are not joined together. Mr. Maginley came up to look at map with the board. Mr. Maginley said when we bought the property they said it was only 2 (two) parcels and they joined them together. Chairman Travis said yes 2317 is your property but it shows it as 3 (three) separate parcels. So my question is, is the garage partially on the second parcel. Mr. Maginley said yes maybe it is. Chairman Travis said that in itself creates an issue but it's one that is easily solved. You would have to go to the Broome County Court House and have them combined the 2 (two) together or combine all 3 (three). Mike Maciak asked how many tax bills you receive. Mr. Maginley said 2 (two), I get one and my wife gets one. Chairman Travis so this does put your garage on 2 (two) parcels, but it is easily solved by going to the County.

Chairman Travis said the other issue we have is where your concrete pad is located now it is clearly in front of the house. Kirkwood Town Code does not allow you to put auxiliary structure in front of the main residence. Janice Maginley came forward with pictures of other homes with auxiliary structures in front of the house. Mr. Maginley said we are not asking for any special favors but I want the garage closer for my wife as she gets older. Bruce Nemcek stated so the front of the house is essential equal to the back of the concrete pad. Chairman Travis said that is correct. Bruce Nemcek said it certainly put it far in front of the house but I keep falling back to if he moved it back now the house is going to obstruct you pulling out of that back spot. Chairman Travis said if they rotate it so the garage doors are facing the highway, then you don't have that obstruction.

Chairman Travis said you were also issued a building permit and then a stop work order until you came to see us. On this building permit I am sure there are inspection intervals thru out the process of building. I am also sure one of the inspections is to have the foundation work looked at before you pour. Mr. Maginley said we found that out but the silly thing is people go past our house 3-4 a week and we rented equipment, we worked out there digging and no one ever stopped and said anything. Ms. Maginley said Chad did tell us that construction could begin 35 feet from the center of the road. Chairman Travis said I am not going to argue that point but when you get a building permit it is your responsibility to make sure

that the rules are followed. That's the bottom line. Mr. Maginley said I accept responsibility. Mrs. Maginley stated we also have a petition signed by all the neighbors saying they don't mind the location of the garage.

Cyndi French asked Mr. Maginley to look at one of the pictures included in the site plan and explain what is in the picture. Mr. Maginley said this must be a very old picture, but before we bought the property there was a shed down back so I think that might be what is in the picture.

Chairman Travis asked Chad Moran if he had any questions. Chad Moran said I did issue a permit and I did say 35 feet and I told them I would need to do a preliminary inspection but then I received a phone call that the pad was already done. Then I went out and told him to stop work until they came to the board. Cyndi French said to Chad Moran I see we have 26 x 4, is this from you measuring from the center of the road. Chad Moran said that's from the edge of the road not the center.

Cyndi French asked the Maginley's if there is a reason why you can't put this garage back further so it's even closer to the house. Mr. Maginley responded I would lose 7,000 dollars in material, it would also be blocking the view out of the windows and it would be a longer walk for my wife. Cyndi French asked what if you did it deeper into the lot. Mr. Maginley said that would be just wasting money. Cyndi French asked where the septic system is. Mr. Maginley said it is way back behind the house.

Mike Maciak asked Chad Moran if there is anything in the flood district that says they have to have it higher. Chad Moran said no, the only issue is they originally were doing a car port and then they connected the car port and garage into one permit. Mr. Maginley said they talked to FEMA and they said it has never actually flooded there. Keegan Coughlin attorney said there is actually a difference between actually flooding and being in a flood zone. Bruce Nemcek asked what will be on the exterior of the garage facing the road. Mr. Maginley said grey seal siding and the house is going to be resided to match. Bruce Nemcek asked are there any windows. Mr. Maginley said one window and on the yard side there will be two windows and a door.

Chairman Travis asked the board if they had any other questions. Hearing none, Chairman Travis 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
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: Yes.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: Yes.

A lengthy discussion followed with the board deciding to approve or disapprove this variance. Chairman Travis reminded the board we have a precedent that we need to look at and we have yet to set a precedent

of allowing someone to put garage on a vacant lot. If we approve this then we set a precedent to the rest of the town. Motion by Cyndi French t to deny this application. This motion did not receive a second. . Keegan Coughlin reminded the board that they could also table this variance for a later date. Cyndi French then withdrew her motion to deny.

Chairman Travis asked the board if anyone had any further questions. Hearing none, Chairman Travis asked for a motion to table the area variance.

Motion by Cyndi French and second by Mike Maciak to table the area variance tonight allowing the Madinley's to come back to the board within 90 days.

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

Motion carried.

A Public Hearing was held on June 19, 2017 at 8:15 p.m. at the Joseph A. Griffin Town Hall, 70 Crescent Drive, Kirkwood, NY on the application of Steven Whited regarding property located 257 Main Street, Kirkwood, also known as Tax Map #211.05-1-16 and located in an Residence (R) District, for an area variance to install an in-ground pool.

PUBLIC HEARING – STEVEN WHITED

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 countywide or inter-community impacts associated with the proposed project. The Broome County Health Department (BCHD) has no comments. Broome County Department of Public Works (DPW) has no comments. The New York State Department of Transportation (NYSDOT) has no comments.

Chairman Travis opened the public hearing to public participation at 8:18 pm.

Glen Fullie from 235 Main Street came forward and asked the board to deny this application. He said the property is not big enough. He also stated there have been several issues in the past with the septic. The septic is not big enough to handle it. He also has many friends parking on the church's property. Elaine Shuskoski from 259 Main Street came forward and said she has no issues with the pool. She said I did have my septic pumped out but it was not because I was having any problems. I know Steve and I think

he would be extremely responsible.

Hearing no more comments, Chairman Travis closed the public hearing at 8:25 pm.

E.A.F. DETERMINATION – STEVEN WHITED

Chairman Travis stated to the board there some questions on Part 1 that need to be answered.

On page 1: Question 1 should be answered no, Question 2 should be answered no, Question 3a should be answered .15 acres, questions 3b should be 13 by 27 square feet and question 3c should also be .15 acres. Question 4 Residential should be checked. Question 5a - should be yes and 5b should be yes. Question 9 should be answered yes. Question 14 suburban should be checked. Question 16 should be no and question 17a and 17b should both be answered no.

Hearing no more questions, Chairman Travis read the questions in Part 2 and Part 3 of the short E.A.F. filed.

Part 2-Impact Assessment: The board answered no, or small impact may occur to all eleven (11) questions.

Part 3-Determination of Significance: The board determined the proposed action will not result in any significant adverse environmental impacts. This is an unlisted action for SEQR.

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

Motion by Cyndi French and second by Bruce Nemcek to accept the SEQR Determination that the proposed action will not have a significant effect on the environment.

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

Motion carried

Chairman Travis asked Steven Whited to come forward and explain his project to the board. Mr. Whited said he did have Suburban Septic come to his home. He inspected the tank and he said everything looked ok. He did say if something did go wrong with the pool there is enough room and access to put a new septic in. Cyndi French asked where does your septic leach out. Mr. Whited came up with the drawing and showed the board out back where it leaches out and gave them a new drawing showing the fence. Cyndi French asked what kind of fencing you are using. Mr. Whited said it's a vinyl 6 (six) foot high privacy

fence from Lowes. And on occasion we have parked in the church but never when church is going on.

I have spoken with Diane at the church and she doesn't have any problems with the pool. It will be a two day install and they will be parking there equipment at the church. In exchange I have agreed to do some landscaping for her at the church. This is a fiberglass pool and don't require a big over dig.

Chairman Travis said the fence will only be 1-2 (one-two) feet from the property line. This is an area variance for the pool because it is less than 15 feet on the driveway side of the church. Mr. Whited said actually if you go from the border line to the pool it's going to be 6-7 (six-seven feet). Cyndi French asked so the fence will be encroaching on the property line. Mr. Whited said yes the fence will only be 1-2 (one-two) feet from the property line. Chairman Travis asked if there will be an entrance to the pool on the church side of the fence. Mr. Whited said no the only entrance to the pool will be from the driveway side or from the back of the house. Both will have alarms and be locked. Cyndi French asked if the fence is considered a set back if on the property line. Chairman Travis answered no. Cyndi French said so it the pool that we are concerned about. That is 6-7 feet (six-seven) feet and the set back is suppose to be 15 (fifteen) feet. Chairman Travis said yes 15 (fifteen) feet is the Code. Bruce Nemcek asked about the septic concern, you couldn't put a pool on top of the leach field, could you. Chairman Travis said no the County would not allow this, they review this application and if there were concerns they would have commented. Cyndi French asked is there will be concrete around the pool. Mr. Whited said yes there will be 3 (foot) concrete around the pool and we might extend it to the back end which will be pavers. Then along the fence by the church will be mulch and flowers. Mike Maciak asked if the pool will have a liner. Mr. Whited said no it's all fiberglass.

Chairman Travis asked the board if they had any other questions. Hearing none, Chairman Travis stated we will now review the area variance criteria as follows:

1. Whether benefit can be achieved by other means feasible to applicant? Board: No.
2. Undesirable change in neighborhood character or to nearby properties? Board: No.
3. Whether the request is substantial? Board: Yes.
4. Whether the request will have adverse physical or environmental effects? Board: No.
5. Whether alleged difficulty is self-created? Board: No.

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 Cyndi French and second by Mike Maciak to grant the area variance.

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

Page 8
June 19, 2017

Motion carried.

OTHER BUSINESS:

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

Motion by Mike Maciak and second by Bruce Nemcek to adjourn the meeting. The meeting was adjourned at 8:45pm.

Respectfully Submitted,

Lori A Garvey, Secretary
Zoning Board of Appeals