

Town of Allegany Zoning Board of Appeals
Public Hearing/Meeting Minutes
Monday, February 3, 2020 at 7:00 P.M.
Allegany Town Hall, 52 W. Main Street, Allegany, NY

APPROVED

Present:

John Jones, Chairman
Carol Ozella
Ron Kyser
Jeff Baxter
Kari Dugan, Secretary

Absent:

Don Sue

Also Present:

Lynn Moshier, Daniel Moshier, Tasha Moshier, Dan French, Denise French, Eric Moshier,
Lawrence Foster III

*Ms. Ozella made the motion to open the Public Hearing at 7:07 PM. 2nd by Mr. Baxter.
Mr. Kyser – aye; Chairman Jones – aye; Ms. Ozella – aye; Mr. Baxter – aye. Carried.*

PUBLIC HEARING

Lynn and Daniel Moshier (# 01-20) 4383 S Nine Mile Rd.

Area Variance of Side Yard Set Back for Existing Carport

This is an application for an area variance, for side yard setback to allow the Moshiers' to retain the placement of their carport.

The letter of intent, written by Dan and Lynn Moshier, presented to the Zoning Board and all neighbors within 500 feet of the property line, reads as follows:

“To Whom it May Concern:

I have always wished to build a carport on east end of house not only to protect a vehicle from weather but to serve as an emergency exit from the second story.

The house was built in 1970 when most people drove cars – so our garage is only 6ft high. Our vehicles have always had to sit in the driveway where west wind blows grit from cement plant and snow drifts across it. We are both in our 70's have arthritis in our spines which is aggravated by shoveling after which you find doors frozen shut!

I am the one who has to go out early in the morning to pickup sick grandkids who can't go to school. My health issues are lupus, fibromyalgia, Raynaud's syndrome, neuralgia in my face and now COPD which are all aggravated by cold & wind.

But our foremost concern is for our Down Syndrome daughter who will have life use of the house. She spends much of her time in her upstairs bedroom. She couldn't use those fire escape ladders and wouldn't jump from a window.

The front east window has a cedar chest under it so you could climb out and be able to stand on carport. For this reason we would like to apply for a variance.

Dan and Lynn Moshier"

Dan Moshier: The biggest reason for the carport is as a fire escape from the second story for our daughter, Tasha. She is unable to climb down fire escape ladders. This is the only fire escape we have. She (Lynn Moshier) has been after me for years to get something up there. She needs something solid, and the metal roof of the carport is solid.

Ron Kyser: You put this up without a permit.

Lynn Moshier: I was in the process of getting it. I came in many times and they kept saying you need 15ft., 15 ft from the property line. I don't have 15 ft. My house is not 15 ft. from the property line.

Ron Kyser: Your house is already there. The house isn't the question.

John Jones: There is an order to do things. Not build it and then try to get the permit.

Jeff Baxter: The carport is already up? It's not attached to the house? Is there something to prevent your daughter from climbing out? I'm just concerned for her safety.

Dan Moshier: Yes, the carport is up. It's not attached to the house. There is a window and cedar chest she would have to climb on to get out the window. She would not touch the window unless there was a fire.

Jeff Baxter: I reviewed this and then I went and took a look at the carport. The problems I had was, there was no diagram, I have no dimensions or size. I see the carport is already up. So, this is after the fact, correct?

Lynn Moshier: Yes, that is correct.

Dan Moshier: They put it up over the weekend, we were going to come in Monday morning and get the permit from Mr. Dzuroff.

Lynn Moshier: The problem was the distance.

Jeff Baxter: So, is this considered a primary structure or an accessory?

Carol Ozzella: I would think an accessory.

John Jones: You received a violation letter for building a structure without a permit, correct?

Lynn Moshier: Yes, and I came into the office to get the permit.

Jeff Baxter: What is the date on that letter? When was the carport built?

John Jones: November 27, 2019. So, the building was built prior to that.

Dan Moshier: Yes, it was prior to that.

Ron Kyser: Did you hire someone to put it up?

Lynn Moshier: No, our son put it up.

Dan Moshier: That is why it was done over the weekend. He works full time, he slid in there and put it up. He was supposed to get the permit. When we found out he didn't we came in and tried to take care of it.

John Jones: We have received a letter from Charles Montanye, dated 1/14/2020
Chairman Jones read the correspondence aloud, as follows:

"Kathleen M Martin, Supervisor

*I received a letter from Kari Dugan (secretary of Zoning Board of Appeals)
regarding the public hearing regarding the area variance for Dan & Lynn Moshier residing at*

4383 S Nine Mile Road. I own the property at 4358 S Nine Mile (93.001-1-23.1). I will not be able to attend the meeting, however I wanted to share my opinion in the matter.

I find no exception to their request and believe they should be granted the variance they requested.

*Sincerely,
Charles L Montanye”*

John Jones: The one thing I have a problem with is they need a 14ft variance.

Lynn Moshier: No, it's only 10ft wide, there isn't 14ft.

Carol Ozzella: It's the distance from the property line, not the size of the carport.

Dan Moshier: My neighbor said she doesn't understand why we can't have the carport. She doesn't see a problem with it. I asked her to write a letter, she said she would call a board member instead. I think she called Jimmy Hitchcock.

Lynn Moshier: I have pictures on my tablet, if you would like to see what it looks like.

Jeff Baxter: I was still trying to determine if this is a primary or accessory building that makes a difference with the distance. If it is principle it needs 15 feet, if its an accessory it needs 10 ft. What is the present distance from your building to your property line?

Lynn Moshier: About a foot or two.

Dan Moshier: About a foot and half or two. Away from the fence. I've talked to everyone of my neighbors and everyone of them said, "I don't see what the problem is."

John Jones: Well the problem is, you built it without a permit and the town law states you need to have distance.

Dan Moshier: Well, I know the variance. But the neighbors don't have a problem with it. The ones that see it the most don't have a problem with it. But I know we need the variance.

John Jones: We need to go through these tests to satisfy ourselves, to grant a variance. You are in violation of the zoning code, it is already there. My point is we need to figure the distance they are requesting for the variance.

Ron Kyser: We need to find out where that property line is.

Denise French: We just had it surveyed for the fourth time.

Ron Kyser: By who?

Denise French: By Mike Canada

Dan Moshier: Just the line between the two houses. Where the fence is.

Ron Kyser: Is the fence on the line?

Dan Moshier: Off the line.

Lynn Moshier: Most of it.

John Jones: Do you acknowledge that they survey they (Dan and Denise French) have is accurate?

Dan Moshier: Yeah, it's close. It's close.

Jeff Baxter: Where is the fence on the property? With the property line?

Dan Moshier: The line is on the other side of the fence, towards their (Dan and Denise French) property

John Jones: Does the fence show on the survey?

Denise French: I don't think it shows on this survey.

John Jones: We are trying to determine where the fence is, so we can see where the property line is.

Denise French: It is staked.

John Jones: Every two feet?

Dan French: We're not trying to get out of line here. It's their turn to talk.

John Jones: We'll let them talk and then you will go.

Lynn Moshier: There are some stakes there (showing pictures on tablet)

Zoning Board reviewed pictures of carport on Lynn Moshier's tablet.

Carol Ozzella: We need the dimensions of the carport.

Lynn Moshier: It's on that paper. 10 feet wide, and 10 x 10, I think.

John Jones: It shows 12 x 18 on the permit application.

Lynn Moshier: It is not 12 x 18. Its not as long house. It's not that deep, it's only the length of the van.

John Jones: We need to see where this is to the property line.

Lynn Moshier: It's about a shovel's width off the property line, on the front corner. Along the wire fence.

John Jones: Well, if that is all the information you have. We still need to know that distance from the line. And we do have a complaint, and that is from the French's, right? Denise and Dan French, right? We'll listen to you guys now then.

Denise French: Let's start with property line. We purchased this property and divided their (Dan and Lynn Moshier) land from our land. We had a building that was not 15 ft off the line and had to remove the building, so it did not encroach on their property. It was on the line so they (Moshier's) wanted it removed.

Dan Moshier: That's a lie.

Dan French: Well, because of the financing, the bank wanted it removed.

Denise French: It's on this survey, you can see it here, encroached on their property.

Zoning Board reviewed survey documents provided by Dan and Denise French.

Dan French: This survey is dated 1996.

Carol Ozzella: But it was the bank that wanted the building removed, not the Moshier's

Dan French: Well, that is what we were told at the time.

Denise French: That's what we were told, but it was still on their property. Also, in 1996 there was an approximate \$55,000 addition put onto the house (Moshier's) that makes it a duplex. There is a downstairs bedroom, full bedroom, full bathroom, full kitchen and full living room. That has a back access and front access. Beverly French lived there and after Beverly, Ethel lived there. The front access already has a wheelchair ramp. Our only thing is why build a carport on our property, our house, on the westbound side, they could build a carport there (eastbound side) and connect it to the wheelchair ramp and that would not infringe on anybody's property. That was build there when Ethel lived there and Beverly lived there.

Carol Ozzella: I'm really struggling with this. You guys are all family. I know you guys. I'm just really struggling. I don't know why this is such an issue.

Dan French: That is what we're trying to figure out.

Denise French: I still want access to build a garage on that side of the house.

The board further reviewed the survey.

Dan French: The wire fence is right on the property line.

Jeff Baxter: Where on here?

Dan French: Down on the south corner, but it is not on this survey.

Denise French: This is an old one.

Dan French: From here to the south corner.

Denise French: This is where the structure is, here on our property line.

Carol Ozzella: The problem with this survey is that the houses are here.

Dan French: The property line goes here from north to south. This here along their property line.

Denise French: This survey does not show the split rail fence.

Dan French: The corner post is directly on the property line.

Denise French: I've squared up the fence, you can see here. I did that as soon as I moved in.

Carol Ozzella: Did you want to say something LJ, before you leave?

Lawrence Foster III: Yeah. I gotta go, I'm sorry. Listen, I don't see a problem here. My main concern is for her (Tasha) and that's where it is. Whatever benefits her, then I'm with it.

John Jones: Wait, what is your name?

Lawrence Foster III: Lawrence Foster, it's on the sheet. Sorry, but I have kids to tend to.

John Jones: No, sorry it took so long, but...

Denise French: So, my only other concern is that this building is on the line.

Dan French: On the line, not inches away from, it is on the line, not 14 inches away or whatever.

Carol Ozzella: Why does this survey still say Beverly French?

Dan French: Oh, that is because that is the second survey. Done in 96-97. This was when Beverly sold the property.

Carol Ozzella: Do you have a revised one?

Dan French: We do not have the most current one.

Denise French: No, we don't have it yet.

Carol Ozzella: Well this one is from 1996.

John Jones: We can't use this one. We need an up to date certified survey.

Denise French: We thought we had the right one.

Dan French: We can get another copy of it. What they said when they surveyed it on September 12th was that nothing has moved, everything checks out. Nothing had changed since 1996.

Carol Ozzella: Since this is from 1996, and in Beverly's name. We can't use this survey.

John Jones: It could be inaccurate.

Denise French: I will get another copy and will drop it off.

Carol Ozzella: Yes, we will need the new one, so we know exactly where all the buildings are.

Jeff Baxter: When is the new one from?

Denise French: We had a new one done on September 12.

Carol Ozzella: Was the carport up prior to that?

Dan French: No, we had the survey done on September 12, because there was a conflict on September 8th.

Denise French: I was confronted by Eric.

Dan French: I said enough, we're going to have it resurveyed again, because there were no flags or anything left to know where it was, since the 90's.

John Jones: We need to know where the line is so we know where the building sets, so we can determine how much of a variance they need.

Denise French: I just don't understand why they don't just build a carport on the other side of the house, it would be part of the driveway and wouldn't infringe on anyone's property. This was built without a permit, and without even asking for a variance.

John Jones: Ok, well, does anyone else have any questions?

Carol Ozzella: Did you want to say anything, Eric?

Eric Moshier: No, I'm just trying to figure out how all of this works. I talked to Jerry and was told we didn't need a permit. I'm just trying to figure out what laws these are coming underneath. Because if it's free standing, it's not attached so...

Carol Ozzella: You talked to Jerry? What did he say?

Eric Moshier: Well, I talked to Jerry, and then got put off, and Craig took it over. He (Jerry) was on vacation, I talked to that girl. It is not attached to the house. I was told I wouldn't need the permit. That's why we built it to be free standing.

John Jones: You still needed the variance.

Dan French: We were told in the Code Enforcement Office, that it doesn't matter if it is temporary, permanent. Any structure, has to have a permit. And it can not be within 10 ft or 15 ft of the line so...

Carol Ozzella: Did Jerry tell you that?

Denise French: In fact, this young lady and Don Sue and Jerry was there that day. Gave us that paper. Come to find out they didn't have a permit. My only issue, and I understand they have needs. But if this is not a really connected carport, is this really safe for a child to stand on? Why not take out the window put in a door, and a landing? She is not ever by herself. I would think that would be more safe.

Ron Kyser: Right.

Dan Moshier: What she is talking about, the building being on the property line, that's not true. Number 2, I cannot put the carport on the other side of the house. She (Tasha) sleeps on that side of the house. She's not on the other side of the house. The only way for her to get out safe is through that window. I cannot put a doorway out there. We have something safe that she can stand on, when she gets out the window, she's not even half way out, and her feet will be on solid ground, which she needs. If she goes downstairs, and we take her outside, she needs to have a railing to hold on to. If I can get her out the window, she will at least have the roof to stand on, to keep her safe until someone can get her down. The other side of the house? There is no concern on the other side of the house. There is nothing I can do on that side of the house. I would have to tear up the whole lawn on that side of the house to make a new driveway. Because the house sits here and the other driveway is like this. It's not on the other side of the house, it stops here before it even gets to the house. So she's (Denise) talking about putting in a driveway on the other side of the house, but the point is she (Tasha) can't get out that side of the house, she needs to get out this side of the house. On that side, that's why I need the variance to get her (Tasha) out safely. We've been talking about doing this for 30 years, I've been in there 50 years without a problem.

Ron Kyser: I hope you don't ever have a problem.

Dan Moshier: Well, so do I. Jeez. My daughter is 39 now. She (Denise) doesn't have any concern for my daughter, don't let her pull your crap on that. She doesn't have anything to do with my daughter, she won't even look at her.

Ron Kyser: That is not why we're here.

Dan Moshier: I know. But she is telling you she is concerned about my daughter, and she's not. I can tell you flat out, she's not.

John Jones: We are here to go through these tests, and to decide.

Dan Moshier: Ok, I just want to let you know I can't do it on the other side, it's got the be on this side, where she is at. Where she lives at on the left side. If I don't get the variance for that side, and we have a fire, I don't know what she's going to do. Probably go up in smoke.

John Jones: You can't do this around back?

Dan Moshier: No, I can't get around back. No, no, no.

Jeff Baxter: Is it built like a pole barn? Like with 4 x 4's?

Dan Moshier: Yes, yes

Jeff Baxter: Is there a cement floor?

Dan Moshier: No.

Jeff Baxter: Are the posts cemented in?

Dan Moshier: No, we've got dirt. The posts come up like this and the across. But that's all it is, is just dirt. They're not permanently in, they sit right on top of the ground. It is what it is. I mean, so... Thank you.

Jeff Baxter: John, do you need a motion to do something?

John Jones: We don't have all the information that we need.

Jeff Baxter: That is what my motion would be.

John Jones: Well, yes then.

Jeff Baxter: I would make a motion then, that number one, we need more details in regard to the building size, building size exactly. Number two, that we need a current survey to know where the building actually sits on the property. We need those details.

Dan French: Can I add to that though? We have multiple pictures of every angle you could look at.

John Jones: Well, pictures...

Dan French: Are you going to understand, John, that building is on the line.

Carol Ozzella: We need more information.

John Jones: We can't tell where the line is.

There were no other comments from the audience.

Mr. Baxter made the motion to table this variance hearing is tabled, until such time that we receive detail in regards to the building size and a current survey. To be continued at the Town of Allegany's next Zoning Board of Appeals Meeting, March 2 2020. 2nd by Mr. Kyser. Chairman Jones – aye; Ms. Ozzella – aye; Mr. Baxter – aye; Mr. Kyser – aye. Carried.

REGULAR MEETING

Chairman Jones opened the regular meeting with the Pledge to the Flag at 8:12pm

Minutes

Ms. Ozzella made the motion to approve the minutes of the December 10, 2018 Meeting, as written. 2nd by Mr. Kyser. Chairman Jones – aye; Ms. Ozzella – aye; Mr. Baxter – aye; Mr. Kyser – aye. Carried.

Correspondence

Thomas Jones – AZT Corporation – Walmart Subdivision

January 2, 2020

Via: Email Town of Allegany Zoning Board 52 West Main St. Allegany, NY 14706

Re: Walmart Plaza Subdivision

Dear members of the Allegany Zoning Board,

Our company purchased the Walmart Plaza shopping center in October 2019. The purpose of this letter is to seek your approval to subdivide one of the lots. Currently the AMC, BJ's, and the vacant lot north of BJ's are all on one legal parcel. We intend to subdivide the lot and put each AMC, BJ's, and the vacant lot on their own legal parcels. This subdivision will not change the character or operation of the center.

Currently within this shopping center the Walmart, Verizon, Home Depot and the Old Navy shops building are already each on separate parcels. It is logical that the remaining buildings should be on their own lots as well. Subdividing the lots will provide us with flexibility in managing the center allowing us to re-invest into the center which will in turn benefit the residents of Allegany.

The subdivision of this parcel will not impact access, parking, or maintenance responsibilities. When the subdivision is recorded we will include cross access and parking easements as needed to ensure the center will operate in its current state. We own all parcels involved and will continue to maintain the buildings and common areas. Given this subdivision merely replicates the existing conditions of having individual buildings on their own parcel, we hope to move forward with the subdivision immediately and forego a board hearing or approval process.

Attached for your review is a new survey and legal description of each lot prepared by a local surveyor and ready for recording.

We are committed to success of the center and in December 2019 we invested a seven-figure sum towards project improvements and tenant retainage. We appreciate everyone taking the time to review this project and we look forward to the continued success of the Walmart Plaza.

Thank you,

*Thomas Jones
AZT Corporation*

New Business

Lynn and Daniel Moshier (# 01-20) 4383 S Nine Mile Rd. Area Variance of Side Yard Set Back for Existing Carport

Discussion was had, regarding the need for more details and possible alternatives for the Moshiers' application for Area Variance. Also discussed, the process for moving forward with this hearing.

Ms. Ozzella made the motion that being a side yard setback area variance, not a front yard setback, this matter would not require submission to Cattaraugus County for review, and could remain at Town level. 2nd Mr. Baxter. Chairman Jones – aye; Mr. Kyser – aye; Mr. Baxter; Ms. Ozzella – aye. Carried.

Walmart Subdivision – Thomas Jones AZT Corporation

Zoning Board of Appeals members discussed correspondence from Thomas Jones, AZT Corporation, regarding the Subdivision of Walmart Plaza. The members agreed that based on **New York State Town Law 276 Section (d)*** the authority of such a decision would be the determined by Town of Allegany Planning Board.

****New York State Town Law 276 Section (d)***

Planning board as lead agency under the state environmental quality review act; public hearing; notice; decision.

Ms. Ozzella made the motion to reply by letter, notifying Mr. Jones the Zoning Board of Appeals does not grant approvals to subdivide. This matter will be forwarded to the Town of Allegany Planning Board for review. 2nd by Mr. Kyser. Chairman Jones – aye; Ms. Ozzella – aye; Mr. Baxter – aye; Mr. Kyser – aye. Carried.

Ms. Ozzella made the motion to adjourn the meeting. 2nd by Mr. Kyser. Chairman Jones – aye; Ms. Ozzella – aye; Mr. Kyser – aye; Mr. Baxter – aye. Carried.

The meeting was adjourned at 8:30 p.m.

Next Zoning Board of Appeals Meeting March 2, 2020 7 P.M.

Respectfully submitted by:

Kari Dugan, Zoning Board of Appeals Secretary