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March 23, 2021

Via Electronic Transmission

Zoning Board of Appeals
Town of Berlin
240 Kensington Road
Berlin, CT 06037

Re: ZBA # 2021 – 05 (the “Revised Application”)
(a/k/a Applications for Variances from Front & Side Setback to Build Oversized Garage
Less than Three Feet (3’) from Property Line of 1.25 Acre Parcel)
Applicant: Ryan Haley (the “Applicant”)
Property Owners: Ryan and Michelle Haley (the “Haleys”)
Project Address: 379 Main Street, East Berlin, CT 06023 (the “Haley Property”)

Members of the Zoning Board of Appeals:

I represent Dorothy N. Warren, a 98 year old woman who owns and has resided at 369 Main Street, East Berlin for more than fifty-seven years. Mrs. Warren’s residence abuts the Haley Property to the north. This is a supplement to my previous letter to the Zoning Board of Appeals dated February 20, 2021 to address issues raised by the Applicant's Revised Application for variances.

Opposition to Revised Application for Variances

On behalf of Mrs. Warren, we oppose the Applicant’s request for the granting of variances that would permit the Haleys to tear down an existing nonconforming garage located close to my client’s property line and construct a significantly larger garage less than three feet (3’) from the property line in an R-43 Zone. The Haley Property is over 1.25 acres and has ample room and suitable topography to enable the Applicant to construct the desired alterations in a location and in a manner that does not extend or increase the nonconformity. The Applicant’s revised claim of hardship is based on his stated desire to continue his "desired use of the land by preserving our back yard, mature trees and existing hand dug well, and to maintain our desired use of the existing driveway and main entry points to the property." Translation: Although I've got hundreds of feet of land behind my house upon which to put a new garage that would allow me to maintain our desired use of the existing driveway and main entry points to my property, the garage I propose to build is so big, it might cut back on my beautiful view. Therefore, I'm requesting variances that would permit me to ignore the side yard requirement in the R-43 Zone, and let me build an oversized garage right up against my neighbor's property line, even though that would most likely reduce her property value.

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The Berlin Zoning Board of Appeals is Dorothy Warren's only source of protection, and we therefore request that you deny the Applications for variances.

Summary of Applicant's Proposal

The brief description of the proposal in the Application states "Removal of existing detached garage and lean-to, and construction of a new 1-car attached garage and small addition. New construction to be located in the same general area as the removed structures." The Variance Applications request "2' -8" Side and 37' -4" Front Setbacks." The Application further states "Existing 1770's house predates Zoning Regulations. Existing unusual physical condition of house & garage located tight to NW corner of lot, entirely within the front and side setbacks. Variances being sought to continue our desired use of the land by preserving our back yard, mature trees, and existing hand-dug well, and to maintain our desired use of the existing driveway and main entry points to the property."

Applicant has reduced the size of the proposed garage from his first application and moved it slightly back from a mere one foot (1') from Dorothy Warren's property line as he originally proposed, which we recognize and appreciate.

However, the current garage is two-hundred seventy square feet (270 sq.') and is located two and a half feet (2.5') from Mrs. Warren's property line. The Applicant now proposes to enlarge the new structure that will replace the garage to approximately four hundred seventy square feet (470 sq.) (approximately twenty-five and ½ feet (25' 6") by eighteen feet nine inches (18' 9"), less a cut out of about 10-12 sq.')), which is more than seventy percent (70%) larger than the existing garage and will be located a mere two feet, eight inches (2' 8") from the property line. .

Deficiencies in Grounds for Requested Variances

Failure to Meet Required Standard for the Granting of Variances

1. There Is No Hardship

a. The Haley Property has:

- i. No unusual size – 1.264 acres
- ii. Far more land on the south side of the dwelling than on the north side where the existing driveway and garage are situated
- iii. No unusual shape
- iv. No unusual topography

- ###### b. Applicant appears to be attempting to argue that the desire to align the proposed new addition and garage with the existing house and existing driveway causes a hardship supporting the granting of the variances. However, a hardship cannot be self-imposed or based on cost or finances, as it is here. There is no reason the garage cannot be situated behind the house.

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2. The Zoning Regulations provide that "it is the intent of these regulations to permit nonconformities (existing structures, etc.) to continue until they are removed but not to encourage their survival. A nonconforming structure, such as the existing garage, may be continued so long as it remains otherwise lawful, subject to the following provisions:
 - a. Such nonconforming structure shall not be enlarged or altered in a manner which extends or increases the nonconformity but may be altered to decrease the nonconformity.
 - b. The Applicant proposes to enlarge the garage to more than double the size of the existing garage and locate it one foot (1') from Dorothy Warren's property line, thereby increasing and expanding, rather than reducing, the nonconformity.
3. The construction of a garage/structure that is located a mere two feet, eight inches (2' - 8") from Mrs. Warren's property line:
 - a. Would reduce the size of the side yard on the Haley Property to two feet, eight inches (2' - 8") effectively eliminated the concept of a "side yard" in an R-43 Zone.
 - b. Anyone who has ever viewed a construction site knows that with a side yard of 2' 8" that is over 25 feet long, it is almost impossible for the new structure to be built without people trespassing on Mrs. Warren's property.
 - c. Would make it almost impossible for the occupants of the Haley Property to maintain the garage or walk around the garage without trespassing on Mrs. Warren's property. For instance, you couldn't place a ladder against the garage to reach the eaves or gutter without placing the foot of the ladder on Mrs. Warren's property.
4. As letters from two of Mrs. Warren's children, Susan Harlan and Dr. Paul Warren, indicate, Mrs. Warren was forced to place a reverse mortgage on her property after the death of her late husband to provide funds to pay for the cost of health care and living expenses. She fears that granting the requested variances and the construction of a much larger garage so close to her property line would significantly reduce the value of her property and impair the equity securing her mortgage.
5. In the 19th Century there was a saying attributed to Horace Greeley "Go west, young man, go west!" We propose that the only acceptable solution to the Applicant's desire to replace his garage would have been to **"Go East Applicant, Go East!"** Unfortunately, that apparently might have diminished Applicant's view, but that does not create a hardship justifying the approval of the requested variances.
6. As noted in the Memorandum of Staff Comments:

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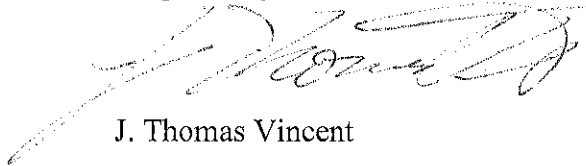
A ZBA variance application was submitted by a prior owner in October 1972 for an addition of a "two car basement garage, with a sun deck overhead, on the south side of 379 Main St". The variance was ultimately denied by the ZBA "because of insufficient proof of hardship in the use of the land", with the motion to deny including discussion of "the existing structure is already nonconforming and there is ample land to the rear which would allow for an alternate building plan without necessitating a variance"

Property owners purchasing, with knowledge, express or implied, of zoning regulations, cannot be deemed to prevent a valid case of exceptional difficulty or unusual hardship since they were aware, in law or in fact, of zoning restrictions prior to taking title to premises.

The Application that was denied in 1972 didn't even include a request for a side yard variance.

Therefore, we request that the Application for the requested variances be denied.

Respectfully Submitted,



J. Thomas Vincent

Enclosures

JTV/as

cc: Mrs. Dorothy N. Warren

Mrs. Susan W. Harlan

Paul Warren, Ph.D.

Mr. James N. Warren