

**TOWN OF KENT  
ZONING BOARD OF APPEALS**

41 Kent Green Boulevard  
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Kent, CT 06757

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KENT TOWN CLERK  
2018 APR 16 A 9:34  
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**APRIL 10, 2018 REGULAR MEETING MINUTES**

The Town of Kent Zoning Board of Appeals held a regular meeting on April 10, 2018 at 7:00 p.m. in the Kent Town Hall.

1) Call to Order and Roll Call

Mr. DiPentima opened the meeting at 7:00 p.m.

Board Members Present: Anthony DiPentima, Chairman; Anne Bisenius, Nick Downes, Dan Murray, John Noneman, Mike Van Valkenburg

Board Member Absent: Patricia Oris

Staff Present: Donna M. Hayes

2) Appointment of Alternates(s) to Voting Status.

Mr. DiPentima elevated Ms. Bisenius to voting status.

3) Acceptance or Revision of Agenda

*Mr. Downes moved to accept the agenda as prepared. Mr. Van Valkenburg seconded and the motion carried unanimously.*

4) Reading and Approval of Regular Meeting Minutes of December 12, 2017.

*Mr. Murray moved to approve the Regular Meeting Minutes of December 12, 2017. Mr. Downes seconded and the motion carried unanimously.*

5) Recess Meeting. Convene Hearing:

The meeting was recessed at 7:01 and the hearing convened.

- 5.1.** Application #01-18, Scot Samuelson for George-Ann Gowan, 89B North Main Street, relief from Section 5.5, Front Yard Setback, for the extension of cantilevered entry roof and new bay window, Map 19 Block 15 Lot 4.

Mr. Samuelson was present representing George-Ann Gowan. He explained that the property is pre-existing, non-conforming and the application was for the installation of a new bay window and cantilevered entry roof. After looking at the site plan it was obvious that the house itself was built in what is now the front yard setback. The purpose of the extension of the cantilevered roof is to extend one side of the cantilevered roof over the front entry door and new window. This new roof line will not encroach any more than the existing roof line. Mr. DiPentima asked if there will be any deviation from the photo presented and Mr. Samuelson said no.

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**5.2. Application #02-18, Dolores Schiesel, Esq. for Edward Schullery, 53B Elizabeth Street, relief from Section 5.5, Rear Yard Setback, for the construction of a detached 2 car garage, Map19 Block 13 Lot 12.**

Attorney Schiesel was present to address the Board. She explained that the application was for a variance to construct a 20' x 24' garage within the rear setback; there currently is no rear garage. Atty. Schiesel explained that the property owner wanted to store his car and some of his equipment in the garage which would keep the property neat. The garage would not be attached to the existing house.

Stacey Renna, who is the niece of Mr. William Watts, whose backyard joins Mr. Schullery's back yard, said they were concerned about the exact location of the garage. Atty. Schiesel showed Ms. Renna and Mr. Watt the location of the garage. They asked if the fence would be taken down and Atty. Schiesel said that it would not and went on to explain that the garage would be 4' from the fence. When asked by Mr. Watts if the snow will end up on his property, both Atty. Schiesel and Mr. Schullery replied that it would not as the roof would be pitched in such a way that the snow would remain on his property.

Mr. DiPentima asked Mr. Watts if he was concerned that snowplowing would destroy the fence. Mr. Watts replied no but was concerned that the snow would slide off the garage onto his property. Mr. Murray asked who owned the fence. Mr. Watts said that he did and it was noted that the fence had been constructed on Mr. Schullery's property. Atty. Schiesel explained that there has been no legal action with regard to the fence's location so it is currently an encroachment issue on Mr. Schullery's property. Mr. DiPentima stated that this is not an issue for the Zoning Board of Appeals but rather something that would be decided by the courts. Atty. Schiesel stated that they have offered to move the fence and replace it with a new fence during the construction of the new garage but that has not been agreed to by Mr. Watts. Mr. Murray commented that by moving the fence to the proper property line it will eliminate the possibility that the snow coming off the roof of the garage would damage the fence. He asked if a contingency could be added that the fence be moved and both Mr. DiPentima and Atty. Schiesel said that ZBA does not have that authority.

Mr. DiPentima asked Mr. Watts if he had a definitive feeling about the application and he replied that he was against it because the garage was too close to his property line. Mr. DiPentima asked Mr. Watts how that could adversely affect his property. He said that the building on the adjoining property has been shedding its snow onto his driveway for years but there is nothing he can do about. Atty. Schiesel clarified that the proposed garage would adjoin the rear portion of Mr. Watts property and there are no structures in that location. The only things in that area are his business machines. Ms. Renna agreed that this garage would not affect Mr. Watts' business. Mr. DiPentima confirmed that the garage would not interfere with his business and Mr. Watts' only objection was that the garage was too close to the property line.

Mr. Murray asked what the rear setback is and Atty. Schiesel said that it was 40'. She added that there is no other place where it could be placed. Mr. DiPentima asked what the distance was to the property line and Atty. Schiesel said that it was 7'. Ms. Hayes commented that most lots in that area were pre-existing, non-conforming. Atty. Schiesel agreed and said that if they were to receive permission to construct the garage, it would not stand out as being anything different from the rest of the neighborhood.

Mr. Downes asked what recent building had been done in the neighborhood and it was noted that the last construction was the rebuild of an existing house.

Ms. Bisenius asked if the shed was still on the property. Atty. Schiesel said that it was. Mr. DiPentima asked Mr. Watts if the removal of the shed would change his view on this application. Mr. Watts said that it would not as the shed was really just a small tent like structure.

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6) Close Hearing. Brief Recess

The hearing closed at 7:17 p.m.

7) Reconvene Meeting. Action on Appeal(s) Heard

There was no brief recess and the meeting reconvened.

With regard to Application #01-18, the following motion was made:

*Mr. Noneman moved to approve Application #01-18, Scot Samuelson for George-Ann Gowan, 89B North Main Street, relief from Section 5.5, Front Yard Setback, for the extension of cantilevered entry roof and new bay window, Map 19 Block 15 Lot 4. Mr. Downes seconded. During discussion it was noted that the approval would not substantially affect the comprehensive plan, might enhance the building and would be appropriate in terms of fitting in. Mr. DiPentima said that he concurs that there is an unusual hardship due to the age of the building. With no further comments, the motion carried unanimously.*

With regard to Application #02-18, the following motion was made:

*Mr. DiPentima moved to approve Application #02-18, Dolores Schiesel, Esq. for Edward Schullery, 53B Elizabeth Street, relief from Section 5.5, Rear Yard Setback, for the construction of a detached 2 car garage, Map 19 Block 13 Lot 12 and said that he was concerned with the encroachment being awfully close and that it was not anywhere near the setback requirement. Given the situation with that unique neighborhood and with almost every other house in somewhat similar situations and given the hardship that exists, he tends to be a little bit more lenient with this application than he would normally be in terms of the setback requirement. He does not see that it would deviate from the comprehensive plan and despite the objection of the neighbor, he is not seeing any real adverse effect on the neighbor's piece of property. Mr. Van Valkenburg seconded and the following discussion was held:*

*Mr. Downes said that his only question was whether a decision should be deferred because of the boundary dispute. He wondered if that should be settled first. Mr. DiPentima said that was a good point. Mr. Murray said that he felt the Board could approve using the fence as the boundary and it would be a moot point. He did not think it was a large issue. Mr. DiPentima said that he would agree. Ms. Bisenius said that the distance to the property line was 7' and the fence line would be even closer. Compared to a 40' setback it is a large percentage of encroachment.*

*The Board, after all agreed, allowed Atty. Schiesel to comment that Mr. Schullery would be willing to allow the Board to modify the application by reducing the size of the garage from 20' x 24' to 20' x 20'. Mr. DiPentima said that while the hardship was not economical, it was unique in particular to Mr. Schullery. He continued that he was not quite sure but it comes close to an exceptional difficulty or unusual hardship. He thinks a case can be made for an exceptional hardship given the circumstances and given that it is not economic it bodes well for the applicant as far as speaking against the application. Ms. Hayes asked what would happen to the variance if it is decided at some point in time that the lot is actually the fence and not the original lot line. Mr. DiPentima said that the Board's decision would be based on the existing terms of the property and if that is changed he would think they would have to come back because the decision is based on the 10' setback and not the 8' setback. It might allow the adjoining lot owners the opportunity to come back to the Board and address the issue. Ms. Bisenius said that if it is non-conforming, it is non-conforming. Mr. DiPentima said that he does not think the Board can consider any potential change to the property. The Board can make their decision on the possibility of a lot line change. The Board has to acknowledge the fact that the lot line could be closer and that would need to be factored into the decision-making process.*

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Mr. Downes asked if the Board could make a change to the application now. Mr. DiPentima said that he did not think the Board could change the size and that was not the concern of the adjoining property owner. Mr. DiPentima said that the Board could say that the garage could not be any larger than 20' x 20'. Mr. Downes said that it was mentioned by the applicant that they would be willing to change the size. Mr. Murray thought the applicant should come back with adjusted measurements. Mr. DiPentima agreed especially if the application is denied by the Board. Mr. DiPentima asked Atty. Schiesel if a one car garage would accommodate the applicant. Mr. Schullery said that he would need something big enough to handle his car and storage for his tractor. Mr. DiPentima said that the Board would treat another application with a smaller size as substantially different.

After discussion, the Board voted as follows:

Mr. Van Valkenburg and Mr. Noneman voted Yeah.

Mr. Downes, Mr. DiPentima, Mr. Murray and Ms. Bisenius voted Nah.

Mr. DiPentima stated that the application has been denied with the understanding that the applicant can return with another application with a waiver of all fees and costs within the next 6 months and that the size of the garage will be reduced.

Mr. Murray said that he would like Mr. Schullery receive his garage but there is nothing written in Kent that everyone should have a two-car garage. Ms. Bisenius agreed that there is a hardship but she also noted that the adjoining property owner took the time to come before the Board to express his concerns; therefore, a compromise should be able to be obtained. Mr. DiPentima said that if the applicant comes back there is no guarantee that it will be approved.

8) Old Business

No action taken.

9) New Business

No action taken.

10) Communications

10.1. Monthly Financials, July -February, 2018.

No action taken.

10.2. Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter, Winter 2018

No action taken.

11) Adjourn

Mr. DiPentima moved to adjourn at 7:50 p.m. Mr. Van Valkenburg seconded and the motion carried unanimously.

Respectfully submitted,

*Donna M. Hayes*

Donna M. Hayes, CZEO  
Secretary/Clerk

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