

Village of Geneseo
Zoning Board of Appeals
Public Hearing for
Patricia Viele- Rep. David Van Epps
4 Dorchester Drive
Tax Map Id# 81.5-1-74.38
May 04, 2010; 4:30 p.m.

Present:

Carolyn Meisel, Chair
Marlene Hamilton
Ronald Palmer
Paul Schmied
Thomas Wilson

Code Enforcement Officer

Dean O'Keefe
Ronald Maxwell

Applicant:

Patricia Viele
Howard Viele
Rep.: David Van Epps

Public Present:

Rocco & Mary Calabrese
Kim Robinson
Susan Richardson, Village of Geneseo Planning Board
Chris Centola, Bergmann Associates
A. Gidget Hopf, Bergmann Associates
Jeff Bush
Robert Freiburger

Chair C. Meisel called the Public Hearing to order at 4:30 p.m. The hearing is a request for permission to erect a ten (10') foot x twenty-four (24') foot deck when the deck addition fails to meet minimum rear set back range of thirty (30') feet per Bulk and Use Table 130-131 for R-2 Residential District per the Zoning Code of the Village of Geneseo. It was noted three (3) certified mail notices were sent and three (3) responses received. Proper notice was published. The Board members were introduced and the applicants were invited to speak.

D. Van Epps, the contractor, commented H. Viele has a hard time with stairs and a patio would not be useful. The Vieles would like a ten (10') foot wide deck to have room for a table and chairs and adequate room for handicap accessibility.

C. Meisel inquired as to why the house was not placed farther forward on the lot when it was built. P. Viele responded the house could not be placed closer to the roadway due to code restrictions. C. Meisel asked if it was a case of available land being used for the house placement. P. Viele said that was so.

T. Wilson asked about the ditch behind the house and who owned it. D. O'Keefe said it was the Village/Town boundary line. There are two lots left in Phase I and Phase II goes west from the corner of Westhampton on Steeplechase. Phase II and Phase IV have not been approved yet and must come before the Planning Board. The Code Office would like to ask the Planning Board to revisit the rest of the layout for Dorchester before the next phase is approved.

C. Meisel commented she had visited the site and the rear of the house had an approximate drop of five (5') feet from the double doors to the ground. P. Viele agreed this was so and why they were requesting a variance to add the deck. Her husband has Parkinson's disease so the house was built handicap accessible with double doors in the living room; the deck would allow him to enjoy the back yard more easily. M. Van Epps stated the developer did not know a setback would need to be met for a deck addition.

C. Meisel stated her concern should the variance be granted that the developer would want the variance to apply to the rest of the development. D. O'Keefe expressed the opinion that the jog in the roadway was not taken into account when that phase of the development was planned; it was just an over-site. He stated everyone is losing sight of the fact neither a permit nor a variance would be needed had Vieles decided to put in a patio of twenty (20') feet by forty (40') feet rather than a ten (10') feet by twenty-four (24') feet deck addition.

M. Calabrese introduced herself as the back yard neighbor. She noted there was plenty of room to add a deck to the side of the house facing Lima Road. While she empathizes with the Vieles, she felt it was a case of "buyer beware"; the builder was aware of the setbacks. Every other house in the development has steps leading down to a patio. She and her husband purchased their property in 1987 and tried unsuccessfully to buy the development property when it sold to Streb and Porter in 1988. They did not want to live next to a development and planted the trees and other plants in the hedgerow on their property as a privacy screen. The Garden Club has favorably noted their plantings. She feels the ninety (90%) percent variance is huge and very unfair to their neighbors. The Vieles should have recourse with the builder.

T. Wilson asked if the house was thirty (30') feet from the boundary line. CEO D. O'Keefe responded it was thirty-one (31') feet. T. Wilson asked if the deck would be twenty (20') feet from the line and CEO D. O'Keefe said yes that was correct.

Contractor D. Van Epps suggested the Board review the survey map with him. The sliding glass doors are on the east side of the house closest to the north side. Placing the deck on the south side as suggested by M. Calabrese would put the deck on the far end of the house from the double doors and the living room. The logical placement of the deck is where the double doors are. M. Calabrese said a patio would be acceptable as it is at ground level and not as visual as a deck; a patio would blend into the landscape. C. Meisel noted a permit is not needed for a patio, as it is not considered construction, as is a deck. The possibility of bringing in fill to raise the patio area was briefly discussed.

M. Hamilton commented the proposed deck is ten (10') foot wide and wondered how far it would be to come around the north side of the house if Van Epps would sell the Vieles more land. D. O'Keefe stated the side yard set back is fifteen (15') feet for that development. M. Hamilton wondered if the builder would give them land enough to do this. CEO R. Maxwell stated he would see what the original subdivision setback was initially. It was noted the current developer is not the original developer.

P. Schmied asked P. Viele if she would consider coming out the north side of the living room and adding a deck to that side of the house. H. Viele stated he would have objections to doing that as the electric, air conditioning compressor and so forth is all located on that wall. It would be unsightly to look at.

T. Wilson asked who owned the swale on the east side of the property. It was noted the Calabreses owned it. H. Viele noted the storm drain in the ground goes across the Calabrese land.

M. Hamilton stated a variance is to be given only if there are no other viable options available. She suggested the Vieles go back to the builder, as he should have known the conditions of the setbacks when he built their home and that a deck not a patio would be necessary for handicap accessibility with this house. The builder should reposition the double doors and give the Vieles more land. CEO R. Maxwell remarked this is a unique situation due to H. Viele's health issues and enough possible reason to grant the variance. A lawsuit with the builder would probably be cost prohibitive.

T. Wilson noted a thirty (30') foot setback within the Village proper is different than a home in the fringe area. This is a very generous setback amount for a village and the variance of about one-third (1/3) is not out of line considering H. Viele's health situation.

P. Schmied interjected the purpose of the board is to support legislation as it is written. People pay a lot for property without close neighbors and look at the zoning around them before making their purchase. Any appeal is a request to violate the law; bias should be in favor of the law as written not as the board feels it should be. Possibly switching the bedroom with the living room or some such arrangement would make it work.

P. Viele stated when she and her husband built the house; they never considered that adding a deck would be a problem. The house was built with alterations to take into account her husband's health needs. D. Van Epps noted a wheel chair ramp would take up almost as much area to get to a patio as the purposed deck. H. Viele stated he would like to be able to enjoy nature in his own back yard. R. Calabrese remarked he made a nice open space with a lot of plantings because he too enjoys nature. He is sorry for the Vieles but it is a poor situation created by the builder. D. Van Epps replied his brother, the builder, placed the house where he was told. P. Schmied said the Code Officers did their job and required the builder to follow the law as written. CEO R. Maxwell stated the house is set according to zoning and the approved plans. The markers go in before the foundation is laid for the Code Officer to verify placement within the lot. They do not choose the location of the home on the property but verify that it meets the Code requirements. CEO Maxwell noted this is an excellent example of the type of variance the Zoning Board was created to review.

S. Richardson, Planning Board member, asked if the deck could be less than twenty-four (24') feet long. T. Wilson stated the length does not matter and D. O'Keefe noted it is the width that is in question. S. Richardson wondered if a comprise might be in order. Perhaps the size of the deck would be reduced to eight (8') feet x sixteen (16') feet or perhaps it could be constructed at two levels. P. Viele commented her husband needs to be able to get into the yard and needs sufficient room to maneuver a wheel chair.

R. Palmer asked if there was another entrance to the patio area where the deck is being proposed. He wondered if a walkway could be constructed from the front entrance of the house around the north side of the structure to a ground level patio area. The only contact with the electric, air conditioning compressors and other mechanicals would be en-route to the rear patio area. H. Viele remarked he prefers to stay away from the north

side of the house, as previously noted the electric; air conditioning compressors and so forth are unsightly.

C. Meisel noted the elevation drop off from front to back of the home is four and one-half (4 ½') feet to five (5') feet. D. O'Keefe agreed there is quite a drop off in elevation. The Vieles could put in a huge patio without a variance; the deck functions the same but is just five (5') feet off the ground.

The questions were reviewed:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? Yes 3 No 2. Too close to the neighbors.
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes 4 No 1. Both the north and south sides of the house could be used for the deck.
3. Is the requested variance substantial? Yes 3 No 2. Ten feet of thirty feet, thirty percent (30%).
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes 2 No 3. Neighbors complained.
5. Is the alleged difficulty self-created? Yes 4 No 1. The builder created the problem.

With no further discussion, P. Schmied moved to deny the application to build a ten (10') foot x twenty-four (24') foot deck when the deck addition fails to meet minimum rear set back range of thirty (30') feet per Bulk and Use Table 130-131 for R-2 Residential District per the Zoning Code of the Village of Geneseo. M. Hamilton seconded the motion. The vote was as follows: Chair C. Meisel- nay; T. Wilson- nay; P. Schmied- aye; M. Hamilton – aye; and R. Palmer- aye. The motion passed.

M. Hamilton commented she understood the Vieles plight and that it was not their fault. T. Wilson agreed. CEO D. O'Keefe suggested the Code Office send a note to the Planning Board asking that a restriction be placed on the rest of the development to prevent another occurrence of the problem.

M. Calabrese felt the whole village should be aware of the developer's disrespect of the code and potential buyers and felt potential buyers should be made aware of this disregard.

P. Viele asked what good is a double door that cannot be used. D. Van Epps suggested the Vieles check into the Americans with Disabilities Act. There might be some recourse available through it. R. Calabrese remarked that was a good suggestion. P. Viele thanked the Board for their time and consideration.

P. Schmied moved to close the public hearing; T. Wilson seconded the motion. The vote was as follows: Chair C. Meisel – aye; M. Hamilton – aye; T. Wilson – aye; R. Palmer – aye; and P. Schmied – aye. The motion passed and the hearing closed at 5:14 p.m.

Debra L. Lund
ZBA Secretary