

Minutes
For the
Village of Cayuga Heights
Zoning Board of Appeals Public Hearing and Meeting
Held on December 1, 2008

Meeting was called to order at 7:07 PM

Present: Chairman John Young; Members Fred Cowett, Peter McClelland, Sarah How Bob Powers, and Alternate Member Sally Grubb

Absent: Alternate Member: Alison Smith

Others: Brent Cross, Code Enforcement Officer, Randy Marcus, Village Attorney, and Mary Jane Neff, Secretary

Guest: Gary Brown, Dorothy Shaffer, Stephen Tien, Jane Kalter, Bob Kalter, Neil Olver, James Gilmore

Chairman Young opened the meeting by reading the public hearing notice and explained the procedures to the applicants and other guests. The public hearing is open and the applicants present their justification for requesting a variance. Board and guests may ask questions of the applicants. The public hearing is closed and the Board will discuss the request and ask the applicants additional questions, if deemed necessary. A decision may be rendered at that time; however, the board can request additional information and take up to 62 days to make a decision.

Code Officer Cross explained that the building permit to construct a fence had been denied due to the lack of the required 15 foot side yard set back for a fence of the requested height. He stated that he had talked with Ms. Shaffer and Mr. Tien about the temporary fence and that when it was not removed; he had requested them to seek a variance for the set back since the side yard set back could not be met.

Ms. Shaffer presented pictures of their fence and showed how they would like to have it enclose their back yard. To meet the side yard set back, the whole house would have to be moved over before they could install a fence. She explained that she and Mr. Tien find the neighbor's fence to be aesthetically offensive and want to construct a white picket type fence around their yard. She also explained that what the Board sees in the picture is a temporary fence and that she did not know that there was a time restraint on temporary fences. As soon as they can obtain a contractor to install the picket fence, they will put up the permanent white picket fence.

Mr. Brown, a neighbor, stated that he had received a side yard variance for the fence that he had constructed 7-years ago in September 2007. He did not know that there was a 15 foot set back and had thought that the installer would have obtained the required permit. He stated that he would not favor painting his fence a different color on the Shaffer/Tien

side. He also stated that he did not have a problem with the construction of a fence on the Shaffer/Tien side if it was no higher than his fence.

The Shaffer/Tien public hearing was closed at 8:17 PM.

The ZBA meeting was opened at 8:77 PM.

Attorney Marcus reminded the Board that their denial or approval was for a variance to the required 15 feet side yard set back.

The Board addressed and voted on the five criteria for granting or denying a variance request.

1. Does the request create an undesirable change in the character of the neighborhood or to the nearby properties? The consensus of the Board that the request does not create an undesirable change in the character of the neighborhood or to the nearby properties particularly because a fence (the Brown's) already exists on that property line.
2. Could the variance request be achieved by other means? The consensus of the board was that the lot configuration prohibits the applicants from complying with the law and that the placement of the house had occurred prior to zoning.
3. Is the request substantial? The consensus of the Board was that it was a substantial request to grant a variance for the 15 feet required set back to no side yard set back. However, this can be mitigated due to the configuration of the house on the property
4. Will this request have an adverse physical or environmental effect? The consensus of the Board was that it would not have an adverse physical or environmental effect.
5. Was the request self-created? The Board's vote was 3 yes and 2 nays. Therefore the request is self-created which can again be mitigated due to the configuration of the house on the lot being constructed prior to zoning.

On a motion by Chairman Young, seconded Cowett and with all members voting yes the following resolution was passed:

RESOLVED, that a variance is hereby granted to 518 Wyckoff Road, tax parcel #15.-4-9 with the following conditions:

- 1. The fence must be at least 6" from the property line**
- 2. The fence cannot be higher than 5 ½ feet above the current grade**
- 3. The fence must be of a permanent nature.**

This portion of the meeting was closed at 8:30.

Note: Peter McClelland was excused at this time and the alternate, Sally Grubb will become a voting member for the second hearing and meeting.

The second public hearing for this evening was opened at 8: 37 PM.

Code Officer Cross explained that Mr. Olver had obtained the required site plan approval which was granted by the Village Board in their capacity as the Planning Board. Since that approval Mr. Olver has been informed of some regulations and costs that he had not known at the start of the project. If the ZBA does not approve the variance from 15 % of lot coverage to 18.5 % of lot coverage then he cannot go back to the Planning Board for a minor subdivision.

Mr. Olver explained that if the two buildings were on one lot there would be no need to seek a variance. Since starting the project he stated that he had learned that Bolton Point regulations would not allow him to have a second water line and meter for the new building. He also learned that he would have to pay approximately \$10,000 for a second electric line and electric meter for his new building, which had not been the utilities company's past practice. He also stated that at sometime in the future the property may be divided so that one of the parcels could be sold. He affirmed that it was not his intent to sell either of the properties.

He presented the site plan with the line drawn to show where the division would be if the planning board approves his subdivision request. However without jogging the division line the new building would exceed the lot coverage, allowed by the ordinance, by 3 ½ %. If the ZBA would not grant a variance, the planning board would not approve the subdivision.

Jane and Bob Kalter came in support of the subdivision, but had some questions which were answered by Code Officer Cross and Mr. Olver.

The ZBA members expressed concern that there would not be adequate parking space to accommodate the new building if the proposed division line was approved. Mr. Olver again affirmed that he did not intend to sell either parcel even if the subdivision request is approved. The Code Officer Cross and Mr. Olver confirmed that prior to the subdivision request there was more than the required number of parking spaces for both buildings. Most of the parking spaces are at the back of the original building with limited parking spaces next to the new building.

Attorney Marcus reminded the ZBA members that their purpose was to address whether there was adequate reason to grant or deny a variance for the additional percentage of lot coverage of the front parcel before Mr. Olver can take the next step of subdivision approval. The parking issue is for the Planning Board to decide.

This public hearing was closed at 8:57 PM.

The Board discussed the proposed area variance and considered the five criteria as follows:

1. Does the request create an undesirable change in the neighborhood? All five members voted – yes. To mitigate this finding the Board will impose a condition if it decides to grant the variance.
2. Can this request be achieved by other means? All five members voted – no.
3. Is this variance request substantial? All five members voted – no.
4. Will this variance request have an adverse physical or environmental affect on the area? Four members voted – yes: one member voted no. To mitigate this adverse affect a condition will be imposed if the Board decides to grant this variance
5. Was this request self created? Four members voted yes; one member voted no. To mitigate the Board concurred that it was also due to regulations that Mr. Olver’s architect was unaware of during the design stage of this project.

Attorney Marcus discussed with Code Officer Cross and the ZBA members if a short form SEQR would be needed. It was determined the SEQR had been done by the Planning Board as part of the site plan review process.

On a motion by Grubb, seconded by Cowett, and with all members voting- yes, the following was approved:

RESOLVED, that the area variance to allow 18.5% lot coverage is hereby granted to 412 Upland Road, tax parcel 10.-3-5.2 subject to the following conditions:

- 1. From the grant of this variance forward, the development of any improvements on any portion of the parcel to be subdivided must satisfy the requirements for lot coverage in accordance with the Village’s then current Zoning Law, as applied to the whole parcel and taking into account all improvements on the whole parcel, and**

BE IT FURTHER RESOLVED, that this board recommends to the Planning Board, if the subdivision is approved, that a cross easement be granted to the front parcel to address the shortage of parking spaces for the new building.

.There being no other business to come before the Board, this meeting was closed at 9:28PM.

Respectfully submitted,

Mary Jane Neff