

Minutes
For the
Village of Cayuga Heights
Zoning Board of Appeals Public Hearing and Meeting
Held on January 4, 2010

The public hearing was convened at 7:05 PM

Present: Chairman John Young; Members Peter McClelland, Bob Powers, Fred Cowett, Sarah How (arrived late) and alternate member Sally Grubb

Absent: Alternate member Alison Smith

Code Enforcement Officer: Brent Cross,

Others: Kristin Gutenberger, Attorney and Mary Jane Neff, Secretary

Guest: Christina J. Lacey, Randall W. Nesbitt, Sarah Hatcher and David Weiss

The public hearing was opened at 7:05 PM

The Board approved Alternate Sally Grubb to hear and vote on tonight's applications due to the absence of Sarah How.

Chairman Young explained the proceedings and asked the Board to hear and consider the applicants' variance request for 322 Highland Road before the variance request for 318 Highland Road. Upon review of the published legal notice that was the way the hearings were published. However, an error was found in the legal notice. Mr. Nesbitt is the owner not the agent for 322 Highland Road and he is the agent for 318 Highland Road not the owner. The Board consulted with Attorney Gutenberger.

Attorney Gutenberger asked if the information provided to the neighboring residents were correct. Code Officer Cross stated that the information was hand delivered to the neighboring residents and the information delivered was correct. Because the neighbor's notice, which is required by law, was presented correctly, Attorney Gutenberger recommended that the ZBA continue with tonight's hearing.

Board member Sarah How arrived at 7:25 PM. Alternate member Grubb recused herself as a voting member of the ZBA for tonight's hearings and meeting. The Board accepted.

Code Officer Cross explained that the ordinance requires a 15-foot set back on the side and rear for any kind of construction including a fence. The applicants have requested to construct a plus or minus 8-foot fence on their property line at the rear of their yard and less than 15-feet on one side of their yard and to extend the fence to an area on the neighboring property on the other side of their property.

Code Officer Cross also stated that he determined that both of these requests are a Type II SEQR action which does not require the completion of a SEQR form. The Board concurred.

Mr. Nesbitt then presented a power point presentation and explained his and Christina's reason for the variance request as follows:

1. Their property is located at the busy intersection of Highland Road, Kline Road, Oak Hill Road, White Park Road and The Parkway.
2. This intersection is part of the bus route.
3. They have two large dogs that enjoy being outside.
4. They have several gardens that they enjoy working in.
5. They have an approximate 5-foot high hedge at the rear
6. The lot has varying elevations.
7. They enjoy entertaining outside in the summer time and would prefer not to divide their back yard with a fence
8. They are concerned about the deer – dog interaction
9. They treat their dogs regularly for ticks
10. The proposed fence material is black Millennium Polyethylene which has minimal vision impact to the neighbors.
11. They are in the process of getting an agreement with 318 Highland property owners to extend the fence on to their property.

David Weiss, a neighbor at 511 Kline Road, stated that he had no problem with the fence, but would like Mr. Nesbitt to consider a softer corner at the back corner of his property. Mr. Nesbitt agreed to work with Mr. Weiss during the fence design stage.

The members asked their questions.

Board asked if anyone else had comments on this variance request. Code Officer Cross stated that he had not received any comments. There being no other comments from the public this hearing was closed at 8:22 PM.

The ZBA members' discussion commenced at 8:22 PM on the area variance request for 322 Highland Road.

Attorney Gutenberger reminded the Board that they are charged with weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood. That is the standard of review for an area variance. She also reminded the Board that this was an area variance to deviate from the set back requirements and that it was not a height variance request.

The Board considered whether this request would create an undesirable change in the character of the neighborhood. The consensus of the board was that a fence on the property line would change the character of the neighborhood since the neighboring properties do not have fences. The Board considered whether this benefit could be achieved by other means feasible to the applicants. The consensus of the board was that the desired quality

of life of the residents could be achieved in other ways because they are currently using the back yard for the uses requested. They considered if the variance request was substantial. The consensus of the Board was that allowing a zero set back would be a substantial change from the required 15 feet set back. The Board considered if the request had any environmental impact on the neighborhood. The consensus of the Board was that granting the request did not have an environmental impact. Last the Board considered if the request was self-created. The consensus of the Board was that it was not entirely self-created due to the fact that it is a corner lot at a multiple road intersection; that it has varying elevations, that it has a creek running through it and that having to meet the set back requirements (25', 25', 15' and 15') would significantly reduce the useable space in their rear yard.

The Board then considered possible conditions under which they would be inclined to approve the requested variance.

Chairman Young offered the following resolution which was seconded by Member McClelland:

RESOLVE, to grant a variance to allow zero set back with the following exceptions to the variance request:

1. That a 4-foot fence be place on top of the retainage wall along the creek.
2. That the fence along the hedge row not exceed the height of the hedge row,
3. That the fence material be the black millennium polyethylene or equal material.
4. That the fence can be constructed on the applicants' south property line.

On the following roll call vote the resolution failed:

How – yes

McClelland – yes

Powers – no

Cowett – no

Chairman Young – no

At this time the applicants withdrew their application for 318 Highland Road because the request was based on receiving the variance for 322 Highland Road.

There being no other business to be brought before this Board the meeting was closed at 9:40 PM.

Respectfully submitted,
Mary Jane Neff, Secretary