Zoning Board of Appeals
City of Cortland
December 13, 2010

A regular meeting of the Zoning Board of Appeals was held on Monday, December 13, 2010, at 5:00 p.m. in the Mayor's Conference Room at City Hall.

Present: Chair Dailey, Comm. Brown, Decker, Haskell, Hickey and Wickman

Staff: Zoning Officer Bruce Weber, Asst. Fire Chief William Knickerbocker and Cheryl Massmann, Deputy City Clerk

Item No. 1 – 90 River St. – (VanDeuson)(R2) - Use Variance - Fencing

David Williams was present representing Wendy VanDeuson. He explained that he had received a violation notice in the mail that the fence was improperly installed with the posts facing outward. He stated that Arrow Fence Corp. had been contracted to install the fence. They put everything in and went through the right channels to obtain the building permits back in 2006. Notice was just received recently indicating that there was a problem with the fence. He stated that according to the zoning rules the fence is out of code. It's not going to be easy to fix because it is a custom built fence. It was built board by board and put in to meet the contour of the ground and the top was scalloped. He noted that to put the boards on the outside, each board has to be taken off separately and moved to the outside of the fence. He noted that after four years the wood has gotten very seasoned and brittle and he was unsure how well the wood would come off. He noted that there was another house on the west end of River Street that has the same dilemma. He noted that the 90 River Street fence was straight and the poles weren't crooked. He noted that it was a professional installation and that it would be very labor intensive to move it around to the other side. It probably could be done. He noted that it went down the sides of the house in the middle of the block and wasn't noticeable from the street. He stated that the part of the fence facing the road was good side out. The sides were the ones in question. He stated that the fence butts up against Cortland Produce in the back and he made sure that a four (4) foot removable panel was put back there that goes up against the building so that Cortland Produce can have total access to the back of their building if they have to. His case is that it's four years after the fact, since the fence was installed and now he's notified that something is wrong. It would've been easier if he was told when the wood was still green.

Comm. Wickman asked if he was told why it took four (4) years to receive a violation notice. Mr. Williams indicated that he was not told. Asst. Chief Knickerbocker explained that they were acting on a complaint and for violations like this they rely on someone to phone the Code Office when the work is done. They are shorthanded in their office and that's the way it is.

Comm. Brown noted that Arrow Fence should've known that the fence needed to be faced the other way. Mr. Williams noted that it was over one hundred (100) feet on

each side and involved a lot of posts and that's why he had hired the job done. He felt that they would've been the ones to investigate the City code requirements when putting a fence in. Obviously they put the front of the fence in correctly. He noted that he had hired professionals to do this and he had relied on them. He noted that the fence is solid and well built. He will have to wait for the spring to remedy this if that's the decision of the Zoning Board.

Joyce Nadge of 88 River Street stated that she had spoken with a person at Arrow Fence and he said that the only reason that they would put the fence up backwards was if they were instructed to do so by the homeowner. Mr. Williams stated that all that he had instructed them to do was to put the fence up.

Mr. Williams further stated that any contractor that would go against the zoning code whether the owner asked for it or not, should not be in business. That's what their job is as a professional contractor. He noted that they were a sub-contractor to him.

Joyce Nadge stated that she had taken some pictures herself and she noted how close the fence was to her property which keeps her from maintaining her property because it is so tight.

Mr. Williams stated that he was told that the fence could go right on the property line.

Mrs. Nadge stated that she didn't know until she saw the picture Mr. Williams submitted, the damage that was being done to her garage because the fence is so close.

Mr. Williams asked why the fence would be causing damage to the garage.

Mrs. Nadge stated because the sun and air can't get in there to dry it out.

Mr. Williams stated that there was plenty of air flow there. He stated that there was over a foot of air flow space between the fence and her garage. He stated again, that he was instructed that the fence could go right on the property line. Mr. Williams further stated that if he moved the fencing to where the other side is facing out, it's going to be even closer to her garage than it is now because it will bring everything from the inside, swing it around and put it on the outside.

Comm. Hickey asked why this is a use variance rather than an area variance. Zoning Officer Bruce Weber explained that an area variance has to do with location on the property and in this case, it's not the location on the property, but actually the way that the fence is. In his estimation, that's a use that is not in compliance.

Comm. Hickey noted that there is no problem with technically with the location of the fence along the property line it is simply the way it's installed.

Asst. Chief Knickerbocker stated that the Code Office didn't know that, as they don't determine where the property line is located.

Mr. Williams stated that if they were to go by the tax map, the garage in question has a roof overhang onto Wendy VanDeuson's property by a few inches.

There was no one further to speak; therefore the public hearing was closed.

On the motion of Comm. Comm. Hickey, seconded by Comm. Brown, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE USE VARIANCE - 90 RIVER ST. – (VANDEUSON)(R2) – USE VARIANCE – FENCING BE PLACED ON THE TABLE FOR DELIBERATION.

The criteria for a use variance were reviewed.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial. Difficult to measure, but there is evidence that it would be expensive to remove it and reinstall it.

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood). Not unique, but the sub-contractor did not check out the City Code.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood. It does alter the character.

4. The alleged hardship has not been self-created. It was self-created.

Asst. Chief Knickerbocker asked if there was a pool there and if there were any other safety issues and if this fence provided support to the pool. He would have to take a closer look as there may be other issues that may restrict the fence from facing the other way.

Joyce Nadge stated that the fence does not prevent access to the pool. Comm. Wickman noted that they could allow for rebuild of a small portion, rather than the whole fence. Chair Daily stated that he felt that there should be a timeline for any rebuild allowed if that is this Board's decision to deny the application.

Mr. Williams indicated that from the front of the house to the rear of the property was about thirty (30) to forty (40) feet deep. Mr. Williams stated that the ten (10) foot posts were set every eight (8) feet and were sunk in about four (4) feet in concrete and that they would have to be cut off and re-sunk. At least five (5) posts would need to be replaced to move the fence away from their garage in that thirty-five (35) to forty (40) foot stretch. Comm. Hickey noted that the neighbors' garage is out of compliance. Comm. Brown noted that they could apply boards to the other side. Mr. Williams noted that then it would bring the fence even closer to their garage.

Comm. Hickey noted that it would be impossible to get in there. Perhaps they could alternate the boards. Comm. Wickman suggested that Arrow Fence could be asked to come up with a solution. Chair Dailey noted that this was the landowners' problem. Comm. Brown noted that if the ZBA denied this application, the applicant would have to come up with another plan. Comm. Wickman suggested that this could be tabled until more information was received. Comm. Haskell felt that a timeline should be given as it was better to wait until warm weather. There was further discussion regarding possible solutions.

Mr. Williams noted that moving the fence panels would not solve the problem of the closeness to the neighbors' garage. Comm. Brown noted that the applicant was allowed to put a fence on the property line.

On the motion of Comm. Hickey, seconded by Comm. Haskell, voted to deny the use variance and to direct the owner of 90 River Street to bring the fence into compliance by August 1, 2011.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE USE VARIANCE - 90 RIVER ST. – (VANDEUSON)(R2) – USE VARIANCE – FENCING BE DENIED AND THE OWNER IS DIRECTED TO BRING THE FENCE INTO COMPLIANCE BY AUGUST 1, 2011.

Item No. 2– 17 – 19 Argyle Pl. (Rogers)(R2) – Use Variance - Re-instatement of Property as an Eight (8) Unit, Parking Space Size Reduction & Parking Area

Rob and Barb Rogers were present. Mr. Rogers explained that the building was purchased as a long term investment and this was not student housing. This is family and working people's housing.

He explained that this property was purchased at a tax auction and it had been vacant for six (6) or seven (7) years. Mr. Rogers explained that they had checked Cortland County tax records as well as online and those had stated that this was an eight (8) family and it was zoned multi-unit. He noted that they have put on a new roof, new marble baths, kitchens, refinished hardwood floors, new water heaters and furnaces. He had applied to have the new furnaces inspected and the fire company had told them that this building was no longer an eight (8) family. It's been that way for about seventy (70) years. He stated that they already had tenants lined up and have now lost two (2) months rent on the eight (8) units. He noted that they did not create this problem and didn't know if they could've done more to find out more about the property, but it was represented as an eight (8) family in the tax sales by the City.

He explained that the City Planning Commission wants them to have sixteen (16) parking spots for the eight (8) single person units. He noted that his experience has been that thirty percent of his tenants do not have cars. City Code requires ten (10)

foot wide spots, but he is asking for eight (8) foot wide spots, which would allow him to get sixteen (16) spots asked for. He also noted that the Planning Commission wants a permeable surface parking area. He's willing to put gravel down for the spots marked fifteen (15) and sixteen (16) on his drawing as well as the other areas.

Comm. Wickman asked him to describe the size of the units in this building. Mr. Rogers stated that they have one (1) studio which has no bedroom and the others are one (1) bedroom units with a living room, bathroom and kitchen. Comm. Wickman noted that it looked like he mostly rented to single people. Mr. Rogers agreed that was correct. He also noted most parking spaces in the City were eight and a half (8 ½) feet wide. Comm. Haskell stated that they were all ten (10) foot wide in City parking lots.

Mr. Rogers noted that the additional five (5) spots indicated in green on his drawing would be a permeable surface to comply and that the other eleven (11) spots indicated in blue were all paved.

Comm. Hickey noted that except for single family homes parking spaces cannot be stacked two (2) deep. They can't be blocked by vehicles and that the Planning Commission's suggestion is a violation of Code.

Zoning Officer Weber explained that the parking plan presented is not in conformance with Code and that there were a variety of issues.

Comm. Brown noted that the Planning Commission had given some suggestions.

Comm. Hickey noted that according to Code, unless it's single family, you can't have a parking space that would necessitate moving another vehicle to get to it, so spaces #12, #13 and #14 are technically not usable so there would only be thirteen (13) usable spots.

Comm. Brown stated that he would like to see that the parking spaces were all the correct size.

Zoning Officer Weber stated that the Planning Commission was looking to see if there was a way to accomplish having sixteen (16) spots, realizing that it would not be in compliance with the Code and that is why they had made a recommendation for approval of this based on the revised parking plan knowing that Mr. Rogers would be going back to them for the parking plan. So while the owner may not need the sixteen (16) parking spots, if they are needed, there is a potential for them there. In other words, the stacked parking may not be an issue at all because of the single occupancy of each of the units.

Comm. Brown stated that he would rather have the parking spaces the right size and okay having less parking. He would rather keep it at ten (10) foot wide spots.

Zoning Officer Weber suggested that they have a parking plan in front of you and the ZBA could indicate that they feel that plan is acceptable, but however, they would

rather see and, if the Planning Commission would go along with this, that the parking spaces meet the ten (10) foot by eighteen (18) foot size regulation, knowing that there will be fewer spots. He further noted that if the Planning Commission is adamant the other way, the ZBA could okay this.

Comm. Brown expressed concerns about okaying an eight (8) foot wide parking space.

There was no one further to speak; therefore the public hearing was closed.

On the motion of Comm. Wickman, seconded by Comm. Hickey, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE USE VARIANCE - 17-19 ARGYLE ST. – USE VARIANCE - RE-INSTATEMENT OF PROPERTY AS AN EIGHT (8) UNIT, PARKING SPACE SIZE REDUCTION & PARKING AREA BE PLACED ON THE TABLE FOR DELIBERATION.

A SEQR review was done.

On the motion of Comm. Hickey, seconded by Comm. Haskell, voted and approved to find no adverse environmental impacts and issue a negative declaration.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

The criteria for a use variance were reviewed.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial. This has been demonstrated.

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood). Re-investment part is unique.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood. No.

4. The alleged hardship has not been self-created. Yes and No.

On the motion of Comm. Brown, seconded by Comm. Decker voted and carried to approve the use variance allowing the reinstatement of the eight (8) unit, recommend to the Planning Commission that they allow only parking spaces that are the legal ten

(10) foot by eighteen (18) foot parking space size and allowing only eleven (11) legal parking spaces.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE USE VARIANCE FOR 17-19 ARGYLE PL. (ROGERS)(R2) – USE VARIANCE – BE APPROVED FOR THE RE-INSTATEMENT OF PROPERTY AS AN EIGHT (8) UNIT AND RECOMMENDING TO THE PLANNING COMMISSION THAT THEY ALLOW ONLY PARKING SPACES THAT ARE THE LEGAL TEN (10) FOOT BY EIGHTEEN (18) FOOT PARKING SPACE SIZE AND ALLOW ONLY ELEVEN (11) LEGAL PARKING SPACES BE APPROVED.

Item No. 3 – 36 Clayton Ave. – (Seales)(R2) – Area Variance – Increased Lot Coverage & Front and Side Yard Setback

Judd and Gary Seales were present. Judd Seales stated that they are doing a rehab on the property which is going to be a total remodel. They are planning to put an addition off of the back corner of the house and adding a porch on to the front. There is an existing porch and they are planning to increase the distance of the porch along the front of the house and do a second story. The addition in the back was originally a two story porch that was enclosed. It came out from the house about seven (7) feet, the pavement went right up to the house. What they are looking to do is to take that porch off and come out three (3) more feet and that will be the addition.

Judd Seales explained that they were not doing any more lot coverage, as the area had been paved. He explained that there would be no loss of greenspace. He further noted that in the front of the house, they were looking at a lot coverage increase of about forty-eight (48) square feet. He noted that they had a non-conforming use because of the setback off of Clayton Ave. of twenty-two point eight two (22.82) feet and they need to be twenty-five (25) feet back. He stated that they are not going any closer to Clayton, but they are coming in the same plane as the porch is right now, but extending it by eight (8) feet. He noted that they are extending the line established going along the face of the house, but the setback is not going to change.

There was not one further to speak, therefore the public hearing was closed.

On the motion of Comm. Haskell, seconded by Comm. Hickey, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 36 CLAYTON AVE. – (SEALES)(R2) – AREA VARIANCE – FRONT AND SIDE YARD SETBACKS BE PLACED ON THE TABLE FOR DELIBERATION

The criteria for an area variance were reviewed.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance. None demonstrated.

2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. Rebuild to existing dimensions and not add on.

3. Whether the requested area variance is substantial. Side yard non-compliance is being extended and front yard is being extended just a bit out of compliance.

4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district. No.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board, but shall not necessarily preclude the granting of the area variance. Yes.

On the motion of Comm. Wickman, seconded by Comm. Brown, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 36 CLAYTON AVE. – (SEALES)(R2) – AREA VARIANCE – FRONT & SIDE YARD SETBACKS BE APPROVED AS DESCRIBED IN THE APPLICATION.

Minutes – November 8, 2010

On the motion of Comm. Hickey, seconded by Comm. Brown, voted and carried to approve as amended:

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

RESOLVED THAT THE MINUTES OF NOVEMBER 8, 2010 BE APPROVED AS AMENDED.

Adjournment

On the motion of Comm. Hickey, seconded by Comm. Brown, voted and carried.

Chair Dailey	Aye	Comm. Brown	Aye
Comm. Decker	Aye	Comm. Haskell	Aye
Comm. Hickey	Aye	Comm. Wickman	Aye

I, BRIAN DAILEY, CHAIRPERSON OF THE ZONING BOARD OF APPEALS FOR THE CITY OF CORTLAND, NEW YORK, DO HEREBY CERTIFY THAT SAID RESOLUTIONS WERE ADOPTED AT A MEETING OF THE ZONING BOARD OF APPEALS OF THE CITY OF CORTLAND, HELD ON THE 13TH DAY OF DECEMBER 2010.

BRIAN DAILEY, CHAIRPERSON