

Zoning Board of Appeals
City of Cortland
September 12, 2011

A regular meeting of the Zoning Board of Appeals was held on Monday, September 12, 2011, at 5:00 p.m. in the Mayor's Conference Room at City Hall.

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

Staff: Zoning Officer Bruce Weber and Cheryl Massmann, Deputy City Clerk

Item No. 1 –5 Lauder St. – (Bible Baptist Church)(R1) – Area Variance, Special Use Permit and Use Variance – School Expansion and Playground.

Craig Miller, pastoral staff member, was present. He gave a history of the church and how it acquired property and how the school program was established and how it has grown. He noted that 5 Lauder Street has been used for guest housing emergency housing and social gatherings. He stated that the backyard of 5 Lauder currently has a playground, but they need higher quality equipment with more variety. He distributed photos of the proposed playground equipment. He stated that programs have expanded and they plan to use 5 Lauder Street for their pre-school program. He noted that they plan to landscape in the buffer area and they will put fencing along 8 McGregor and enclose the corner at 8 & 6 McGregor and fencing will be put along the front between the Church building and 5 Lauder. He noted that the proposed fencing will tie into some existing fencing and there will be a stockade style privacy fence that will go along the back boundary between 5 and 8 McGregor with a gate.

Comm. Wickman asked if the neighborhood kids could use the playground. Mr. Miller indicated that they would have no problem with that.

Comm. Dailey asked if he could give an explanation of their change in enrollment. Mr. Miller indicated that there has been a three (3) to five (5) percent increase in enrollment over the last four (4) years to one hundred fifteen (115) students.

Comm. Wickman asked if there was enough parking. Mr. Miller stated that there was except for graduation.

Chair Hickey stated that the Zoning Board must consider competent financial evidence that the applicant can't realize a reasonable return from any of the other uses that are permitted for that property or building when reviewing applications for Use Variances. She asked him to explain the financial hardship the church would incur if this Use Variance were not granted. Mr. Miller explained that a single family dwelling was of no use to the church for either school or church. He stated that the property was purchased for use by the school. Chair Hickey noted that she did not see in the application any evidence of financial hardship or lack of a reasonable return.

Comm. Dailey asked if students paid tuition to attend the school. Mr. Miller stated that they did. Comm. Dailey noted that it might be argued, that without facilities improvement, the school could see a drop in enrollment and therefore, show a loss of tuition income. Chair Hickey stated that they still needed to see lack of a reasonable return.

Pastor Nate Cobb was present. He stated that if they were to run out of space, they would have to eliminate the pre-school and that would drop enrollment. Mr. Miller noted that the area variance for the playground was to encourage pre-school and primary school age children's parents to be encouraged to send their children to their school and that has financial ramifications as far as the school is concerned.

Chair Hickey stated that based on past counsel, at this point she would have to vote no on this regardless of its merits because there is just not the financial evidence. She wondered if other commissioners would like to hold this public hearing open until more commissioners are in attendance, to give the applicant more of a chance to provide that evidence and to have corporation counsel present.

Comm. Wickman would like to have the opportunity to have an executive session to discuss what the ZBA should expect in the way of financial proof. He also would like to have the advice of counsel.

Mr. Miller noted that school is underway and he understood that the use variance was necessary. He asked that the Board at least consider the area variance to make the change over to the playground.

Zoning Officer Weber noted that approval would affect the change of use. He felt that the best course was for the ZBA would be to withhold any action on this until they have gotten the advice that they are looking for.

Gary Seales noted that the City has gotten themselves into a bit of a crunch. He stated that they have set the bar so high on the use variance that it gives the ZBA very little latitude to deal with issues like this which probably clearly should be approved. Chair Hickey stated that she understood, but noted that it wasn't the City's fault; it was due to State law. Mr. Seales felt it was the way the City had written the codes. Chair Hickey stated that the definition for use variance was pretty universal. Zoning Officer Weber stated that the criteria for the use variance was not a City criteria, it was a State criteria. Chair Hickey stated that every training session that she has attended has reinforced that. She noted that the financial hardship information presented should be compelling and contain actual figures.

There was further discussion regarding whether to close the public hearing or to leave it open. Zoning Officer Weber stated that they needed to show that they could not realize a return on the property based on the allowable uses in that district.

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

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

RESOLVED THAT THE AREA VARIANCE, SPECIAL USE PERMIT AND USE VARIANCE – 5 LAUDER ST. – (BIBLE BAPTIST CHURCH)(R1) – AREA VARIANCE, SPECIAL USE PERMIT AND USE VARIANCE - SCHOOL EXPANSION AND PLAYGROUND PUBLIC HEARINGS BE HELD OPEN UNTIL THE NEXT MEETING.

Mr. Miller was told that the submission deadline for the next meeting would be September 28, 2011.

Item No. 2 – 27 W. Main St. – (Gregoire)(R1) – Area Variance - Patio

Harold Gregoire was present to describe his project. He would like to extend his patio six (6) feet the entire length of his present patio which is about twenty-seven (27) feet. He would like to move his grill away from his house and to accommodate his very large picnic table.

Chair Hickey asked if he was planning to put up walls on that patio. Mr. Gregoire indicated that he only planned to widen the patio and there would be no walls, further noting that he already had a fence.

Comm. Wickman expressed some concerns regarding drainage on the property indicating that he had noticed some water damage to the garage. Mr. Gregoire noted that he had already put in a dry well in the corner of his driveway to aid drainage.

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

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

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

RESOLVED THAT THE AREA VARIANCE – 27 W. MAIN ST. – (GREGOIRE)(R1) – PATIO 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. No

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. No

3. Whether the requested area variance is substantial. Yes and No, but already non-conforming
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. Self-created

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

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

RESOLVED THAT THE AREA VARIANCE – 27 W. MAIN ST. – (GREGOIRE)(R1) – PATIO BE APPROVED AS PRESENTED.

Item No. 3 – 140 Madison St. – (Klegmont)(R1) – Area Variance - Deck

Margaret Klegmont, property owner and her daughter, Margie Lann were present. She noted that the property is non-conforming, but that was not known until they decided to put a deck on the front of the home. She noted that the front deck would be twelve (12) feet by eighteen (18) feet and because she is set back so far from Madison Street, it won't be ugly.

Comm. Wickman asked if it was a porch and asked if it could be put on the rear of the house. Ms. Lann stated that it would not have a roof over it. She felt that the project would improve the property and the neighborhood. She also noted that there was no room to put it on the rear of the house and they would like to try to put a pergola on the rear. She noted that she has already spoken with the neighbors and they all approved.

Comm. Brown asked if a variance had been needed to redo the sidewalk. Ms. Lann indicated that they did not need a variance because they were just replacing the sidewalk. They applied for a City grant and were able to offset some of the cost of the project with that money.

Comm. Wickman asked if they had presented an actual description of the proposed deck. Dave Dovi, the contractor for the project, was present. He showed pictures of a composition deck and railing system. Comm. Wickman asked how high the proposed deck would be. Mr. Dovi stated that it will be close to the ground and that there would only be one (1) step down to the cement.

Comm. Brown asked what the deck colors would be. Mr. Dovi noted that the deck would be blue/grey and called driftwood with a white railing. Ms. Lann stated that they would put stone around the base to resemble a foundation.

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

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

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

**RESOLVED THAT THE AREA VARIANCE – 140 MADISON ST. – (KLEGMONT)(R1)
– AREA VARIANCE –DECK - 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, an improvement
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. No
3. Whether the requested area variance is substantial. Yes, but front yard is very deep.
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. Self-created

On the motion of Comm. Dailey, seconded by Comm. Brown, voted and carried to approve the construction of a front deck as proposed.

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

**RESOLVED THAT THE AREA VARIANCE — 140 MADISON ST. – (KLEGMONT)(R1)
– AREA VARIANCE – DECK BE APPROVED.**

Minutes – August 23, 2011

On the motion of Comm. Dailey, seconded by Comm. Wickman, voted and approved.

Chair Hickey	Aye	Comm. Brown	Aye
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Comm. Dailey

Aye

Comm. Wickman

Aye

RESOLVED THAT THE AUGUST 23, 2011 MINUTES BE APPROVED AS AMENDED.

New Business

There was discussion amongst the Board regarding receiving more legal advice on use variances and what constitutes financial hardship. Comm. Wickman noted that the Zoning Board was designed to approve exceptions to the Code. Chair Hickey noted that past legal advice had been that before granting a use variance, the applicant had to meet all of the criteria. Comm. Wickman felt that the City should tell applicants more explicitly what needs to be provided to meet the criteria for a use variance. Comm. Brown was concerned about applicants for student housing being able to show financial hardship better than this church. Comm. Wickman felt that this was a complicated situation. There was further discussion regarding the current use of 5 Lauder Street and about holding them to the same standards as everyone else who applies for a use variance. Chair Hickey and Comm. Brown both spoke of the thought of the church combining their properties as opposed to trying to show financial hardship.

Commissioners felt that they would like to discuss matters being presented at the October meeting with Corporation Counsel.

The October 2011 meeting date was discussed. The Commissioners chose October 17, 2011, as their next meeting date.

Adjournment

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

Chair Hickey
Comm. Dailey

Aye
Aye

Comm. Brown
Comm. Wickman

Aye
Aye

I, MARY KAY HICKEY, 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 12th DAY OF SEPTEMBER 2011.

MARY KAY HICKEY, CHAIRPERSON