

Zoning Board of Appeals
City of Cortland
October 17, 2011

A regular meeting of the Zoning Board of Appeals was held on Monday, October 17, 2011, at 5:00 p.m. in the Mayor's Conference Room at City Hall.

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

Staff: Corporation Counsel Patrick Perfetti, Director of Administration and Finance Cook, Zoning Officer Bruce Weber, Capt. William Knickerbocker and Cheryl Massmann, Deputy City Clerk

Chair Hickey noted some agenda changes. She had received notice from the Bible Baptist Church, 5 Lauder Street that they have retained Counsel to assist them with their application and Counsel is not available today and has requested that the public hearing be held open another month. She noted that since the public hearing has not been closed, it can be held open.

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

Atty. Victoria Monty was present to observe the approval of the request that the Public Hearing be held open for another month.

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	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 HEARING BE HELD OPEN UNTIL THE NOVEMBER 14, 2011 MEETING.

Item No. 2 – 19 W. court St. – (DeVecchio)(R4) – Interpretation of Zoning Officer's Determination

Chair Hickey noted that the second item on the agenda was 19 W. Court Street for Interpretation of the Zoning Officer's determination. This had also has been postponed at the request of the applicant's attorney. She also noted that this public hearing had not been opened yet.

Corporation Counsel Perfetti explained the purpose of the request, noting that Atty. Scott Chatfield had called him that afternoon explaining that other events had transpired in other venues which may render this application moot, but Atty. Chatfield doesn't want to abandon the request that has been made here. Atty. Chatfield noted that it may be forthcoming, but because of the actions before a court and another administrative body, it may make this request obsolete, but he doesn't want to foreclose an opportunity that he may otherwise have.

Chair Hickey noted that Corporation Counsel Perfetti had been asked to attend this meeting to answer questions and discuss some matters with the Zoning Board members regarding Use Variances, particularly. Comm. Wickman asked him to discuss the application of the language as it applies to the Church with proving financial hardship for a non-profit. Corporation Counsel Perfetti stated that the Zoning Board of Appeals does not prove financial hardship. That it is up the applicant to demonstrate. Comm. Wickman asked him by what measure does a Church go about doing that.

Corporation Counsel Perfetti noted that it is the applicant's duty to demonstrate that to the Board and if they cannot do that, the Board has to come to the determination that they have failed in that requirement. He noted that there is a four (4) prong analysis for a Use Variance, which still applies. He noted that the standards are very difficult, so much so, that it is the rare exception that the Board will grant a Use Variance. He explained that when there is a non-conforming use that exists and it is grandfathered, a Use Variance should only be granted when those four (4) prongs of analysis are met. He noted that the aim of the Zoning Ordinance is to basically cause those things out of existence so that anyone within a particular zone is treated the same way.

Comm. Wickman stated that he thought the bar was set very high and felt that the City needed to be more forthcoming with telling applicants what they needed to provide. Corporation Counsel Perfetti stated that the Board actually didn't need to do that. He stated that an applicant comes before the Board seeking your permission; they have the duty of presenting their case. He noted that just claiming financial hardship is not enough. The applicant needs to come forward with financial documents showing hardship and that the hardship is not of their own doing and showing that the hardship is for something beyond merely the inability to use the property as they would choose to use it. He noted if they could use the property for any other economic benefit that is permissible within the zone hence the bar is set very high.

Comm. Brown asked if the applicant showed they were losing money by doing one thing over another..... Corporation Counsel Perfetti stated that if they showed they could make more money by doing something else; that did not constitute a hardship. Corporation Counsel Perfetti noted that it was not the Zoning Board's job to provide an applicant with evidence or to direct them on what to provide. Comm. Wickman stated that he felt they should be able to tell applicants up front or in the application process what should be provided or that someone should. Corporation Counsel Perfetti stated that they were a decision making Board and that applicants had access to the Zoning and Code Offices to provide them with information regarding their applications.

Chair Hickey asked him to give some examples of competent financial evidence. Corporation Counsel Perfetti noted that was for the Board's determination. He noted that if someone brought forth ledgers from an accountant or something like that and noted that the Board didn't have to decide an issue like that right at the meeting. He explained that if an applicant brought forth some evidence like that, the Board could take that matter under advisement and have the Law Department review it. He noted that in his experience he would want to review the case law and determine whether any document put before the Board beyond a mere claim of financial hardship actually satisfies the legal requirement. He further explained that if an applicant brought in an accountant or an economist and the Board didn't feel that was enough, they could have the Supreme Court review it to determine if they were right or not. Corporation Counsel noted that it was not the Board's focus to offer suggestions. He noted that an applicant can always reapply if you deny an application. He explained that granting a Use Variance should be an exception and not the rule.

Corporation Counsel Perfetti further explained to the Board that they must treat everyone alike and this Board provides a process by having an applicant satisfy a test to see if they can be allowed a variance and not be treated like everyone else.

Capt. Knickerbocker stated that he, Dan Dineen and the Zoning Officer Weber wanted to develop and publish a flow chart so that an applicant can understand the process that the City uses when they apply for a variance or a site plan review. All present agreed that would be very helpful.

Corporation Counsel Perfetti stated that Area Variances are easier than some others to make a determination on, but they still need a thorough review.

There was some discussion regarding some past applications.

Item No. 3 – 95 Pendleton St. – (Stupke)(R2) – Area Variance – Lot Coverage

Mr. & Mrs. Stupke were present. Mr. Stupke explained that they would like to put a fourteen (14) foot by sixteen (16) foot pre-made shed by his garage, plus install a picket fence for their daycare business and to add a concrete pad at the rear door at the end of their sidewalk. He stated that they operate a daycare center and they want to erect the fence to keep children in the yard and to keep stray dogs out. Mr. Stupke also stated that he had just incurred two thousand dollars (\$2,000) worth of pot hole repairs to Blodgett Street.

Chair Hickey noted that this was already a non-conforming and inquired what the increase was. Zoning Officer Weber stated that presently the lot is forty-nine (49) percent as a non-conforming lot and forty-five (45) percent is allowable and the applicant's request is for fifty-five (55) percent, noting that was ten (10) percent over what's allowed.

Chair Hickey asked the applicants if the proposed concrete pad was just a pad or if they planned to add a roof or some walls. Mr. Stupke noted that there would be no concrete pad for the shed and was removable. Zoning Officer Weber noted that usually these sheds were installed upon a gravel bed and that there were pressure treated runners on the storage shed.

Chair Hickey asked if the proposed fence complied with other requirements. Zoning Officer Weber indicated that it would with regards to open space and height. He was unsure if the fence was part of the application or if it had been discussed. Chair Hickey noted that this was a picket fence with a couple of four (4) foot gates, made of open construction with the good side out towards Blodgett Street. Mr. Stupke noted that the fencing would probably be vinyl. Chair Hickey instructed Mr. Stupke to thoroughly discuss the fencing with the Zoning Office or the Code Office to make sure it met all requirements.

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

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE - 95 PENDLETON ST. – (STUPKE)(R2) – AREA VARIANCE – LOT COVERAGE 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, ten percent (10) percent increase over what's allowed.
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, self-created.

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 95 PENDLETON ST. – (STUPKE)(R2) – AREA VARIANCE – LOT COVERAGE BE APPROVED.

Item No. 4 – 34 Cleveland St. – (Davis)(R2) – Area Variance – Fence

There was no one present to represent this application. They received a copy of the agenda and Zoning Officer Weber stated that he normally told all applicants to be present at these meetings. Chair Hickey noted that from the standpoint of the Code Office the problem was that this is a solid fence as opposed to open construction and it already has been installed. It was noted that the solution was to remove every other piece of fencing. She further explained that the Board could act on this application if they chose.

Comm. Brown wondered if the applicant could open up the fence by cutting designs into it to provide sight and airflow. Zoning Officer Weber stated that the Code required fifty (50) percent. Chair Hickey stated that two (2) neighbors of the applicant had written letter of support indicating no problem with the fence. Comm. Wickman and Brown wanted more information and would like to have someone present to answer questions. There was speculation amongst the Board as to why the fence was installed the way it was.

Chair Hickey asked if they wanted to make a motion to table this until the next meeting.

On the motion of Comm. Brown, seconded by Comm. McGinley, voted and carried to table this application.

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 34 CLEVELAND ST. – (DAVIS)(R2) – AREA VARIANCE – FENCE BE TABLED UNTIL THE NOVEMBER 14, 2011 MEETING.

Item No. 5 – 49 Elm St. – (Northeast Transformer)(G1) – Area Variance – Parking

Gil Kozer and his son were present. Mr. Gil Kozer explained that he was cleaning up the area and he had stoned it to level it for employee parking. Mr. Kozer explained that it was mostly stone already and he had taken down a few scrubby trees and added some more crushed stone to level the parking area. Comm. Wickman asked if he would be doing further cleaning of the area up. Mr. Kozer stated that once Zoning Officer Weber told him that he needed to obtain an Area Variance, he stopped cleaning up the area until a decision is made upon review of this application. He explained that shrubs

had grown up since he bought the property; people have thrown garbage there and even camped in there. Comm. Brown asked if he was buying the property. Mr. Kozer stated that he was not buying the property; he just wanted to clean it up. He stated that the property was owned by the BDC.

Zoning Officer Weber indicated that the Planning Commission had wanted a letter from the BDC, allowing Mr. Kozer to use the property. Mr. Kozer stated that the letter had been obtained. Comm. Wickman noted that the Planning Commission had raised issues regarding some transformers being stored about the property. Mr. Kozer stated that he would not be storing transformers there.

Comm. Brown asked how much of the property was owned by him. Mr. Kozer explained that the BDC owns eighty (80) percent of that property and he owned twenty (20) percent.

Chair Hickey asked for a copy of the BDC letter giving support to his application. Mr. Kozer submitted a copy for the records.

Comm. McGinley asked what the problem was with the stone surface. Zoning Officer Weber stated that the surface had to be concrete or asphalt for anything other than a single family. The Zoning Board members reviewed the map of the area and the BDC letter which was submitted.

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

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 49 ELM ST. – (NORTHEAST TRANSFORMER)(GI) – AREA VARIANCE – PARKING 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. Nearby property owner (BDC) is in agreement with it.
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

4. Whether the proposed variance will have an adverse effect or impact on the physical environmental conditions in the neighborhood or district. No. It's an improvement, but should be blacktopped or concrete, but this is an unusual situation.

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 and No

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	Aye

RESOLVED THAT THE AREA VARIANCE – 49 ELM ST. – (NORTHEAST TRANSFORMER)(GI) – AREA VARIANCE – PARKING BE APPROVED AS PRESENTED.

Item No. 6 – Minutes – September 12, 2011

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

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	Aye

RESOLVED THAT THE SEPTEMBER 12, 2011 MINUTES BE APPROVED.

Adjournment

On the motion of Comm. McGinley¹, seconded by Comm. Brown, voted and carried.

Chair Hickey	Aye	Comm. Brown	Aye
Comm. McGinley	Aye	Comm. Wickman	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 17th DAY OF OCTOBER 2011.

MARY KAY HICKEY, CHAIRPERSON