

**Zoning Board of Appeals
City of Cortland
November 13, 2012**

A regular meeting of the Zoning Board of Appeals was held on **Tuesday, November 13 2012 at 5:00 p.m.** in the Mayor's Conference Room at City Hall.

Present: Chair Mary Kay Hickey, Commissioners David Funk, Christine Place, Michael Stoll, Kenneth Wickman and Phyllis McGinley

Staff: Zoning Officer Bruce Weber

Item #1 – 33 Hubbard Street – (Varughese) – (R2) – Area Variance - Porch

With no one present to speak, Chair Hickey suggested moving this item to later in the agenda to allow time for the applicant to arrive.

Item #2 – 13 Lansing Avenue – (MacHenry) – (R1) – Area Variance – Driveway.

Zoning Officer Bruce Weber noted that he had received a phone call from Fran Casullo, attorney for the applicant, requesting this item be tabled until the next meeting in an effort to provide more detail of the application.

On the motion of Comm. Place, seconded by Comm. Stoll, voted and carried.

Chair Hickey	Aye	Comm. McGinley	Aye
Comm. Funk	Aye	Comm. Place	Aye
Comm. Wickman	Aye	Comm. Stoll	Aye

RESOLVED THAT THE AREA VARIANCE – 13 LANSING AVE. – (MACHENRY) (R1)-AREA VARIANCE – DRIVEWAY AND GARAGE BE TABLED FOR THE DECEMBER MEETING, AS REQUESTED BY THE APPLICANT,

Item #3 – 34 Garfield Street – (Barbara English / Mike May) – (R2) – Area Variance – Set back for enclosed porch.

Applicant Barbara English was present, as was her contractor, Michael May, to speak. He explained that the concrete steps and rickety old railing with an awning over it needs to be replaced. In order to block the cold air from coming directly into the living area, the homeowner would like to enclose the entrance. The steps will be relocated and new steps and landing constructed. Several questions from the Board were answered by Mr. May.

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

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

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Wickman	Aye	Comm. McGinley	Aye
Comm. Stoll	Aye	Comm. Place	Aye

RESOLVED THAT THE AREA VARIANCE – 34 GARFIELD – (English / May) (R2) - ENCLOSED PORCH – 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 Area 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, no.
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. Funk, seconded by Comm. Place, voted and carried

Chair Hickey	Aye	Comm. Funk	Aye
Comm. Wickman	Aye	Comm. McGinley	Aye
Comm. Stoll	Aye	Comm. Place	Aye

RESOLVED THAT THE AREA VARIANCE 34 GARFIELD STREET – (ENGLISH / MAY) (R2) – SET BACK FOR ENCLOSED PORCH BE APPROVED AS SUBMITTED.

Item # 3 – 115 South Pendleton Street (Whitney) (R2) – Area Variance – Shed

To speak was Helen Whitney. Her intention was to replace the existing 10' X 14' shed with a pre-built 12' X 12' shed closer than the four foot limit to the property line. She wanted to place the new shed where the old one was, four feet from the rear property line and two feet from the side property line. The Board discussed the options with Ms. Whitney.

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 Area 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, yes, she could move the shed.
3. Whether the requested Area Variance is substantial, yes, 50% of the side yard requirement.
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. McGinley, seconded by Comm. Funk, voted and carried.

Chair Hickey	Aye	Comm. Wickman	Aye
Comm. Place	Nay	Comm. McGinley	Aye
Comm. Funk	Aye	Comm. Stoll	Aye

RESOLVED THAT THE AREA VARIANCE – 115 SOUTH PENDLETON STREET – SHED - BE APPROVED AS SUBMITTED, TWO FEET FROM THE SIDE YARD AND FOUR FEET FROM THE REAR PROPERTY LINE.

Item #1 – 33 Hubbard Street (Varughese) – R2 – Area Variance – Porch

To speak was Matthew Varughese. The applicant wants to extend the existing porch to replace the section of porch that had been removed back in 1980. The dimensions will change from 6' X 10' to 6' X 22'.

There was no one else to speak, therefore the Public Hearing was closed.

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

RESOLVED THAT THE AREA VARIANCE – 33 HUBBARD STREET – (VARUGHESE) – (PORCH) 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 Area Variance, no, will be 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 conforms with the original plans.
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. Funk, seconded by Comm. Stoll, voted and carried.

RESOLVED TO APPROVE THE AREA VARIANCE – 33 HUBBARD STREET – (VANGHESE) - PORCH

Chair Hickey	Aye	Comm. Wickman	Aye
Comm. McGinley	Aye	Comm. Funk	Aye
Comm. Place	Aye	Comm. Stoll	Aye

Item #4 – 108 Groton Avenue – (Fox) – (GB) – Interpretation

Corporation Counsel Kelly Colasurdo arrived.

Linda Fox was present to speak and Chair Hickey gave a quick review of all documentation that had been previously submitted and additional documentation Ms. Fox distributed for this application. After some discussion Chair Hickey asked for a motion to go into Executive Session in order to get legal advice from the City's Corporation Counsel.

Documentation:

The following documents and speakers were taken into account when reaching this decision.

Provided by Linda Fox:

1. Copy of City of Cortland Code, Chapter 17, date unknown, written by hand - "1978 Copy prior to 6/6/78" - pages as follows:
693, 694, 706, 707, 709-711, 735
2. Copy of Section 17-180, Article VIII (undated) - Nonconforming uses and structures

3. Letter from David Briggs, Assessor, 10/29/12 - notes the property has been identified as student housing since 1975, but also notes that in 1987 the owner was notified that a special permit was required
4. Copy of assessment records, Student Housing List 2011, 6/1/12 - 6 or Less Occupants
5. Inspection record, 9/21/94, owners at the time were John and Kathleen Tavarone
6. Sworn statements from previous owners, James Elias, Kathleen Tavarone; and current owner Linda Fox - all noting that the house had been used for student housing
7. US Tax Schedule E from Linda Fox for 2004-2011
8. Lease agreement from Fox Property Management for 2004
9. Lease agreement from John and Kathleen Tavarone for 2001
10. Certificate of Zoning Occupancy for 96 Groton Ave. giving permission to occupy it as a rooming house - this was not actually pertinent to the decision

Documentation cited by the Code Office, from the City's property file:

1. Certificate of Occupancy, 9/8/86 - one family residence
 2. Building permit, 1/2/87 - notes that 5 students requires a special permit
 3. Statement of Use Occupancy, undated, - notes that 5 students requires a special permit
 4. Certificate of Zoning Occupancy, 9/14/01 - single dwelling unit, no mention of 5 students
 5. Application for Certificate of Zoning Occupancy/Statement of Use, 4/24/03 - notes that assessor has single dwelling with 5 bedrooms
 6. Certificate of Zoning Occupancy, 4/25/03 - allows use as a single dwelling unit structure
-

The following people were present to speak on behalf of Ms. Fox: John and Kathleen Tavarone

Motion to go into Executive Session by Comm. Funk, seconded by Comm. Stoll, voted and carried.

Motion to come out of Executive Session by Comm. Funk, seconded by Comm. Stoll, voted and carried.

Motion by Comm. Funk, seconded by Comm. Stoll, voted and carried.

RESOLVED TO FIND IN FAVOR OF THE PROPERTY OWNER – 108 GROTON AVENUE – (FOX) – (GB) – INTERPRETATION, AND TO DIRECT THE CODE OFFICE TO ISSUE A CERTIFICATE OF OCCUPANCY FOR A SINGLE FAMILY RESIDENCE WITH FIVE UNRELATED ADULTS.

Chair Hickey	Aye	Comm. McGinley	Aye
Comm. Funk	Aye	Comm. Place	Nay
Comm. Stoll	Aye	Comm. Wickman	Aye

Minutes

On the motion of Comm. Place, seconded by Comm. Funk, voted and carried

Chair Hickey	Aye	Comm. McGinley	Aye
Comm. Funk	Aye	Comm. Place	Aye
Comm. Stoll	Aye	Comm. Wickman	Aye

RESOLVED TO ACCEPT THE MINUTES AS AMENDED

Adjournment

On the motion of Comm. Stoll, seconded by Comm. Funk, voted and carried.

Chair Hickey	Aye	Comm. McGinley	Aye
Comm. Funk	Aye	Comm. Place	Aye
Comm. Stoll	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 10th DAY OF SEPTEMBER 2012.

MARY KAY HICKEY, CHAIRPERSON