

Zoning Board of Appeals
City of Cortland
Monday, February 9, 2015

A regular meeting of the Zoning Board of Appeals was held on Monday, February 9, 2015 at 5:00 PM in the Mayor’s Conference Room at City Hall.

Present: Chair, Mary Kay Hickey, Commissioners David Funk, Christine Place, Phyllis McGinley, Scott Steve

Absent: Comm. Dave Dovi

Staff: Deputy Fire Chief, William Knickerbocker; Zoning Officer, Bob Rhea; Secretary, Shellie Blaisdell

The meeting was called to order at 5:00 pm

Item #1 – 131 Port Watson Street (G1) – (Withey) – Area Variance

Lot width and lot side setback / Lot was subdivided earlier and left nonconforming front width less than 150 feet.

Derek Withey explained they are looking to expand their business which has been to train water and wastewater operators and offer continued certification for their employment requirements as well as to operate water systems. Their expansion will include opening a pump repair shop which is why they would be asking for a variance. They want permission to go within 15 feet of the property line so as business expands they will be able to make the building larger. When ZBA members suggested another possible location, Mr. Withey said that area is already slated for future growth on the training end where they would be putting a mock system in for future training.

Derek Withey proposes they will be constructing a new 40’x70’ building. Asking for a Variance within 15 feet to allow for future expansion to make the building larger - 70’x60’. It is a non-conforming lot (due to coverage). Lot is 180’ wide with a very large parking lot. The applicant requires a 20’ side yard plus a 10’ border because the property borders a residential area. The board would like to see a new drawing that is to scale. The pavilion on the lot will remain (due to the rental ability).

The board states a variance is good for one year. If expansion isn’t started then the applicant would need to re-apply. The applicant states that the proposal is the best option for the business and its future expansion plans. The building will match the other building on the property. No variance would be required if the building conforms to side yard – 30 ft. (20+10) and consider alternate location. The board cannot make a decision now on a future variance.

The applicant indicates their business anticipates growth for their business which would be beneficial to the City of Cortland. Their business is a thriving business in the City and they want to grow here. The expansion will bring people to the City for business and could impact future job growth as well.

A motion to close the public hearing was made by Comm. Place and seconded by Comm. McGinley.

Approved: Ayes – 5
 Nays – 0

A motion was made by Comm. Place, based on the discussion the Board concludes that no variance is needed for the non-conforming lot based on road frontage because the area in the rear more than meets the requirements. This action does not absolve the applicant from returning to the board if he wishes to place the building in an area that infringes upon the side or rear set back requirements of zoning. The motion was seconded by Comm. McGinley.

Approved: Ayes – 5
 Nays – 0

Item #2 – 7 Woodruff Street (Reeners) – (R2) – Flood Plain Regulation Variance

Flood proofing exterior walls 5" above BFE; this may need to be referred to County Planning, so it would be removed until we get the County's decision; FEMA approved doorway flood barriers; Exterior walls flood proofed upper 5" of 2' required freeboard

Jim Reeners (owner) states he is not here to set a precedent or to change the Base Flood Elevation but is seeking approval of an alternative method to comply with the top five inches of requirement that residential buildings must be protected from flood damage to a level of 2 feet above the base flood elevation. In drawing plans for the building, a 1988 flood plain data was used to determine the BFE. A building permit was issued on the basis of compliance with that BFE and construction began. During a subsequent meeting, the error was discovered and it was found that compliance was 5" short of the 2010 BFE requirement. ZBA is required to hear when there is an alleged error in the requirement decision. Due to the error not being brought to their attention until after the concrete floor was constructed, framed and enclosed it is causing an undue hardship to applicant.

The applicant states an error was brought to his attention that was not originally caught when issued the Flood Plain Development Permit. Applicant can raise the floor which has radiant heating system, and is already under the concrete. A wood floor could be installed above the concrete, but the loss in heating efficiency would be a large ongoing expense over the life of the structure. All of the doorways on the first floor would have to be raised and interior stairways would have to be rebuilt. Engineer indicates compliance is currently at 1.7 feet, needing additional 5 inches required with proposed remedy. The proposed alternate method involves dry flood proofing of exterior walls and installation of flood barrier shields which will protect

the building to the full 2 feet from the flood damage. Insulation building permit and to offset hardship. Ken Teeter (City Engineer) addressed the Board and stated the dry flood proofing method is adequate for compliance with conditions of 1.7 inches.

A motion to close the public hearing was made by Comm. Place and seconded by Comm. Funk.

Approved: Ayes – 5
Nays – 0

A motion was made by Comm. Funk to approve the application for the alternate method to mitigate the 5” difference in floor height contingent upon approval of the City Engineer of the means and method, and that certification of such approval will be included with the Floodplain permit application. The motion was seconded by Comm. Place.

Approved: Ayes – 5
Nays – 0

Item # 3 – 89 Tompkins Street – (R2) – (Ruggiero) – Interpretation

Appeal: Refusal to enforce zoning laws

This agenda item was tabled from January 12, 2015 meeting due to a request by the ZBA for legal advice. Comm. Phyllis McGinley recused herself for this agenda item at the applicant’s request. A motion was made by Comm. Place to go into executive session to ask questions to Corporation Counsel. The motion was not seconded.

Chairperson Hickey reminded applicant to remain respectful and also reminded him the public hearing was closed, setting the ground rules – the applicant could only speak to the board when recognized by a member.

The applicant provided additional information he feels will support his application. The law department also provided information which included instruction on what the board can or cannot do or rule on and the Board needs to have a formal decision to deny or accept.

The date of the appeal is questioned if it is past the 60 days. No evidence that states 89 Tompkins didn’t need a variance. Project is still in progress and time frame is in question. Certificate of Compliance has not been issued.

This decision is going to involve a lawsuit either way. Comm. Place feels the ZBA needs to make a decision as to whether the property needs a variance. Counsel explains it is not the ZBA’s role to tell the applicant they need a variance. Appropriate way for it to happen is make a decision to deny or approve the Interpretation Application and if the decision is to deny it, the applicant will be to take the next step and file suit against the City.

Applicant is willing to have tabled waiving the 62 day requirement for a decision by the ZBA, but wants a decision in March so he can pursue suit.

A motion was made by Comm. Funk and seconded by Comm. Place to have 89 Tompkins Street investigated as to the need for an Area Variance and a decision needs to be made in the property file to indicate whether it does or does not need an area variance with formality.

Approved: Ayes – 4
Nays – 0
Recused – 1 (Comm. McGinley)

A motion was made by Comm. Funk to request the City to review the property and ask the property owner to apply for an area variance. The motion was seconded by Comm. Steve. After a brief discussion, Comm. Funk withdrew the motion.

A motion was made by Comm. Funk to table the application until the March meeting so that 89 Tompkins St. can be investigated as to the need for an Area Variance. The decision needs to be placed in the property file to indicate whether it does or does not need an Area Variance with formality. Comm. Place seconded the motion.

Approved: Ayes – 4
Nays – 0
Recused – 1 (Comm. McGinley)

Item # 4 – 8 Hill Street – (R2) – (Ruggiero) – Interpretation

Appeal: Denial of CZO

This application was tabled from the December 2014 meeting. The public hearing is still open. Comm. McGinley recused herself for this agenda item at the applicant's request.

A motion was made by Comm. Place to table the decision at the applicant's request due to the late hour. The Motion was seconded by Comm. Funk.

Approved: Ayes – 4
Nays – 0
Recused – 1 (Comm. McGinley)

Comm. McGinley returned to the meeting.

Other Business: Comm. Place made a motion that the ZBA schedule a workshop on zoning procedures and will coordinate the agenda through email. Comm. Funk seconded the motion.

Approved: Ayes – 5
Nays – 0

Adjournment

On the motion of Comm. Steve and seconded by Comm. Funk, voted and carried to adjourn meeting.

Approved: Ayes – 5
Nays – 0

I, MARY KAY HICKEY, MEMBER OF THE ZONING BOARD OF APPEALS FOR THE CITY OF CORTLAND, NY, 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 9th DAY OF FEBRUARY IN THE YEAR 2015.

MARY KAY HICKEY, ZBA MEMBER