

ZONING BOARD OF APPEALS
Town of Goshen, Orange County, New York

MINUTES OF THE MEETING FOR
SEPTEMBER 28, 2004

Members Present:

Donna Roe, Chairwoman
Mike Wilson
Robert Farfalla
Priscilla Gersbeck
Dawn Santoro

Also Present:

Brian Morgan, Esq.
Neal Halloran, Bldg. Inspector



I. Call to Order

Chairwoman Roe called to order the September meeting of the Town of Goshen Zoning Board of Appeals at 7:30 p.m. It was noted that the October Zoning Board of Appeals work session will be held at 7:30 p.m. on October 12, 2004 and the next Zoning Board of Appeals meeting will be held on October 26, 2004 at 7:30 p.m.

II. Public Hearing

**Tomaszewski – 7-2-2, located on Fleetwood Drive, for relief from
97-15F and 97-40A(1)(e), in an HR with an AQ 6**

Steven Tomaszewski was in attendance with his contractor, Mr. McCloud. Chairwoman Roe and Ms. Santoro recused themselves from this application.

Mr. Halloran stated that the State Building Code requires that a one story structure should be 3 ft. from the property line. If the Board were to grant a variance of less than 3 ft., this application would have to be brought to the State.

Mr. Wilson asked what Mr. Tomaszewski's basis was for moving the shed. Mr. McCloud explained that the shed had been placed at an angle to match the wall of the pool. When a surveyor was brought in to look at the property, Mr. Tomaszewski was informed that the shed was in violation.

Mr. Farfalla advised that 5 ft. was the least variance ever allowed by the Board. Mr. Wilson stated that a variance of 1 1/2 ft. was an unrealistic request. Mr. Tomaszewski explained that one reason for such a tight area is due to landscaping. Mr. Tomaszewski also explained that a Bob-Cat would be needed to move the shed and in order to maneuver the Bob-Cat out of the area the deck would have to be removed.

Mr. Wilson asked what kind of electricity is in the shed. Mr. Tomaszewski answered 110. Mr. Tomaszewski informed the Board that the shed was on a 4x4 wood slab. Mr. Tomaszewski also explained that the shed was not used for tools, but instead as a dressing room. Ms. Gersbeck asked which part of the application was more important to the applicant. Mr. McCloud answered the deck and Mr. Tomaszewski stated the shed because it was the beauty of backyard.

After discussion, Mr. Farfalla suggested angling the shed out 5 ft. on a 45 degree angle. Mr. Tomaszewski agreed with Mr. Farfalla's suggestion. Mr. Wilson and Mr. Farfalla asked if anyone in the audience had any questions regarding this application. There were no comments from the audience.

Ms. Gersbeck made a motion to cut the deck on a 45 degree angle and move the shed 5 ft. away from the property line and parallel to the existing property line. Mr. Wilson seconded the motion. All in favor. Aye. Motion carried.

III. Public Hearing

Edward Palmer, Jr. – 22-1-48, located at 1028 Pulaski Highway, for an area variance from 97-40A (1)(e) for sheds in an AI with an AQ 3 overlay

Edward Palmer, Jr., owner of the property, was in attendance to support his application. Mr. Palmer explained to the Board that there had been two concrete slab sheds (approximately 30 years old) on the property. One shed was destroyed by a tree falling of it, but it was replaced by Mr. Palmer. Mr. Palmer advised that he is requesting a variance to leave these sheds, which never had permits, on the property. In preparation to sell his property, Mr. Palmer was informed that the sheds would be an asset to the property.

Chairwoman Roe asked for the distance of the sheds to the property line. Mr. Palmer stated the first shed is 3 ft. 7 inches from the side and 10 ft. 7 inches from the back and the second shed is 4 ft. from the side and right on the property line. Chairwoman Roe asked what the property was behind the shed. Mr. Palmer advised that the property belonged to Victor Korycki and is used to dump onions. Chairwoman Roe asked if there was any electricity in the sheds. Mr. Palmer informed the Board that there is no power in either of the sheds. Mr. Palmer stated that one shed houses lawn mowers and landscaping equipment. The other shed housed an Ultra-Light, which was sold.

Chairwoman Roe asked Mr. Halloran if this application fell under the State's requirement of a structure being 3 ft. from the property line. Mr. Halloran informed the Board that Mr. Palmer's property was considered combustible and could be granted a lesser variance. Chairwoman Roe stated for the record a new requirement from the County's Planning Department, General Municipal Law 239 LMN. Chairwoman Roe stated that the proposed project has no major impact on County facilities.

Chairwoman Roe asked if there were any questions from the public. There were no questions from the public. Chairwoman Roe asked if there were any further comments from the Board. There were none. Chairwoman asked if there was a motion to close the public hearing. Ms. Gersbeck made a motion to close the public hearing. Mr. Farfalla seconded the motion. All in favor. Aye. Motion carried.

Mr. Palmer advised that he only intends to remain the owner of the property for 1-2 years. Chairwoman Roe explained that the variance would only be temporary and would be an issue at a closing of the property. Ms. Santoro advised that since Mr. Palmer cannot convey a temporary variance, there would still be two permanent slabs on the property which would result in an encroachment. Mr. Halloran informed that once the sheds are gone, the concrete slabs would not be an issue. Mr. Halloran suggested red flagging the property's folder so no further C.O's in the future could be granted for sheds at that site.

Mr. Wilson made a motion to approve the variance with the understanding that the variance is only good for the lifetime of the structure that are in place at this date regardless of the ownership of the property and if there are no longer any viable structures, the variance ceases to exist and cannot be replaced in that location. Ms. Gersbeck seconded the motion. All in favor. Aye. Motion carried.

IV. Public Hearing

ASU Associates, Inc. – 6-4-6.3, 6.4 & 6.5, located on Upper Magic Circle for a variance of §280A, access for 2 subdivisions lots from a third, in an SR 2.5

Ischa Nagar, owner of the property, was in attendance with his attorney, Donald Tirshwell, Esq., and engineer, Mark Sandor of MJF Engineering. Mr. Tirshwell provided Chairwoman Roe with proof of mailings.

Mr. Sandor stated that the easement benefits the property and there would be a great difficulty and disturbance in creating a driveway in each lot. Mr. Wilson asked Mr. Sandor to define "disturbance". Mr. Sandor explained that there would be blasting, cutting, filling and a greater disturbance to topography. Mr. Wilson asked if it was possible to create three separate driveways. Mr. Sandor answered yes, but with a great disturbance. Mr. Sandor stated that the houses are 85 - 90% complete.

Chairwoman Roe stated that the Town Engineer, Mr. Henry, has already submitted a report regarding this application. Chairwoman Roe asked Mr. Henry to comment on this application. Mr. Henry stated that these lots were approved as part of Section C of the Hambletonian subdivision. The original submission to the Building Department for building permits was somewhat done in a manner that caught the Building Department off guard. Three separate sub-plans were submitted to the Building Department for three individual building permits. The 1962 subdivision plans were reviewed and they do not

address site grading for driveways. Mr. Henry stated that Mr. Sandor's solution will answer questions regarding access to the site and feels that this solution results in the least amount of disturbance to the site. Mr. Henry stated that this action is not a cost issue, but rather an environmental issue. Mr. Sandor's solution is still quite expensive and involves a lot of work to be done.

Mr. Wilson asked if there was a requirement for emergency equipment to access this site from Upper Magic Circle. Mr. Sandor advised that the driveway would be 50 ft. and is wide enough for an emergency vehicle. Mr. Henry stated that the slope should be no greater than 10%; the driveway is slightly less than 12%.

Mr. Tirshwell proposed that the Town has the right at anytime to inspect and the owners have to make any modifications at the Town's request at the time. Mr. Henry added that the easement agreement should also allow the Town to read meters and shut off services if needed. Mr. Henry also advised that the driveway would meet current Town codes for a public roadway.

Mr. Henry expressed his concern regarding the execution of the plan developed by Mr. Sandor. Mr. Henry stated that the road should be staked out, he is concerned with the sanitary location of water and sewer lines, locations of retaining and stone walls, limits of disturbance and the center line of the driveway should also be staked out. The Town will inspect this work.

Chairwoman Roe asked Mr. Sandor to explain the situation of retaining walls. Mr. Sandor advised that the retaining walls would be 3 ft. high and will run the full length of the driveway to assure that cars do not fall off. Ms. Santoro asked if the maintenance of walls would be part of the maintenance agreement. Mr. Tirshwell answered yes. Mr. Sandor advised that all roads would have a wall on the low side or hill side except for the center line.

Ms. Santoro asked how utilities were going to be put into the houses. Mr. Sandor stated that there could be more blasting and hammer-drilling. At the time, only electricity is installed. Water and sewer utilities have been installed as of yet. Mr. Tirshwell advised that there would be less blasting installing utilities than in creating three separate driveways.

Mr. Wilson asked if the Town Engineer was comfortable with this plan. Mr. Henry answered yes. Ms. Santoro asked if there has been anything done to the grounds in regards to retention. Mr. Sandor stated that the grounds are mostly shale so the water is absorbed in the land.

Chairwoman Roe asked for the distance of the closest catch basin. Mr. Sandor answered the closest catch basin is 200 ft. from the property. The closest hydrant is located at Good Time Court.

Chairwoman Roe asked if there were any comments from the public. John McDermott, whose property stops at the front of the Town's easement, advised that the roads in Section C were never dedicated. Mr. McDermott also stated that these three lots were never approved by the Planning Board, instead they were deleted along with five other lots from Section C. Mr. McDermott suggested that the common driveway is the only solution to this application due to the blasting. Mr. McDermott also addressed the issue of storm drains and was advised by Brian Morgan, Esq. that the matter of storm drains would be considered a building matter rather than a zoning matter. Mr. Tirshwell stated that under Section 189 the road is dedicated because it has been maintained by the Town for over ten years. Chairwoman Roe advised that this matter would be reviewed. There were no further comments from the public.

Chairwoman Roe asked if there was a motion to continue the public hearing until the next Zoning Board of Appeals meeting dated October 26, 2004 and to receive comments from the Fire Chief. Mr. Wilson made a motion as stated. Ms. Santoro seconded the motion. All in favor. Aye. Motion carried.

V. Discussion

Mr. Halloran stated that he has to make a recommendation to the Town Board regarding setbacks on behalf of the Zoning Board of Appeals. Chairwoman Roe stated that there should be a 10 ft. setback for any shed and pool. A shed over 200 square feet would meet the standards of a house.

VI. Adjournment

Ms. Gersbeck made a motion to close the September meeting of the Zoning Board of Appeals at 9:20 p.m. Mr. Wilson seconded the motion. All in favor. Aye. Motion carried.

Respectfully Submitted,

Lisa Alvarado, Secretary

Date Approved: November 23, 2004