

A regular meeting of the Zoning Board of Appeals of the Village of Cooperstown was held in the Village Office, 22 Main Street, Cooperstown, New York on December 2, 2014 at 5:00 pm. Members in attendance were Chair - Susan Snell, Frank Leo, John Sansevere, Marcie Schwartzman and alternate – Ron Streek. Also in attendance was Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax. Two members of the public were present.

Ms. Snell called the meeting to order at 5:00 p.m.

Ms. Snell introduced Mr. Ronald Streek. Mr. Streek was appointed as an alternate to the Zoning Board at the November Board of Trustees meeting. Ms. Snell stated that Mr. Streek has served on the ZBA in the past.

Public Hearing

8 Susquehanna Avenue (Margaret and Fred Kaplan) – Public Hearing for an area variance for a 6' fence

Ms. Schwartzman recused herself.

Ms. Snell opened the public hearing at 5:01 p.m. and reviewed the application. She explained that the application is for a six foot fence in the side and rear yard setbacks. She stated that the law allows residents to install fences up to four feet in height without acquiescence or a variance and fences between four and eight feet in height with written acquiescence from the adjacent neighbor or a variance. Ms. Snell further stated that HPARB reviewed the fence design previously and gave approval for a four foot fence of this design. She further stated that the minutes from that meeting of HPARB clearly indicate that a fence over four feet requires acquiescence or a variance. Ms. Snell stated that both adjacent property owners object to the aesthetics and height of the fence.

Mr. Austin stated that he did mention the fence to the members of HPARB at their November meeting and stated that HPARB did not have any concern regarding the additional height. He explained that HPARB indicated that there was no design change and that the fence did not need further review from them.

Mr. Streek asked if he understands correctly in that the Kaplan's were aware of the height restrictions and at the time of the application to HPARB agreed to a four foot fence.

Mr. Austin stated that was correct.

Ms. Snell stated read for the board the statements received from the neighboring property owners which included a statement in support from Dawn Dietz at 6 Susquehanna Avenue, a current statement from John and Tara Santello, 55 Chestnut Street which request that the applicant follow the law and an additional statement on file from 2012 which indicated that they are not in support of the fence height and feel the fence does not reflect the character of the neighborhood, and a statement from Marcie Schwartzman, 10 Susquehanna Avenue, which explains her objection to the fence and indicates that the application fails the first question of the area variance test.

Ms. Snell asked for additional public comment.

Ms. Schwartzman stated that although Ms. Dietz supports the fence it cannot be seen from her property. She further stated that both her property and that of the Santello's will be affected by the fence as it can be seen from both properties. She further stated that when originally erected the fence also had orange snow fence attached to it which made it even more obtrusive.

Mr. Sansevere asked which property belonged to the Santello family.

Ms. Snell explained how each of the neighbors borders the Kaplan property.

Mr. Sansevere stated that there are several other fences in this area which are well over four feet in height.

Ms. Schwartzman stated that the Kaplans use orange snow fence extensively throughout their property. She explained that Ms. Kaplan had lead HPARB to believe that the Santello family had provided acquiescence when the snow fence was removed from the chain link fence but the Santellos had not provided acquiescence. Ms. Schwartzman stated that the snow fence that it is offensive enough that the neighbors have to experience the snow fence for seven or more months per year without any recourse as the snow fence is like paint color and is not regulated by Village law.

Mr. Leo pointed out that there is currently other chain link fence in the neighborhood.

Ms. Schwartzman concurred that the Toulson family has a chain link fence which is only four feet in height and has been in place for a long time.

Mr. Sansevere stated that the other fences on the property line are much taller than the chain link fence.

Ms. Snell reviewed the location and height of the other fences surrounding the Kaplan property. The fences along the driveway side and most of the backyard are tall fences. The approved fences on the side adjacent to the Schwartzmans are no taller than four feet.

Mr. Sansevere asked if those fences were given variances.

Ms. Snell stated that the other fences were given acquiescence by the neighbors after they worked out the details together.

Mr. Sansevere stated that he feels that allowing a seven foot fence for one applicant and then denying a shorter fence in the same neighborhood is inappropriate.

Ms. Snell stated that each request for a variance is reviewed on its own merit and situation. She explained that she feels that the taller fences are all located in a similar location on the properties and/or where they adjoin existing structures. She reviewed with the board photos of the existing fence and explained their relationship to the properties and other structures.

Mr. Sansevere asked if there is a reason for the installation of the snow fence.

Ms. Schwartzman stated that it is her understanding that Ms. Kaplan believes that snow from her property is being put on the Kaplan's property.

Mr. Sansevere asked if there is a site plan of the property. He explained that the site plan would help him to understand the location of each neighbor in relation to the fence and each other.

Mr. Austin provided a site plan from the file for 8 Susquehanna Avenue and the board reviewed all fences on the property line, their height and location as well as the location of each neighbor's property.

Ms. Snell stated that in the letter from Sally Graumlich and Timothy Campbell in 2012 they indicated that they felt that the chain link fence was out of character with the neighborhood in both height and design.

Dr. Kaplan stated that Ms. Graumlich and Mr. Campbell are no longer the property owners of that residence as the home was recently sold.

Ms. Snell asked Mr. Austin who received notice for the property of Ms. Graumlich and Mr. Campbell.

Mr. Austin stated that at the time of mailing ownership of the property had not changed and therefore, Ms. Graumlich and Mr. Campbell received notification of the public hearing.

Mr. Sansevere stated that HPARB has already reviewed the fence and found it acceptable in relationship to the character of the neighborhood. He stated that the only reason the fence is coming before the ZBA is due to the height and if it were less than four feet the neighbors would not have any voice in the matter.

Ms. Snell concurred that the height is the only reason for the fence to come to the ZBA and that the only piece of the application that the ZBA has any jurisdiction over is the requested height variance.

Ms. Snell read question number one, "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," and the written response prepared by the Kaplans.

Mr. Sansevere stated that the response of the Kaplans is a true statement.

Ms. Snell pointed out that three of the neighbors object to the higher fence.

Dr. Kaplan stated that the material of the fence is not an element that the ZBA should be looking at.

Mr. Leo stated that the neighbors object to a six foot fence yet one of those neighbors has a seven foot fence.

Mr. Sansevere stated that all of the properties in this area have fences.

Ms. Snell stated the tall fences are all on in a similar location and are a continuation of accessory structures. She further pointed out that the type of fence placed in this location is metal, chain link, and has never received a variance for height over four feet.

Mr. Sansevere stated that the chain link fence is really just a continuation of the existing fence heights.

Mr. Streek stated that three neighbors feel that the fence has a negative impact on the neighborhood.

Mr. Austin stated that one of HPARB's primary concern when reviewing a project is the project's compatibility with the neighborhood. He further stated that HPARB approved the fence, at the height of four feet, but when asked if further review was necessary for the additional height stated that as long as the design does not change they do not need to review the fence design again. Mr. Austin stated that it seems that the compelling issue here is the style of the fence being chain link.

Ms. Snell stated that no review by the ZBA would be necessary if the fence was not over four feet in height.

Mr. Austin stated that from his understanding of the discussion if the material were to change no one would have an issue with the increased height.

Ms. Snell stated that she feels based on the letters submitted that the Santello family would still object to the fence regardless of the material.

Mr. Sansevere stated that the ZBA is not here to look at the aesthetics of the fence.

Ms. Schwartzman stated that the chain link is not the biggest issue. She explained that the big issue is that the Kaplans canvas the fence with orange snow fencing which the neighbors and the village have no way to control. She further stated that Ms. Dietz cannot see the fence and although she approves of the fence her opinion should have little to no weight on the decision. The neighbors directly affected are the ones who would need to acquiesce and they do not want to look at more orange snow fence.

Mr. Leo stated that everything he has heard leads him to understand that the objection is to the orange snow fence not the height.

Ms. Schwartzman stated that she does not want any fence but definitely nothing over four feet in height, especially adjacent to the structures.

Mr. Sansevere asked Dr. Kaplan why the snow fence is put up.

Dr. Kaplan stated that when they purchased the snow fence orange was the only color available. He further explained that when the Santello Family asked for a specific portion of the fence to be removed we graciously did so. Dr. Kaplan continued to state that none of the other neighbors ever asked for the snow fence to be removed and had actually mocked them by spray painting the side of the garage and the face of the stone wall with a "snow fence" pattern.

Ms. Snell read question number two, "whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance," and the written response from the Kaplans.

Mr. Sansevere clarified that the fence was installed at 5'6" not 6'. He stated that he has no issue with the fence and that there are several properties in the Village which have installed fences to prevent intrusion whether it be from animals, foot traffic, etc.

Ms. Snell read question number three, "whether the requested area variance is substantial," and the written response from the Kaplans.

Mr. Sansevere stated that the board has granted similar variances previously.

Ms. Snell read question number four, “whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district,” and the written response from the Kaplans. She continued to state that the impacted neighbors both find the fence as a negative intrusion on their property.

Ms. Sansevere stated that the feelings of negativity regarding the fence seem to have more to do with the type of fence than the height. He further stated that HPARB has already reviewed and approved the style of fence.

Ms. Snell read question number five, “whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance,” and the written response from the Kaplans. She further stated that typically all variances are self-created in that the law was in effect prior to the purchase of the property even though the property owner may have little or no control over the condition.

Mr. Austin stated that one might argue that the need for a fence is not self-created in that the property owner cannot control the actions of the neighbors.

Ms. Schwartzman apologized for the actions of her husband, explaining that he painted the “snow fence” pattern on the side of their garage and stone wall in a fit of rage and that she did not approve. She further stated that he never trespassed on the Kaplan property as there is some distance between the property line and the structure. She further stated that although the act is an embarrassing one there was never any physical harm nor was anyone in any physical danger. Ms. Schwartzman stated that Dr. Kaplan indicated that they had not asked nicely for the snow fence to be removed but he did not mention that Ms. Kaplan will not even speak to her or her husband. She stated that the situation is very difficult.

Mr. Leo stated that he went to the property and took a moment to view the fence from each of the neighbor’s yards. He stated that he does not feel that the fence is visible from any of the properties except the Schwartzman’s property.

Ms. Schwartzman stated that the Santello family has indicated that they can see the fence especially from their porch.

Mr. Leo stated that an increase in height from four to six feet will not have a huge impact. He further stated that he has not heard anything compelling to vote against the variance request as there are lots of projects which are granted variances even though some people may not like the project.

Ms. Snell stated that once the variance is approved it is good forever.

Mr. Streek stated that he is concerned about setting precedence. He explained that once the six foot chain link fence is approved the next applicant may want an eight foot fence.

Mr. Leo stated that precedents are set and laws change over time based on needs, wants and desires.

Mr. Austin stated that fences are allowed up to eight feet with acquiescence and asked if there is any reason not to grant a variance for a six foot fence.

Mr. Streek stated that there is a lot of unrest in this application. He stated that we could say its only two feet but his concern is not so much about the two feet but more about the law and the applicant's choice to violate it. He further stated that the applicant has a case for the granting of the variance but he cannot get passed the fact that the applicant choose to go ahead and install the fence knowing that they were violating the law.

Mr. Austin stated that it is not acceptable that the Kaplans installed the fence without the appropriate approvals, however, regardless of that fact the discussion of the ZBA regarding the fence would probably still be happening.

Mr. Leo stated that everyone is aware that the Zoning Law was violated but the Kaplans are not going to jail for the violation. He asked how long the board was going to punish them for the action.

Mr. Streek stated that he understands that they would probably still be going through the process and that the Kaplans probably went ahead and installed the fence because they could not get acquiescence.

Mr. Austin stated that Ms. Kaplan asked what would happen if she could not get acquiescence. He stated that Ms. Kaplan had explained to him that she did not want to apply for a variance because either way it would have a negative impact on her. He further stated that Ms. Kaplan indicated that if the variance is granted the neighbors would look at it as a win for the Kaplans. Mr. Austin stated that Ms. Kaplan went so far as to ask what the fine would be if she choose not to apply for the variance, and only after discussion of the buildup of the fine over time did Ms. Kaplan decide she would have to apply for a variance.

Mr. Streek stated that he does not see the extra height as providing a significant benefit to the Kaplans.

Mr. Austin stated that some may see the height of the stone wall as justification of the extra height as the wall provides additional height to the neighbor making the fence, in some ways, less than four feet high.

The board discussed if the fact that the application was received after the fence was installed should affect the vote, and if the board ever votes against the opinion of neighbors.

Mr. Austin pointed out that each individual sees things differently but the chain link fence is functionally "see through" whereas other style fences would create more of a visual wall.

The board further discussed when and how acquiescence affects a decision, the negative impact of variances and that a variance becomes part of the property.

Dr. Kaplan apologized for not applying for a variance prior to the installation of the fence. He explained that they felt time was of the essence due to weather conditions and that if no one complained it would be fine. He further stated that he and his wife felt that they and their property had been violated by both people and animals, objects had been found on the property and the animosity amongst the neighbors was significant. He explained that he has spoken with the contractor and that the fence can be lowered but it may take some time to facilitate the work but it would be their first choice to leave the fence at the current height based on their preference and for protection of themselves and their property.

Ms. Snell asked if there was any additional public comment. There was no further public comment and Ms. Snell closed the public hearing at 5:52 p.m.

Mr. Sansevere made a motion to approve a height variance for 8 Susquehanna Avenue for the chain link fence, as installed, at a height of 5' 6". Mr. Leo seconded the motion and a vote had the following results:

AYES: Leo, Sansevere

NAYES: Snell, Streek

Motion failed.

Mr. Leo asked what happens now that the motion has failed.

Mr. Austin stated that he can cite the Kaplans with the violations but it will be a Trustee decision as to whether or not they want to pursue this issue in court.

Ms. Snell stated that the Kaplans could just choose to lower the fence to four feet.

Mr. Leo asked if this meant that the Kaplans could never have a six foot fence.

Ms. Snell explained that the Kaplans would need to submit a new application requesting a variance or provide written acquiescence from the neighbors to install a six foot fence.

Mr. Sansevere stated that there have been times where the board has granted variances that were not what the neighbors wanted but because of who the applicant was or who was in support of it a variance was granted.

Mr. Leo asked how many variances have been denied based on the opinion of the neighbors.

The board discussed previous applications and whether or not the opinion of the neighbors always affects the vote. The project at 10 Fair Street was explicitly pointed out where the neighbors were against the variance but a variance was still granted.

Mr. Austin asked the board why a six foot fence is problematic at this location.

The board discussed the six foot fence and again reviewed the letters from neighbors of 8 Susquehanna Avenue received as a result of the current notification and as the result of the 2012 notification. The board further discussed what an appropriate fence height is and how that height should be determined.

Mr. Leo asked Ms. Schwartzman if she would be acceptable of the fence as installed if the Kaplans agreed to not use the orange snow fence.

Ms. Schwartzman stated that type of condition cannot be made as part of the variance nor can it be enforced.

Mr. Sansevere stated that at this point regardless of the granting of a variance Ms. Schwartzman and the surrounding neighbors will probably be looking at orange snow fence for the rest of their lives.

Ms. Schwartzman stated that she understands this but that there is no mechanism in the law to regulate the snow fence.

Mr. Sansevere stated that there is a lot of animosity with these neighbors and this situation is just adding fuel to the fire. He pointed out that the chain link fence is not very visible and could be a better solution than the snow fence.

Ms. Snell stated that the board has 62 days to make a decision on an application and that the application could be held over until the January meeting.

Mr. Leo asked Ms. Schwartzman if anything would sway her objection to a six foot fence.

Ms. Schwartzman stated that she does not think anything could sway her opinion. She further explained that a variance is forever. She stated that her family uses their back yard and it is already fairly closed in and the height of the fence only increases that closed in feeling.

Mr. Sansevere stated that it is often said that "Good fences make good neighbors."

Ms. Snell again informed the board that they have 62 days to make a decision and stated that they could review the application again at the next meeting.

Mr. Austin stated that the reason that the 62 day allowance is in the law is to allow the board the opportunity to obtain additional information that might affect a vote. He asked what the board might gain holding this application over.

Mr. Leo stated that he does not feel anything would be gained unless the neighbors change their opinions. He stated that he is concerned about what precedent is being set.

Mr. Streek stated that residents need to realize that they have to abide by the law.

Mr. Leo stated so the precedent being set is that the board will deny applications which are not submitted in an appropriate manner as required.

Mr. Streek stated that if the application had been accompanied with the acquiescence of the neighbors he probably could vote for it even though the application was not submitted as required prior to the work.

Mr. Sansevere asked Ms. Snell why she was voting against the variance.

Ms. Snell stated that she feels that the law clearly respects and gives a neighbor's opinion a high regard when it comes to the installation of fences. She explained that unlike other areas of the zoning law a resident can install a fence without a variance if they have acquiescence whereas any other exception to the law requires a variance. She continued to state that she does feel there is a lot of animosity between the neighbors and regardless of the decision that is not going to change but her role is to enforce the law and given the high regard the law places on the neighbor's opinion in regards to fences she feels that she cannot vote to allow a variance when she knows that the neighbors strongly object.

Mr. Sansevere stated that he agrees that the board must work within the compounds of the law. He further stated that he has seen occasions where Ms. Snell has argued and/or voted against the opinion of the neighbors on some proposed projects.

Ms. Snell stated that she always recuses herself when she has any involvement in a project and tries to remain relatively quiet if there is opposition to the project. She stated that during the public hearing for a project she was working on at 32 Delaware Street she remained quiet and did

not speak except for clarification or if asked a specific question. She continued to state that she always takes into account the opinion of the neighbor where it is relevant and acts according to the law, and what makes sense in regards to each specific situation.

Mr. Austin asked if the same application was to be presented prior to the work being completed if it would change the outcome of the vote.

Mr. Streek stated that a timely application in compliance with the law would go a long way to help. He clarified that he has two issues with this specific application; the first begin that the fence was installed prior to receiving a variance and the second that the affected neighbors strongly oppose.

Ms. Snell stated that although the neighbors do not want the fence the Kaplans have the right to install the fence at four feet in height. She continued to state that it can be reviewed again in January and should opinion have changed a new vote can be taken. Ms. Snell said she will contact the Village Attorney to clarify the procedures for an application when the motion doesn't get at least three votes.

8 Elk Street (Patrick Broe) – Public hearing for an area variance for a porch

Ms. Schwartzman returned to the board at 6:15 p.m.

Ms. Snell opened the public hearing at 6:15 p.m. and reviewed the application for the reconstruction of an original porch in the front and side yard setbacks.

Mr. Streek asked if other homes in the neighborhood also have similar relativity to the property lines.

Mr. Austin stated that one of the neighboring structures is even closer to the property line that this proposed porch and another is significantly further from the property line.

Ms. Snell reviewed the location of the proposed porch in relation to the property lines and required setbacks.

Mr. Austin stated that HPARB has reviewed the application and given preliminary approval. He explained that although they have no concerns with the mass and general design they asked for more specific information regarding design features, materials, etc.

Ms. Snell asked if the lot is less than 60 feet in width.

Mr. Austin stated that the lot is less than 60 feet in width and therefore only requires a 5 foot side yard setback on one side. He stated that a variance is still required for 6 inches in the side yard. He further pointed out that in the side yard the porch does not infringe on the setback as significantly as the residence but it will still require a variance.

Ms. Snell asked if there was any public comment. There was no public comment. Ms. Snell read a letter submitted in favor of the proposed porch and closed the public hearing at 6:25 p.m.

Ms. Snell asked the board to review the area variance test.

Ms. Snell read question number one, "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," and stated that no historical photos were available through NYSHA but one

photo of the residence was located which shows the original porch which is in keeping with the character of the neighborhood. The original porch is very similar to the proposed porch.

Ms. Snell read question number two, "whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance," and stated that the only other option the applicant would have would be to not reconstruct the original porch.

Ms. Schwartzman stated that the residence is already located in the setbacks.

Ms. Snell read question number three, "whether the requested area variance is substantial," and stated that the although the request is fairly substantial in the front yard it is not in comparison to the residence and is in keeping with the adjacent structure on the corner.

Mr. Streek pointed out that it is being returned to its original condition.

Ms. Snell read question number four, "whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district," and stated that she does not feel it has an adverse effect.

Ms. Snell read question number five, "whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance," and stated that it is self-created but that all variances are self-created and this request will restore an original feature.

Ms. Schwartzman made a motion to approve two variances for the proposed porch at 8 Elk Street, where the required front yard setback is 20 feet and the residential structure is located 10' 6" from the front property line, a variance is granted for the reconstruction of an original porch 3' 6" from the front property line and, in addition, a variance be granted to allow the porch to intrude 6" into the side yard setback were 5' is required. Mr. Sansevere seconded the motion and a vote had the following results:

AYES: Leo, Sansevere, Schwartzman, Snell, Streek

Motion carried.

Regular Meeting

Minutes

Ms. Schwartzman made a motion to approve the minutes from November 4, 2014 as submitted. Mr. Leo seconded the motion and a vote had the following results:

AYES: Leo, Schwartzman, Snell

ABSTAIN: Sansevere, Streek

Motion carried.

Meeting adjourned at 6:43 PM

Respectfully Submitted,

Jennifer Truax
Deputy Village Clerk