

**Village of Tivoli
Zoning Board of Appeals Meeting Minutes
November 3, 2014**

Call to Order / Determination of Quorum

The meeting, held at the Historic Watts dePeyster Hall, was opened at 7:03 pm and a quorum was determined to be present for the conduct of business.

ZBA Attendees:

Chair Laura Gail Tyler
Karen Cleaveland
Bob Zises
Tim Lynch

Also Present:

Applicant Michael Piastro

Public:

Paul Piastro, Linda Piastro, Harry Heleotis, Rick Ostfeld, Bob Barrett, Michael Kelly

The first item of business was to approve the draft minutes from the October 6, 2014 meeting. Karen Cleaveland moved to approve the minutes as presented. Tim Lynch seconded. All in favor. Motion carried.

Old Business

Three area variances for front and side setbacks and driveway location for parcel on Clay Hill Road: The variances were declared by the Board to be Type II actions and therefore no environmental assessments are required.

It was confirmed that the certified mailings were completed and the public hearing was opened at 7:06 pm. Chair Tyler explained the following: that this public hearing is for three area variances for a parcel that is undeveloped. A house and garage will be situated on the parcel. One variance is for the side setback. The required setback is 35 feet and applicant is going for 30 feet in the side setback. Second variance is for the front line setback, required setback is 50 feet and he is going for 30 feet. Third variance is for the location of the driveway. Because of the way Clay Hill Road turns, there is a "T" intersection there. Driveways are supposed to be 70 feet from the center line of the intersecting street to the center line of the driveway. The applicant wants to make it 45 feet.

Applicant Michael Piastro shared his map and updated drawing with the Board and members of the public. The applicant explained that he is requesting the variance for the front setback because he has a shallow lot and wants a southern exposure for his house and cannot get this if he puts the house 50 feet back. The driveway variance would enable the driveway to be closer to the house and garage, he could buy less fill and avoid a drainage culvert. The applicant stated that these are the primary reasons for requesting the variances.

Public comments were:

Rick Ostfeld:

- Must be a good reason for the original laws
- What will be the safety impact if variances are granted

Bob Barrett:

- Applicant couldn't abide by the law and still use the lot
- To come out lining up with existing road would be safer
- It might not be easier for the applicant

Michael Kelly:

- Is there a reason he chose that location for the driveway

Michael Piastro responded that it's because of the location of the septic.

Harry Heleotis:

- No objections to this plan
- Road is unusually quiet, he supports the plan

Tim Lynch asked the applicant if there is something that prevents him from meeting the zoning ordinance as it is written. Mr. Piastro responded that it depends on what you mean by "preventing". He noted it would be physically possible to locate the structures without a variance and to put the driveway farther south but it would mean an additional cost to him for fill and redirecting the culvert.

Tim Lynch moved to close the public hearing at 7:23 pm. Bob Zises seconded. All in favor. Motion carried.

The Board considered the following in the granting of these area variances:

1. Will an undesirable change will be produced in the character of the neighborhood or create a detriment to nearby properties?
2. Can the desired result be achieved by some other means other than granting a variance?
3. Is the variance request substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district?
5. Was the alleged difficulty self-created?

For the side yard setback, the answers to the above questions were:

1. Applicant answered no. Board answered no
2. Applicant answered no. Board answered yes
3. Applicant answered no. Chair Tyler, Bob Zises and Karen Cleaveland answered no. Tim Lynch answered yes.
4. Applicant answered no. Chair Tyler answered no. Tim Lynch answered yes.
5. Applicant answered no. Board answered yes. Chair Tyler commented that the topography of the lot and the location of the street culvert suggest certain locations for things that are not self-created and the applicant is positioning his house on the highest portion of the lot.

There was discussion and disagreement among the Board. Some comments were:

Bob Zises: Applicant could reposition the house. Everything is self-created.

Tim Lynch: There is nothing to prevent him from meeting the rules.

Karen Cleaveland: Having done the site visit the variance is not substantial and where he is locating the house is probably the best location for it.

Karen Cleaveland moved to approve the 5 foot side yard setback variance. Bob Zises seconded. Roll call vote: Zises – yes, Tyler – yes, Cleaveland – yes, Lynch – no. Motion carried, variance granted.

For the front setback variance, the preliminary answers to the five questions were:

1. Applicant stated that the proposed front yard setback is consistent with other historical houses. Chair Tyler stated that the ZBA looks at individual cases not the Village as a whole. However, she personally doesn't think it would create an undesirable change.
2. Applicant answered no, that lot is too shallow. There was a discussion about repositioning the house on the lot. Chair Tyler stated he could move the house within the setback but it would be harder to do.
3. Bob Zises stated that the setback is substantial and that variations could be made in the position of the house so the variance could be minimized. Karen Cleaveland agreed that the variance is substantial but wondered if the house could be moved so that it could meet the zoning. Tim Lynch stated that it looks like it could. He also stated that the topography is interesting but has nothing to do with zoning and is not something that is considered. Chair Tyler said that it is a valid reason to seek a variance. Karen Cleaveland stated that many of the houses on Clay Hill Road have probably less than a 30 foot setback.
4. Board answered no.
5. Board answered yes because it is in the planning stage.

Comments on the front setback from the Board were:

Tim Lynch: Waiving it is arbitrary. There are often valid reasons for requesting a variance. He has plenty of room; he's not using half the lot.

Bob Zises: it's self-created and substantial

Chair Tyler: She stated that after the site visit, she feels that it's a natural place to position the house on this particular lot.

Tim Lynch disagreed.

The applicant was asked by Karen Cleaveland if he could move the house 20 feet back or turn it or if he explored other options. Mr. Piastro stated that he and the architect have always had the house in this position. If the house is moved back, it is physically possible, but he doesn't agree that it makes the position of the house more desirable to have it in that location. It makes it less desirable for him as the property owner. Tim Lynch said he can appreciate that fact but it's not the position that the Board is in. He stated that in his opinion, the Board does not waive the law because it makes better sense on the site for the property owner. Chair Tyler disagreed. She said pointing out the trapezoidal shape of the lot, should the houses be diagonally placed along the property line? Is that more desirable to the neighborhood?

Chair Tyler asked the Board if anyone felt they could approve the front setback. Bob Zises asked the applicant if he could minimize the variance. The applicant stated that having the house perpendicular to the street is desirable for everyone and that he wants a southern exposure. Bob Zises asked the applicant to explore the other options.

Chair Tyler asked the applicant to return to next month's meeting on December 1, 2014 at 7:00 pm with concrete numbers in the difference in what it will cost him and whatever reasons he has for the way he wants to position the house and the driveway. The front setback variance could be found to be too substantial and the Board would like a more concrete reason why he has to put the house there or a smaller number for the variance. He needs to bring more evidence, measurement of other houses, architectural reasons, and financial reasons.

For the location of the driveway variance, the preliminary answers to the five questions were:

1. Applicant no. Chair Tyler, Karen Cleaveland responded no. Tim Lynch agreed.
2. Board said yes. Bob Zises wants to know what the effect would be to move the driveway. Tim Lynch said there needs to be a pretty good reason to not keep it at 70 feet. Bob Zises would like to know what the cost difference would be if that is the reason. But he is concerned with the safety aspect. Tim Lynch stated all the more reason to keep it further away. The applicant disagrees that it's an unsafe driveway. He says there is not much traffic on the road.
3. Board said yes it is substantial. Tim Lynch asked about the measurements asked for last month but the driveway is in the same location on the new map. The number was changed but not the scale.
4. Bob Zises stated that safety is the issue. Chair Tyler suggested the applicant speak to Jim Simmons about the roads.
5. It is self-created because it's still in the planning phase.

Tim Lynch asked about a question raised last month about the definitions and whether we are dealing with the center line. Chair Tyler stated she let Steve Cole interpret the zoning and it is center line to center line.

Adjournment

Bob Zises moved to adjourn the meeting at 8:07 pm. Karen Cleaveland seconded. All in favor. Motion carried.

Respectfully submitted,

Claire Roff
Planning and Zoning Clerk