

**Village of Lansing
Board of Zoning Appeals
November 20, 2000**

The meeting of the Village of Lansing Board of Zoning Appeals was convened at 7:37 P.M. by Acting Chairperson Mary Sirois. Present at the meeting were Board members John Dennis, Don Eckrich, and Mike Ward, Code Enforcement Officer Curtis, Village Attorney Randy Marcus, and members of the public.

Appeal 2000-4, Douglas Sutton and Anne Sterling-Sutton, to cure a ten foot side yard set back deficiency of their home at 24 Cedar Lane in the Low Density Residential District, Tax Parcel 48.1-2-43.

Curtis stated he had been provided proof of notification.

Peter Walsh, attorney with True Walsh & Miller – 202 E. State St. representing the Suttons, addressed the Board first. In May, the Suttons came before the Board with an area variance application and by a 2-2 vote, the application was not granted. He stated that the Suttons proposed a long time ago to build an addition on the house that they were purchasing at 24 Cedar Lane, but it was too close to the side yard lot line. They made an application for a variance, but it was denied. They then made an arrangement with the then adjoining property owner, Jim Hartshorne, to exchange a ROW across the property they were buying in exchange for conveyance of a strip of land to cure the side yard setback deficiency. As time went on and details were firmed, they applied for a subdivision approval to allow the conveyance of the strip of land for their sideyard which was granted. There was further delay while the map and design were being adjusted and finalized. In the midst of this, James Hartshorne unexpectedly died. Due to the time elapsed the subdivision was required to be brought back to the Planning Board for a re-approval. It was reapproved and the plat filed this time in 1995. Then the construction of the addition was begun and completed. Unfortunately, part of the process had been missed, namely the conveyance of ownership via a deed. The addition remains there and remains with the deficiency. In May of this year, the Suttons again requested a variance as the new owners of the property (Hartshorne's son and daughter) declined to grant a deed to that property which would have cured the deficiency. In May, this Board was not convinced that the Suttons had done everything possible to cure the problem before asking the Board to grant the variance. The Suttons asked the Hartshornes if they would sell the property and they were told no. At the May meeting, a member of the public who had spoken to Mr. Hartshorne stated that Mr. Hartshorne indicated that he might be willing to sell the property. The Board requested the Suttons pursue that option. Beginning on June 2, the Suttons sent a letter to the Hartshornes asking if they would contemplate selling. In July, the Hartshornes responded requesting a price from the Suttons. The Suttons responded with a price based on the assessed value of the land, provision for the ROW previously conveyed to Hartshorne and closing costs, and a request for the conveyance of the strip of

property. In September, the Suttons sent a second offer which was five times higher than the assessed price and stated they would be willing to take care of the warranty of title, would not take back the easement on the back part of the property, would like to borrow abstract & title, and would be willing to take care of taxes, filing fees, etc. The Hartshornes responded on Sept. 14 indicating they had received the letter with the higher offer but it was still not sufficient. Now, having offered the market value as well as five times that amount, the Suttons feel they have gone as far as possible. Walsh provided copies of all the correspondence for the Board. The alternative left for the Suttons appears to be a lawsuit against the Hartshornes and Walsh has advised Sutton on this matter as indicated in the letter which was given to the Board. His recommendation based on costs of litigation weighed against the probability of success is that a lawsuit would not be feasible. The Suttons are asking the Board to grant a variance as the only feasible alternative to cure the deficiency. Walsh referenced a similar case in upstate NYS where a variance was granted and it was challenged and then upheld by the courts.

Eckrich referenced the diagram and asked for details. Sutton responded that the addition is a two-story enclosed space which replaced, in part, an existing deck, Curtis noted that the deck was grandfathered.

Evan Meltzer, 20 Cedar Lane, spoke to the Board. He stated that one of the implications of the Board granting the variance is that the variance will in turn clear the way for the Planning Board to grant the Suttons a permit to operate a business in his home which has been going on without a permit for the past couple of years. He feels this is setting a dangerous precedent in the neighborhood and could lead to other less desirable businesses in the same area. It is not a commercial business area and granting a variance would encourage others to apply for home occupation permits.

Eckrich moved to close the Public Hearing. Seconded by Dennis. All aye.

BZA Deliberations:

Sirois stated she feels the Suttons have done a lot to rectify this situation. Eckrich stated he is unsure about the feasibility of legal action. Ward noted that it is unfortunate this occurred as a result of failing to obtain the necessary signature although everything else was done in accordance with the proper procedures. Dennis requested clarification from Marcus regarding hardship. Marcus stated the original application would have been denied under different criteria where failure to demonstrate economic hardship may have been referenced. This is no longer the case. The application must now be reviewed under the five area variance criteria. Each is meant to direct your attention to the impact of the variance and do not relate to hardship. The new law states that the five criteria must be considered and that the Board shall take into consideration the benefit to the applicant of the variance granted as weighed against the detriment to the health, welfare and safety of the neighborhood and community by the granting of the variance. It is like a scale where weights are placed on each side and a decision made accordingly.

Eckrich stated that if the applicant were to come before the Board to request a variance prior to building the addition, it would likely be denied for many reasons. Now that it is built, land must be

acquired to bring it in to compliance and it is a different issue. He would be inclined to deny the variance. Ward feels the Suttons have been responsive to the requests of this Board and he feels the Hartshornes will never sell the land and the only alternative is to have the Suttons sue the Hartshornes. If that is unsuccessful, it may again come back before this Board, so he is inclined to grant the variance which is how he voted last time. Dennis would be inclined to approve the variance as the owners of the strip of land in question have stated that the land will remain undeveloped, but in the future if a house were built, it could be placed such that there would not be a significant impact. Sirois stated that the Planning Board's functions which deal with the question of the home occupation are separate from this Board. She also feels that the Suttons have accommodated this Board as far as can reasonably be expected.

Review and Findings:

The Board reviewed the five criteria:

(a) whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance.

Sirois stated that if the property to the south of the Suttons is sold, any house that may be constructed can be sited so that the Sutton's addition would not be detrimental. Ward stated that if the Hartshornes were to sell the property, the new owners should not be deterred by the addition as they could site their house knowing the addition was there. Ward acknowledged Meltzer's concern regarding traffic but did not feel it would be substantial. The Board's consensus is that it would not be an undesirable change.

(b) whether the benefits sought by the applicant can be achieved by some method, feasible for the applicant, other than an area variance.

Sirois stated that the Suttons attempted to purchase the land through negotiations. Aside from going to court she can not see any other feasible options. Ward felt the Suttons have carried through on what was requested of them. Dennis also agreed.

(c) Is the requested area variance substantial?

Sirois stated that 10 ft. is substantial when considered as a percentage of the required 25 feet, but she does not feel this is substantial when looking at the total size of the lots in this area. Eckrich feels this is a substantial amount and if it were to be considered before the addition were in place, he feels the Board would vote that it is substantial but since the addition is now built, the Board is in a difficult position. He feels the Law requires 25 ft. and that is what it should be. Dennis feels it is in the interests of the Village to find a resolution to the situation and steps should be taken to attempt to remedy the situation. The Board was in agreement that this is not substantial.

(d) Consider whether the proposed variance will have an adverse effect or impact on the

physical or environmental conditions in the neighborhood or district.

Sirois stated she agreed with Dennis that it probably will not have a great effect. The Board was in agreement.

(e) Whether the alleged difficulty was self-created.

Sirois stated that it comes down to the fact that the last signature was not in place although the rest was legal and official. Sirois felt it probably was self-created to some extent. Ward also agreed as the deed was never signed. Dennis felt it was not a blatant disregard by the applicants.

Marcus stated for the record that under the SEQR Regulations, this is an exempt action as an area variance request for a residential lot under 617.5 c 12. Dennis moved that the variance be approved. Seconded by Ward. The vote was Dennis, Sirois and Ward aye. Eckrich – abstain. Therefore the variance was granted.

Meeting Day Change

The Board agreed to recommend to the Trustees that they change their meeting date from the third Monday to the second Tuesday, subject to the approval of the Board of Trustees. Curtis will send a memo to Mayor Hartill.

Approval of Minutes

The minutes of June 19 were reviewed. Eckrich moved to approve the 6/19/00 minutes with revisions. Seconded by Ward. All aye.

The minutes of June 29 were reviewed. Eckrich moved to approve the 6/29/00 minutes as submitted. Seconded by Ward. All aye.

The minutes of August 21 were reviewed. Dennis moved to approve the 8/21/00 minutes as revised. Seconded by Eckrich. All aye.

Adjournment

Sirois moved to adjourn the meeting at 9:03 P.M. Seconded by Ward. All aye.