

Village of Lansing
Board of Zoning Appeals
July 19, 1999

The meeting of the Village of Lansing Board of Zoning Appeals was convened 7:30 p.m. Present at the meeting were Acting Chairman Don Eckrich, Board members John Bailey, Lorraine Johnson, Mary Sirois, Code Enforcement Officer Curtis, and Village Attorney Marcus.

Appeal No. 1999-1, Warren Mormile, to construct an accessory building in a front yard

Mr. Mormile said that he had provided proof that he had notified four of his adjoining neighbors. Three of five neighbors have responded favorably. There are three neighbors in residential homes, one of which was in attendance at the meeting in support of the application. The fourth neighbor is Murray Estates, and the fifth property had just been purchased by someone from the Bank of Cortland, but the name of that new owner was not available.

Mr. Mormile explained that Murray Estates has a right-of-way to use the existing driveway to access a barn adjoining the property. The Mormiles have built a shed in their back yard and were unaware that they had broken zoning regulations. Their house is on the corner of Burdick Hill and N. Triphammer Roads. When they purchased the house in October 1997, it was completely overgrown with brush and shrubs. As part of their plan for the property they consulted with Curtis on the possibility of adding a second driveway off of Burdick Hill Road and constructing a garage in the southwest corner. The Planning Board has now given their approval for a second driveway on the property. Mr. Mormile said that he is a general contractor in Tompkins County and currently he has no garage or shop to store his tools. The house sits 8 feet from the property line, which makes the house non-conforming. He built a shed that was contained by an 8 foot fence which already existed on the property. He was not aware that because this is a corner lot, the yard that he considers a back yard is technically considered a front yard. He has now applied for the proper building permit and is requesting a variance to keep that shed where it is. The location of the garden shed fits the scheme of the property as they had envisioned it when they bought it. For all practical purposes, they consider this their back yard and they have gardens, a picnic table, and a flagstone patio back there. They consider the Burdick Hill Road side the front side.

The house itself is closer than Village regulations allow. The fence provides some privacy and that's why they built the shed in the back yard. They don't feel they would be able to locate it anywhere else on the property.

Eckrich opened the Public Hearing. Delores Babcock, 2553 N. Triphammer, was present and expressed her support.

Sirois asked why the shed could not be relocated so that it backed onto the right-of-way. Mr. Mormile felt there wasn't sufficient room for it there and that they did not want the shed placed

between the driveway and the house where there is currently an established perennial garden and small pond. It seems more appropriate to locate a garden shed off to the side where it doesn't draw a lot of attention to itself rather than in the middle of the back yard. The shed is constructed to look identical to the house.

The fence that borders the eastern edge along Triphammer Road runs from where the gravel driveway starts on Triphammer Road to about 40 feet from the corner of Triphammer Road and Burdick Hill Road where it stops and makes an L turn toward the house. At its peak the fence is approximately 10 feet tall.

As there was no one else present who wished to speak, Sirois moved to close Public Hearing. Seconded by Johnson. All in favor.

The Board reviewed the criteria for considering the application and make the following findings of fact:

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. This criterion would be met if conditions were attached to the approval. There must continue to be a screening fence on that property which at least screens to the level of the existing fence. Any subsequent fence must be opaque and at least as tall as the existing fence. It should be located in the exact location on the property line. Also the existing shed should not be modified or expanded beyond 8 f. x 10 f. x 10 f. without another variance.

B. Whether benefits sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance. Marcus said that typically this would include relocating the building. The concept of feasibility would take account of the cost of relocating the building or the impact that it would otherwise have on the property.

Eckrich noted that there was some testimony as far as the inability to relocate the shed without destroying other aesthetic features of the yard. This is a unique property because what the Mormiles consider the back yard is technically considered a front yard. The property has been aesthetically improved which is appreciated by the neighbors.

The only other option within the Law would be to move the shed. The Board felt that the applicant has given a good reason for leaving it where it is. The applicant is attempting to improve the property and has found that this location is preferable and placing elsewhere on the property takes away from the improvements.

C. Whether the requested area variance is substantial.

Marcus said that the front yard setback in this district is 40 feet for a front yard. A corner lot has 2 front yards and two side yards. He pointed out that this house is only set back 8 feet from the property line. The Board felt that the request is substantial in that it is going from 40 feet to zero feet.

However, other factors diminish how substantial the request is. The fence diminishes this in that it almost completely eliminates the view of the shed. The house already is out of compliance and nothing can be done about that. So it is a substantial variance but the new shed is well in keeping with the character of the lot and house.

D. *Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district.* The Board found that because a garden shed is a usual and typical addition to a back yard in a residential neighborhood, and because the existing fence screens the shed almost entirely from view, the variance will not have an adverse effect on the character of the neighborhood.

E. *Whether the alleged difficulty was self-created.* The Board found that the difficulty is self-created but the fact that the house is close to the road is something over which the applicant had no control.

Marcus said that the the action must be classified under SEQRA and that this action would be classified as Type II, exempt under 617.5c(12) which relates to the granting of setback and lot line variances.

Mary Sirois moved that the request for a variance be approved with two conditions. The first condition is that the current fence or a fence like the current fence in that it be opaque and at least as tall as the existing fence remain in place as least as long as the building remains. The current height of the existing fence is approximately 8'-6" at its highest point. The second condition is that the building may not be enlarged beyond its current dimensions, which are approximately 9' x 11' and 10'-6" high. Seconded by Johnson. All in favor.

Appeal No 1999-2, Roy and Evelyn Hogben, to place a movable storage shed near the rear property line of 35 Janivar Drive (Parcel 45.1-1-69.2) in the Village of Lansing.

Roy Hogben, 35 Janivar Drive, in the Lansing Trails Subdivision, addressed the Board. He is requesting a variance from the setback requirement to place a movable storage shed at the rear property line to replace current space that they are renting. They would like to have a storage shed on their own property because it's more convenient and more economical. They expect to purchase the shed from an area dealer. The construction will be similar to most others on Janivar Drive and they will paint it similar to their own residence.

Mr. Hogben explained that his property is triangular shaped and bounded on the front by Janivar Drive, on another side by a Village of Lansing walking path and on the back by Votapka Road which is dead-ended just beyond the St. Joseph Lane intersection. Votapka Road is used as an entry road

to get to a side driveway from #2 St. Joseph Lane. Because Mr. Hogben's property actually bounds on that short section of Votapka Road it technically has two front yards. The combined effect of setback regulations for the front and back and also a very elongated side yard makes it very difficult to put a shed on the property and stay within the regulations. If the variance isn't granted they would have no other option than to place it at just about the center of the side yard which would make it very conspicuous from the walking trail and would severely limit their ability to use the side yard for anything else. For all practical purposes the property line that borders on Votapka Road is their rear property line. A storage shed placed on that line will be virtually unseen by anybody except people going into #2 St. Joseph Lane.

Curtis said that Votapka Road is not maintained, and he suspects that road would have been abandoned except that it has to be used to access that driveway. The section of the Law that Curtis cited states in Section 3 that a movable building cannot be placed on the front yard of the parcel. Accessory buildings are not permitted to be placed in the front yard either. Marcus said that when the new law regarding movable buildings was prepared, nobody thought of a situation where a lot in effect has a front yard set back requirement for what is for all intents and purposes a rear yard. If a yard borders on a public road, the way the Zoning Law is written, it's a front yard. That's why issues come up with corner lots because both sides are considered front yards.

Mr. Hogben said that property owners adjacent to the property were notified and didn't respond except for one who has no problem with it.

As there was no one else present who wished to speak to the variance, Sirois moved to close the Public Hearing. Seconded by Johnson. All in favor.

Finding of Fact:

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.* The adjacent property to the rear is a virtually abandoned dead end road. The building itself is permitted, just not in the front yard. There is one feature about this property which is particularly unique in that it does have a front yard in both the front and back of the house. The required 40 foot setback in opposite directions in combination with the 10 foot accessory building setback on the side leaves them with a very limited area on a triangular lot within which to locate their shed.

B. *Whether benefits sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.* It would be unattractive if they put it where it could be according to the Zoning Law and it would not allow the use of the yard for family needs.

C. *Whether the requested area variance is substantial.* This is not a substantial request given the nature of the road due to the fact that the rear yard is abutting a Village road which is not maintained.

D. *Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district.* If they were to follow the Village law and locate it near the Village walkway it would be less aesthetically appealing.

E. *Whether the alleged difficulty was self-created.* This is self-created in the sense that they wish to put in a storage building. However it is an odd shaped lot, and the walkway and the two road frontages don't permit them to take advantage of the regulations as others might be able to.

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Johnson moved that the variance be granted. Seconded by Bailey. All in favor.

Appeal No. 1999-3, Theodore Spitzburg

Marcus announced that he has been representing Mr. Spitzburg with the sale of this house so it is not appropriate to for him to be counsel to the Zoning Board in this case. He also pointed out that the properties adjacent to the south and west of this property are still owned by an entity called Horizons Development Corp. which is owned by several of his partners. A transmittal from one of his partners and statement in favor of the variance was submitted in their role as property owner.

Barry Blust, 400F Elm Street, Mr. Spitzburg's real estate agent from Audrey Edelman, was present at the meeting to represent Mr. Spitzburg. He pointed out that the footprint of the building sits kitty corner to the rear line at 40 feet which is within the regulations. However, the cornice of one corner stretches approximately 5 feet in length, and at the most 5 ft. 10 in., over the 40 foot setback requirement. The eaves are about 20 feet in the air. This was simply a building error and this is what Mr. Spitzburg is asking a variance for.

It's a rather large building for the size of the lot. It's just barely within the front setback. The Board has in their materials a letter from the secretary and current owner of Horizons that states that he doesn't object to the granting of the variance. Mr. Blust said that he has personally spoken with Barbara Semo the next door neighbor on the east side, and she signed a document that said she would agree to allow the variance. The Village of Lansing owns the retention pond on the west side of the property. He tried to get in touch with the other neighbors that live on the other side of the retention pond but they haven't been home. Christopher and Lisa Smith will be the new owners (25 Rosina Drive) pending bank closing proceedings and are in attendance in the audience.

The public was invited to speak. Christopher Smith they would also like to buy the vacant lot immediately behind the new construction. They are new in the area; just got married and have baby on the way. They anticipate making an offer on the lot in the future and when they own both lots, they will be in compliance. Lisa Smith said that the vacant adjacent lot has a utility pole about 20 foot from Bush Lane which makes it an undesirable lot to be purchased by a potential home owner because they

would have to pay approximately \$10,000 to move the pole. For this reason, they feel confident that no other buyer will buy that lot.

As no one else wished to speak, Sirois moved that the Public Comment portion of the meeting be closed. Seconded by Johnson. All in favor.

Findings of Fact:

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.* Given the small nature of the variance request as far as the overhang of the cornice there will be no undesirable change in the character of the neighborhood

B. *Whether benefits sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.* No.

C. *Whether the requested area variance is substantial.* The requested variance is not substantial.

D. *Whether the proposed variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district.* No, due to the small nature of the affected area.

E. *Whether the alleged difficulty was self-created.* Yes, it was self-created by small oversight.

Johnson moved that the Board approve the variance. Bailey seconded. All in favor.

There being no other business, Johnson moved that the meeting be adjourned at 9:10PM, Bailey seconded. All in favor.