

MINUTES OF THE ZONING BOARD OF APPEALS
September 14, 2009

The regular meeting of the Zoning Board of Appeals was called to order by Vice Chairman Mark Moore at 7:01 p.m. at the Village Hall.

Members present: Vice Chairman Mark Moore, Scott Adams, Robert Guarnaccio, Terry Howard, Walter Oakley, and Andy Robinson.

Members absent: William Cotey.

A quorum was established.

Village Staff present: John Spoden, Director of Community Development; and David Smith, Senior Planner.

Board Member Robinson moved, seconded by Board Member Howard, to approve the August 10, 2009, Zoning Board of Appeals meeting minutes.

Motion carried 6 - 0.

OLD BUSINESS: None.

NEW BUSINESS:

**ZBA 09-15 Jess Smith and Katherine Hamilton-Smith, Applicants
210 Pond Ridge Road**

Request is for a variation to reduce the required side yard setback from ten (10) feet to approximately four (4) feet in order to construct a deck in the side yard of a single family home in an R-5, Single Family Residential District.

Mr. David Smith, Senior Planner, stated that the petitioners, Jess and Katherine Smith, are requesting approval for a variation to reduce the minimum required side yard setback in order to construct a deck in an R-5 Single Family Residential District located at 210 Pond Ridge Road. David Smith stated that the petitioner is proposing to replace a previously existing wrap around deck that was located along the rear and side of the house. David Smith stated that the previous deck was nonconforming as it had a setback of approximately four feet from the side property line. He stated that the petitioner states that the old deck was in existence for more than thirty years and possibly part of the home's original construction. He stated that the petitioner began removal of the deck as part of repairs to the home and now wishes to reconstruct a portion of the deck with the same approximate setback from the side property line.

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Mr. David Smith stated that the Zoning Code requires that Side and Rear Yard Regulations for Accessory Uses and Structures, which include decks, when located entirely within the rear fifty percent (50%) of a single family residential lot may be located not closer than five (5) feet to any side lot line or rear lot line. He stated that if an accessory structure, such as a deck, is not located entirely in the rear (50%) of a lot, then the minimum required yards (setbacks) shall apply which shall include a minimum side yard (setback) of 10 feet in the R-5 District. He stated that the petitioner is proposing to replace the old deck with a new deck along the side of house with a setback of approximately 3 feet from the south side yard property line. The deck appears to be located within the front (50%) of the lot along the side of the house thereby requiring the ten (10') foot side yard setback from the side property line.

Mr. Jess Smith, petitioner, stated that the subject non-conforming deck was already existing when they purchased the house. He stated that during the course of effecting repairs to his home and removing the existing deck, he then discovered that replacing the deck would require a variation from the Zoning Code. He stated that if he were to replace the deck with a smaller version, it would still require a variation. He stated that he measured the setback from the property line with a tape measure and believes that the setback is closer to 4'8" and would then ask for a 4 foot setback, not the 3 feet that Staff has indicated that his plans scaled to be.

Vice Chairman Moore stated that he cautions the petitioner that his on-site tape measurement should be as accurate as possible otherwise he will risk the necessity of returning to the Zoning Board of Appeals in the future if the new deck is constructed at a setback that is closer than 4 feet.

Board Member Oakley asked if the petitioner has received any notices of complaint or concern. Mr. J. Smith stated that he has not received any concerns or complaints from his neighbors regarding his proposed deck plan. He stated that he believes that his neighbors are supportive of his project.

Board Member Adams asked if the petitioner considered constructing a double wall to help alleviate the gap between a reduced sized deck and the pit created by the separation between the retaining wall and the deck. Mr. J. Smith stated that they have looked at several alternative solutions, but was concerned about the additional costs that the alternatives would incur. He stated that he is also concerned about the aesthetics of the project and that the deck with the proposed dimensions seemed to be the best solution. He stated that they are attempting to avoid a finished deck that looks cheap.

Board Member Howard stated that he does not object to the proposal provided that it does not exceed the previous deck's setback.

Board Member Robinson stated that he is concerned about a precedent being set. He stated that if approved then the neighbors may seek a similar variation.

Mr. J. Smith stated that the deck replacement is a better design with three different levels with a direct connection to the yard.

Board Member Robinson asked if consideration was given to making the deck narrower or tighter to the house. Mr. J. Smith stated that the proposal offers better aesthetics. He stated that he knew about the water problem when they bought the house, but had to act quickly because of the competitive housing market.

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Vice Chairman Moore stated that there appears to be a unique physical condition to the property including the topographical grade slopes downward from front to back. He stated that even with a reduced deck size, a variation would still be necessary.

Board Member Howard stated that each variation case that may pose a potential precedent should be determined on a case by case basis.

Board Member Adams stated that he views this proposal as having a unique physical condition.

Mr. J. Smith stated that by removing a portion of the old deck, it has uncovered a basement window which can now provide daylight into the basement.

Vice Chairman Moore asked the petitioner how he would like to proceed by either requesting a recommendation from the Zoning Board of Appeals or by requesting a continuance to a future Zoning Board of Appeals meeting. Mr. J. Smith requested that the Zoning Board of Appeals make their recommendation tonight so that he can proceed forward with his request.

In the matter of ZBA 09-15, Board Member Oakley moved, seconded by Board Member Guarnaccio, to recommend the Village Board of Trustees approve a variation to reduce the required side yard setback from ten (10) feet to approximately four (4) feet in order to construct a deck in the side yard of a single family home in an R-5, Single Family Residential District, in accordance with the plans submitted.

Motion carried 5 - 1.

Ayes: Howard, Moore, Adams, Guarnaccio, Oakley

Nays: Robinson

Absent: Cotey

COMMUNICATIONS AND DISCUSSION:

Board Member Moore moved, seconded by Board Member Adams, to adjourn the Zoning Board of Appeals meeting.

Motion carried 6 - 0.

Meeting adjourned at 7:40 p.m.