

Village of Ellenville
Zoning Board of Appeals
July 26, 2012

Meeting called to order at 7:00 p.m. by Chairman Tennenbaum. Also Present at this time was Commissioner(s) Beck and Shorter.

Also Present: Brian Schug, Code Enforcement Officer and Peter Berger, Village Attorney.

Walter Dexter – 26 N. Main Street – Public Hearing - Requesting use variance to allow two non-conforming apartments that have vacant for at least one year.

Motion by Commissioner Beck, seconded by Commissioner Shorter to open the Public Hearing at 7:05 p.m.

All in favor - Aye - motion carried

Mr. Dexter and Joseph P. Stoeckeler, Jr. were before the board tonight to discuss the plans for this property.

Code Enforcer Schug told with Board members that this house has been vacant since 2005 and read the below section for discontinued uses:

§ 227-79. Discontinued uses.

If a nonconforming use is discontinued for an uninterrupted period of one calendar year or more, the building, structure or lot occupied by such nonconforming use shall immediately, thereafter and henceforth be entitled to occupancy only by conforming uses.

Attorney Berger reviewed with commissioner members a section from the State Village Law §7-712-b which actions are permitted by the board of appeals in reference to use variances:

- a. The board of appeals, on appeal from the decision of determination of administrative officer charged with the enforcement of such local law shall have the power to grant use variances, as defined herein.
- b. No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located.
 1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 2. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

3. that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 4. that the alleged hardship is not self-created.
- c. The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Mr. Dexter told commission members the history of the property since he has owned it and what his future plans will be if a variance is granted. He has spoken to an architect and also a bank about refinancing the property. Also submitted were several of Mr. Dexter's tax returns.

Chairman Tennenbaum read into the minutes the Planning Board recommendations and they are as follows:

Motion by Commissioner Cafaro, seconded by Commissioner Eisman to recommend to the Zoning Board of Appeals that the use variance be granted with the following conditions:

1. A time limit of one year for the applicant to have completed the interior and exterior of the building and a Certificate of Occupancy as well as a closed Building Permit.
2. The "ice house" be restored to a useful purpose or be demolished.
3. The "commercial space" has to be renovated and presentable.

Aye – 3; Yes – 1, Nay, Commissioner Maizer – Motion passed

Code Enforcer Schug gave background information on this parcel and the correspondence that had been sent to Mr. Dexter since 2005.

There was discussion about the condition that the Planning Board placed on the "ice house" and the "commercial space."

Public Notices had been sent to property owners within 200 feet of this project and we have heard from Mr. Michael Stearns and Mr. Joseph Verdino and they are in favor of this project.

Commissioner Beck spoke about the deterioration of the commercial building and there was discuss about the time frame that Mr. Dexter would need in order to finish the project.

Commissioner Shorter stated that he is favor of granting the applicant a variance.

Motion by Commissioner Shorter, seconded by Commissioner Beck to declare the Village of Ellenville Zoning Board of Appeals as lead agency on this project.

All in favor - Aye - motion carried

Motion by Commissioner Beck, seconded by Commissioner Shorter acting as lead agency on said site plan issued a Negative Declaration on an unlisted action on a Short Environmental Assessment Form and determining the proposed action would not have a significant effect upon the environment.

All in favor - Aye - motion carried

Motion by Commissioner Beck, seconded by Commissioner Shorter to close the Public Hearing at 7:40 p.m.

All in favor - Aye - motion carried

Motion by Commissioner Beck, seconded by Commissioner Shorter that the Zoning Board of Appeals finds that the applicant cannot realize a reasonable return for the subject property for each and every permitted use under the zoning ordinance and we base that on tax returns presented to the ZBA. The alleged hardship is unique and does not apply to the substantial portion of the district or the neighborhood inasmuch this is a pre-existing residential rental property and originally enjoyed a grandfathered use. The Zoning Board of Appeals also finds that there are many residential properties both owner occupied homes as well as rental in the district or neighborhood and inasmuch as there are such residential properties this will not alter the essential character of the neighborhood. Also based on the applicant's statement that the loss of his grandfathered use is that it was not self created but it was due to damage created by former rental occupants. In granting this variance, the Zoning Board of Appeals proposes the following conditions:

Prior to a Building Permit being issued, the applicant will show a plan that the "ice house" will be demolished or rehabilitated and will further require that the commercial cinderblock attached building will be rehabilitated to the greatest extent and a closed Building Permit with a Certificate of Occupancy within sixteen months.

All in favor - Aye - motion carried

Auto Zone – 69 N. Main Street - Area Variance. Mr. Eric Redding from Auto Zone reviewed the project with board members whereby the company is proposing to develop this site with a 6,816 square feet retail auto parts store. The present site plan would need three variances from the Zoning Ordinance and they would be:

1. Area and Bulk Schedule regarding the side yard setback
2. Area and Bulk Schedule regarding the rear yard setback
3. Parking within fifteen feet of the street right-of-way and within three feet of the rear lot line.

Attorney Berger gave to board members the conditions that need to be met in granting an area variance and they are as follows:

Area Variance –

- a. The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.
- b. In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:
 1. 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;
 2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 3. whether the requested area variance is substantial;
 4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 5. 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.
- c. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chairman Tennenbaum read the minutes from the Planning Board:

“Motion by Commissioner Cafaro, seconded by Commissioner Maizer that it be recommended to the Zoning Board of Appeals that the variances be granted with the condition that the applicant review our design standards and consider an alternate site plan.

All in favor - Aye - motion carried”

There was discussion with Mr. Redding about the placement of the dumpster, closing off the alleyway, the wall towards Maple Avenue and the possibility of some architectural features.

Motion by Commissioner Beck, seconded by Commissioner Shorter to schedule a Public Hearing to discuss the above variances on August 23, 2012 at 7:05 p.m.

All in favor - Aye - motion carried

Adjourn – Motion by Commissioner Shorter, seconded by Commissioner Beck to adjourn at 7:55 p.m.

All in favor - Aye - motion carried

Respectfully submitted,

Noreen Dechon
Village Clerk