

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD 9/2/08**

Present: Lloyd Frink, Chairman, Frank Barresi, Vice Chairman, Allen Firstenberg, Scott Davis, George Dansereau, Richard Berube and Mary Ann Loncto, Secretary

Others Present:

Code Enforcement Fenton

Mark Webber

Ellen Webber

Mike Martin

David Barschi

Meeting was called to order at 7:30 p.m. It was noted that Counsel was absent.

### **MICHAEL AND ERIK PERRY, 2794 WEST MAIN STREET**

First on the agenda was the public hearing on the request of Michael and Erik Perry, 27 Robert Lane seeking a use variance from Section 151-16(A) of the Zoning Ordinance to be able to use 2794 West Main Street entirely for office space which is not allowed in a residential zone – property is located in a R12.5 zone. No one was present for the hearing. Mr. Frink made a motion to suspend the opening of the public hearing until such time that an applicant makes an appearance. Mr. Davis seconded the motion. On roll call vote – Mr. Firstenberg – Aye, Mr. Barresi – Aye, Mr. Davis – Aye, Mr. Dansereau – Aye and Mr. Frink – Aye.

### **MARK AND ELLEN WEBBER, 37 HIGH STREET**

Next on the agenda was the public hearing on the request of Mark A. Webber, 37 High Street seeking the following area variances from Section 151-16(A) of the Zoning Ordinance to be able to construct a two car garage on his property at 37 High Street – (1) sideyard – required is 5 ft. and proposed will be 28 inches and (2) maximum building area – allowed is 30% or 2700 sq. ft. and proposed would be 2,817 sq. ft. which exceeds the maximum building area by 117 sq. ft. Secretary stated that Dutchess County Department of Planning had responded to the zoning referral with a “matter of local concern” comment. Mr. Webber presented to the Board a copy of the affidavit of publication from the Poughkeepsie Journal dated August 22, 2008 and the receipt from the post office dated August 20, 2008 for proof of mailing to property owners within 250 feet of subject property.

Mr. Webber stated currently on the property there is a single car garage that is 28 inches off the property line – the proposal is to use the existing footprint but expand it into the yard and actually make it a foot deeper into the property – Mr. Webber stated the use of the new garage would be strictly private use – it is not intended to be used commercially at all. Mr. Webber stated that the 8' x 10' storage shed would remain as well as the 18' round pool. Mr. Frink went on to state that when everything is added together including the construction of the new garage Mr. Webber would need a variance for approximately 117 sq. ft. of lot coverage – Mr. Frink asked how this figure was arrived at and Mr. Webber stated he basically measured the house, deck, pool, current garage, storage and did a net of the proposed garage minus the current garage – added it all together and took the percentage of allowed coverage. Mr. Frink asked what the distance was between the rear wall and the rear of the shed and Mr. Webber stated he was not absolutely sure but when he constructed the shed he check with the Code Enforcement Officer for the setbacks and he is completely confident that it is code compliant. Mr. Webber stated he is considering a A-frame garage with a typical 3/12 or 4/12 roof slope – with a 10 ft. high average height. Mr. Webber also stated when asked that he would be using the proposed garage for the storage of vehicles and would retain the storage shed for lawn equipment, etc.

Mr. Fenton stated that when the shed was calculated it was calculated as 8'x12' instead of 8' x 10' which

would make the lot coverage variance 101 sq. ft. instead of 117 sq. ft. It was stated that the house and current garage were both built in 1951 which predates the zoning ordinance. Mr. Frink made a motion to close the public hearing, seconded by Mr. Firstenberg. On roll call vote – Mr. Frink – Aye, Mr. Firstenberg – Aye, Mr. Davis – Aye, Mr. Dansereau – Aye, Mr. Barresi – Aye.

Mr. Frink stated that if you look at the zoning map of the Village you will see that the lot at 37 High Street is slightly irregular compared to adjoining lots – 101 sq. ft. of lot coverage is diminutive when compared to 2500 sq. ft. that is allowed and the 28 inch sideyard has existed since the house and garage was built in 1951 which predates zoning. Mr. Frink stated he has no evidence that this would change the central character of the neighborhood or lead to a detriment of the character of the neighborhood.

Mr. Frink made a motion stating that as a findings of fact the lot coverage variance needed is 101 sq. ft. instead of 117 sq. ft. based on the storage shed being 8' x 10' instead of 8' x 12'. Mr. Firstenberg seconded the motion. On roll call vote – Mr. Firstenberg – Aye, Mr. Barresi – Aye, Mr. Davis – Aye, Mr. Dansereau – Aye and Mr. Frink – Aye.

Mr. Frink made a motion stating that the 101 sq. ft. variance for lot coverage and 32 inch variance for sideyard for the proposed garage be granted contingent upon the following: (1) the 32” sideyard (plus or minus 3”) be granted for the lineal length of the proposed garage only and (2) the mean height of the proposed garage be limited to a maximum height of 11' 6” - this is based on the following: (1) the benefit to the applicant is to store vehicles without subject to the effects of weather, (2) will not result in a change of character to the neighborhood, (3) there is no detriment to the adjoining property owners because it is an existing condition that has existed since before zoning was established when the house was built in 1951 and (4) it will result in an improvement to the neighborhood. Motion was seconded by Mr. Dansereau. On roll call vote – Mr. Firstenberg – Aye, Mr. Barresi – Aye, Mr. Davis – Aye, Mr. Dansereau – Aye and Mr. Frink – Aye.

### **MICHAEL AND ERIK PERRY, 2794 WEST MAIN STREET**

Next on the agenda was the suspended public hearing on the request of Michael and Erik Perry. Mr. Michael Martin, Attorney was representing the applicants. He submitted the notice of mailing and notice of publication. He did not have the notice of publication but stated that it had been published in the Poughkeepsie Journal at least 10 days prior to the meeting. Mr. Martin stated he would bring the affidavit of publication into the office tomorrow. Mr. Martin stated that the property is in contract to be sold – the Perry's have been trying to sell this property as a home for 8 months and have had no luck – they have reduced the price dramatically – now a buyer has come along who is interested in purchasing the house to be used for a professional business – but this is contingent upon the variance being granted. At this point Mr. David Barschi who is the potential buyer came to the front of the room. Mr. Martin stated the building is on a state road – there are professional businesses in the area and it seems like a good fit. Mr. Frink stated based on the evidence submitted the property may be teetering on foreclosure – is there clear title to the property today and Mr. Martin answered yes there is. Mr. Frink asked Mr. Barschi if he was currently an incorporated entity that does business as a financial advisor and he answered no – he just operated under a d/b/a. Mr. Frink asked Mr. Barschi if he was familiar with the area surrounding the subject property. Mr. Frink stated that the “windshield” use of the area is a mixed use area with some professional offices, some residential uses, some borderline industrial uses and asked Mr. Barschi if he concurred with that and Mr. Barschi answered yes. He then asked Mr. Barschi if in his opinion a professional office use would do well and prosper in this area and Mr. Barschi stated he is just looking for a small building that he can call “home” - traditionally people just

do not walk in for CPA advice or investment advice – it is usually by appointment – but he does not think it will change his or his wife's business that much. Mr. Frink asked Mr. Barschi if he was amenable to the condition on his variance that the building be used for professional use only and he answered yes. Mr. Barschi stated if one day he would sell the property he could sell it the same way he is buying it and Mr. Frink answered he is not acting at Mr. Barschi's attorney and not to construe what he is saying as legal advice but the use variance runs in perpetuity with the property.

At this point Mr. Frink read from the Comprehensive Plan section 3.3.5 – He feels this chapter needed to be read into the record to recognize the unique character of the neighborhood. Mr. Firstenberg asked Mr. Barschi what the sale price of the property was and he answered \$214,000.00. He then read from the Dutchess County parcel access which states the assessed value is \$215,500.00 – the prices are relatively similar. He then asked Mr. Martin what the original listing price was and he answered \$270,000.00 and there were several price drops since that time. Mr. Barschi stated if he was purchasing the property just to live there he would not pay any more than \$180,000.00 for the property.

Mr. Frink made a motion to close the public hearing, seconded by Mr. Davis. On roll call vote – Mr. Firstenberg – Aye, Mr. Barresi – Aye, Mr. Davis – Aye, Mr. Dansereau – Aye and Mr. Frink – Aye.

Mr. Frink made a motion to approve the variance contingent upon the following: (1) No more than two professional uses concurrently each use with one principal employee, (2) Completion and approval of the site planning process with regard to landscaping, signage, parking and lighting, (3) Final response from Dutchess County Department of Planning, (4) Proof of publication in the Poughkeepsie Journal and (5) Business customers by appointment only. This is based on the following: (1) The applicant cannot realize a reasonable return, as shown by competent financial evidence – the property was listed on market as residential use for 9 months, price was reduced three times with no offer after showing property, (2) The alleged hardship relating to the property is unique – there is long standing legal non-conforming uses in the same zone with similar type of businesses in the area, (3) The requested use variance if granted will not alter the essential character of the neighborhood – The Masterplan Section 3.3.5 which talks about special cases and specifically references the Upper West Main Street and the fact that this area has little relationship between the various land uses and the zoning of this area, (4) The alleged hardship has been self-created – it is a residential structure in an area that is widely used – either legally or non-conforming – for professional uses. Motion was seconded by Mr. Dansereau. On roll call vote – Mr. Firstenberg – Aye, Mr. Davis – Aye, Mr. Dansereau – Aye, Mr. Frink – Aye and Mr. Barresi – Present.

Mr. Frink made a motion to adjourn the meeting, seconded by Mr. Firstenberg. Meeting was adjourned at 8:45 p.m.

Respectfully submitted,

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MARY ANN LONCTO, Secretary  
Zoning Board of Appeals

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