

**VILLAGE OF CORNWALL-ON-HUDSON
ZONING BOARD OF APPEALS
THURSDAY, FEBRUARY 23, 2017 – 7:00 P.M.**

Present Were:

Mike Kelly, Chairperson
Philip Adams
Matthew Bannan
Kevin Finn
Steve Fogarty

Also Present:

John Furst, Attorney
Roberta Haste, Recording Secretary
Robert & Toni Minuta, Applicants
Ben Maggio, Building Inspector
Jessica Danahy-Fishel & Tim Fishel, Applicants
Members of the Public

Chairman Kelly called the meeting to order at 7:08 P.M.

New Business

Stylist Chair-276 Hudson Street- Applicant is requesting approval to permit the allowance of 5 parking spaces reduced from the required 9 stalls

Robert Minuta stated they were asking for a waiver of the requirement additional spaces. Atty Furst explained that although they were before the Board asking for a waiver of two additional spaces, they had been operating with a deficit of two already. Number of off-street spaces is dictated by square footage in use and since they will now be adding an apartment in space previously used as storage, the applicants now will require nine off street spaces. A variance should have been sought two years ago but since they had just applied for a change of use and have fewer clients at one time than the previous owners, it was not done. The applicants are asking for a waiver for four onsite spaces, reducing the required nine down to five onsite stalls.

The Planning Board sent a request/recommendation to allow the waiver.

Mr. Kelly opened the hearing to the public.

One question clarifying how many spots were being requested.

Mr. Kelly closed the public hearing.

Mr. Fogarty read the recommendation from the Orange County Department of Planning stating it does not appear to have county-wide or inter-municipal impacts.

SEQRA

Motion was made by Mr. Finn to make a negative declaration regarding SEQRA, seconded by Mr. Bannan, approved by all.

Motion to Approve Waiver

A Motion was made by Mr. Bannon to approve the waiver of four spaces to allow for five spaces instead of the nine stalls required, seconded by Mr. Finn, approved by all.

Jessica Danahy-Fishel 28 Andrews Street- Applicant has applied for an interpretation/appeal of the Building Inspector's determination that the spa she installed constitutes a swimming pool under the Village's Zoning Code. In the alternative, if the ZBA confirms the Building Inspector's determination, the applicant seeks a variance of §172.43.C (Swimming Pools) of the Village Zoning Code to allow placement of the spa within 3.7 feet of the property line.

A letter from Mr. Peter Neuman was read into the record stating he was not in favor of granting another variance for the property.

Ms. Danahy-Fishel explained she had put up the spa in good faith thinking there were no special variances needed after having gone through the regulations not finding anything regarding hot tubs or spas. Found no one else in the area given a code violation. The tub/spa is not affixed to the ground and can be moved and there is no way to swim within it, so did not consider it a pool. Tub is covered when not in use. She asked that if the Board determines it is a pool that they grant the variance because it meets the 5 questions asked in the determination of granting a variance. Ms. Danahy-Fishel then listed the questions and how she felt they were met. Mr. Fishel presented letters from neighbors in support of approving the variance from:

- O'Neil Syna (neighbor who owns the property closest to the spa)
- Bobby Burgess 5 West Street, COH
- Melissa Minasi COH
- Lonny & Eric Aversa 82 Hill Road, New Windsor but live in Cornwall
- Peter & Jessica Krill 192 Main Street, Cornwall

Mr. Kelly opened the hearing to the public.

Mary Davidian – 11 Braden Place is against. The property is already nonconforming because of small size, feels it impacts her and her privacy and comfort greatly and asked why the building inspector felt it was non-compliant.

Ben Maggio, building inspector – NYS defines a vessel 2ft or more of water is considered a pool. Hot tubs are considered an accessory structure. Because it is close to a steep slope and the property cuts off on an angle a variance is needed. The [Zoning Board] Chairman and Village Engineer have been out to examine the area involved. Mr. Maggio told them to get an engineer to sign off that it is stabilized. Tub was installed but not in operation.

Jim Navarra of Andrews Street. Asked if the Village Engineer determined that it was a danger to the embankment.

Ms. Danahy-Fishel noted that they applied for a permit, then applied for a variance with the Planning Board, provided them with a lot of documentation, hired an engineer and had him submit a report and then was told it did not fall under planning jurisdiction. Mr. Fishel noted there is a retaining wall behind the hot tub, making it one of the safest places to put the tub.

Mr. Finn asked some more questions in particular if they made the slope steeper.

Mr. Steve Draybeck made it more flatter and more stable, the hot tub is sitting 3.7 of the property

line it is about 10 feet off of steep slope. The tub is recessed in the ground. Adding to the stability it also sits on a pad of stone. The hot tub is not within the steep slope, it is within the 75ft buffer zone (which also encompasses the whole house).

Joe Solicito contractor – gave specifics regarding the construction of the space the hot tubs sits upon and within. Mr. Solicito also answered Mr. Finn’s question regarding height of the wall the tub sits in as being 3½ to 4 feet tall.

Brigid Flynn – 9 Vinebrook, COH, previous property owner spoke to the fact that in the past the property had erosion issues.

Dr. Davidian since a pool requires 10ft set back according to Village Law and asked what determines whether a variance is granted.

Atty Furst explained the five factors.

Dr. Davidian noted for #3 it was self-created and a hot tub was not a necessity.

Atty Furst noted it was a balancing of the five and that even if they don’t meet all five factors they can still be granted a variance. Almost all variances are self-created.

Ms. Danahy-Fishel noted they put the hot tub as far away from Dr. Davidian’s property as possible. If they needed to move it, it would probably need to be moved next to Dr. Davidian’s property.

Mr. Solicito noted what was done was best regarding the erosion, better for the neighbors.

Mr. Maggio noted that it is designed well but it is too close to the property line.

Ms. Danahy-Fishel noted that they didn’t not realize the property had a cut in and felt they were doing what was least intrusive for 11 Braden Place and that the neighbor most affected was okay with the hot tub.

Mr. Navara asked if the fence need to surround the people constituted a substantial change of character since it affected people’s views.

Mr. Maggio explained as long as the public could see the river from Andrews Street it was allowable. Additionally he had the Fishels put fencing with spacing between the slats, still protecting the space, but allowing additional views.

Liz Myer 26 Andrews Street would like to see the steep slope issue addressed and wondered what the Village Engineer recommended.

Atty Furst asked if the wall was designed by a licensed engineer experienced in geotechnical stabilization projects because they are within the steep slope buffer zone.

Mr. Fogarty read a signed & sealed letter from engineer Sean T. Kelly regarding the free standing spa.

As no one else requested a chance to speak the hearing was closed.

Motion was made by Mr. Kelly to close the hearing, seconded by Mr. Fogarty, approved by all.

The Board went into a closed session with the Attorney for the Village at 8:45 and reopened the meeting at 9:15

Atty Furst noted it was a Type 2 action under SEQRA and no referral from county was needed.

A determination was made to uphold the Building Inspector's determination that the hot tub constituted a swimming pool.

Motion was made by Mr. Fogarty to uphold the Building Inspector's determination, seconded by Mr. Bannon, approved by all.

Mr. Finn explained the five considerations for the variance and went through each

1. **Community Character** - Spa was located in an effort to be the most unobtrusive to all neighbors and away from neighbor to the back.
2. **Is there another way to meet the objectives of applicant** - there were other locations but this one was best for many reasons including consideration of neighbors.
3. **Whether variance is substantial** - It is a substantial amount on one side – majority is not substantial and the one side where it is substantial is next to a vacant area that cannot easily be built upon.
4. **Adverse effect** – considered the fact that Sean Kelly, a professional engineer determined and stamped and signed to the affect that it did not pose a risk to the hillside and looked at methods used to stabilize the area and the use of permeable gravel. Still must meet all of the Village's regulations/requirements including the Steep Slopes requirements.
5. **Self-created** but balanced by thoughts of privacy for both themselves and their neighbors.

Based on those considerations a motion was made by Mr. Finn to allow the variance pursuant to meeting the steep slopes requirement, seconded by Mr. Adams, approved by all.

MINUTES

Motion was made by Mr. Fogarty to approve January 12, 2017 minutes as amended, seconded by Mr. Finn, approved by all.

ADJOURNMENT

Motion to adjourn was made by Mr. Fogarty, seconded by Mr. Adams, approved by all.

Meeting adjourned at 9:35

Respectfully submitted,
Roberta Hastey, Recording Secretary