

A regular meeting of the Zoning Board of Appeals of the Village of Cooperstown was held in the Village Office, 22 Main Street, Cooperstown, New York on November 3, 2015 at 5:00 pm. Members in attendance were Chair - Susan Snell, Frank Leo, John Sansevere, Marcie Schwartzman, and alternate – Ron Streek. Also in attendance was Zoning Enforcement Officer – Tavis Austin and Deputy Village Clerk – Jennifer Truax. Four members of the public were present.

Ms. Snell called the meeting to order at 5:00 p.m. and reviewed the agenda.

Public Hearings

124 Main Street (BTP/McManus Engineering) – Public hearing for an area variance for the removal of three trees

Ms. Snell opened the public hearing at 5:01 p.m. and reviewed the application. She asked for public comment. There was no public comment at this time.

Mr. Sansevere asked if the tree removal needed to be reviewed by the Village Tree Committee.

Mr. Austin stated that DPW Superintendent, Brian Clancy, has reviewed the request and indicated that the Tree Committee will be glad to make recommendations on what species of tree should be planted.

Ms. Snell asked the board to review the area variance test and read question number one, *“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.”* Ms. Snell stated that the three trees will be replaced with three new trees.

Ms. Schwartzman stated that as a whole it was detrimental as the entire rear yard was cleared. She continued to state that she realizes that the board is currently just reviewing the three remaining trees but that prior to the start of the original project the lot had many trees.

Ms. Streek stated that although the trees are proposed to be replaced the replacement trees are only two inches in caliper.

Ms. Schwartzman stated that it would be a noticeable change.

Mr. Sansevere asked if there is a legal requirement where the property owner must replace the trees being removed.

Ms. Snell stated that there is nothing in the law which requires the replacement but the applicant has indicated the replacement as part of the application and therefore, the board should review the replacement along with the removal. She stated that the proposed replacement may affect the position of the board members.

Mr. Streek asked if the Planning Board has completed their review.

Ms. Snell stated that she spoke to Mr. Berman, Planning Board Chair, who indicated that the Planning Board is in full support of the project. She continued to state that Mr. Berman indicated that the Planning Board did not feel that based on the existing law they had the authority to approve the tree removal.

Mr. Austin stated that there is a proposed law change which will allow the Planning Board to make these types of decision, as part of a site development plan.

Ms. Snell read question number two, "*whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance.*"

Mr. Leo stated that there is always another way, but they are not always the most feasible.

Ms. Snell read question number three, "*whether the requested area variance is substantial,*" then explained that the variance is not substantial."

Ms. Schwartzman stated that although the removal of the three trees does not seem substantial at this time, especially compared to the previous, unapproved, removal of a substantial number of trees. She continued to state that substantial is subjective.

Mr. Streek asked if Mr. McManus had prepared responses to the criteria.

Mr. McManus stated that he has jotted down his thoughts but had not submitted them prior to the meeting.

Ms. Snell asked him to review his responses to the area variance criteria.

Mr. McManus stated that he does not feel an undesirable change will be produced. He explained that the removal of the trees will allow for the expansion of needed parking and provide access to the NYSEG transformer which needs to be serviced and is currently not accessible.

Ms. Snell questioned the accessibility of the NYSEG pole.

Mr. McManus explained that there is currently no access over Willow Brook and the trucks cannot reach the pole without crossing. He further explained that the previous access through the alley has been blocked by the expansion of Sal's Pizzeria to the rear. Mr. McManus further stated that he has spoken to DEC and Army Corp of Engineers regarding a temporary crossing. He explained that they would allow a temporary crossing (7 – 10 Days) to access the transformer but the cost would be approximately \$15,000. He stated that it is not financially feasible to spend those funds for a temporary crossing but would make more sense to use the funds towards the further development of the property with a permanent crossing and expansion of the parking area.

Mr. McManus stated that the benefit sought cannot be achieved by another means without hindering full access to the parking lot.

Mr. McManus stated that question number three is very subjective but that he does not feel that the proposed removal of three trees is substantial especially considering the proposed replanting of three new trees.

Mr. McManus stated that based on the input of DEC and the Army Corp of Engineers he does not feel that the project will have an adverse impact on the environment.

Ms. Snell asked Mr. McManus if he would provide a written copy of his responses for the file.

Mr. McManus provided his copy to Ms. Snell for submission into the record.

Mr. Leo stated that with only three trees on the property the removal of all of the trees would be substantial but since the applicant is proposing the replacement of the trees with new trees he feels that the variance is okay.

Ms. Schwartzman stated that the removal of trees is substantial. She stated that it is bothersome that the applicants previously removed all but these three trees from the property, without approval, and are now requesting permission to remove the remaining three trees. She stated that she feels as if the board is being used. She further stated that she understands that technically the previous removal of trees is not relevant as the Board of Trustee has accepted restitution for that act, it is still disconcerting. Ms. Schwartzman stated that based on the applicant's proposal to replace the trees she feels that the board needs to be affirmative in insuring that this occurs.

Ms. Snell stated that the proposal is for a two inch caliper trees to be planted. She stated that based on the law the property owner could technically remove the two inch caliper trees after they are planted as the law only regulates trees which are at least six inches in caliper. She further asked what would be required if the trees did not survive.

Mr. Austin stated that the applicant is seeking the advice of the Tree Committee in hopes of planting trees which are more suitable for this environment.

Ms. Snell asked if there was any public comment. There was no public comment and the public hearing was closed at 5:13 p.m.

Ms. Sansevere made a motion to approve the area variance for the removal of three trees at 124 Main Street, as submitted with the planting of three new trees on the property at least two inches in caliper. Mr. Leo seconded the motion and the following discussion was held.

Ms. Schwartzman stated that she feels that the motion should include a proviso that requires action should the new trees not survive.

Mr. Leo asked what enforcement action is feasible should the applicant not plant the trees or if the trees do not survive.

Ms. Schwartzman stated that the Village plants two inch caliper trees and it is not unusual to have some of those trees not survive. She stated that she feels that the board should require some kind of assurance that the trees will be maintained and replaced if necessary.

The board discussed whether or not a requirement for a minimum retention of the trees should be included as part of the motion.

Mr. McManus suggested that the motion state that the three trees must be maintained according to standard forestry practice.

Ms. Schwartzman stated that she feels an amount of time should be indicated. She suggested that a period of five years should not be considered unreasonable.

Mr. McManus stated that the Planning Board did not feel that requiring the trees was necessary but that the owners felt that offering to replant trees either on this property or perhaps in a better location in the Village would be an appropriate action.

Mr. Austin asked if the board would consider allowing the trees to be planted in the Village with the location to be determined by the Tree Committee rather than requiring them on this property.

