

**VILLAGE OF GOSHEN
ZONING BOARD OF APPEALS
OCTOBER 14, 2009**

The regular meeting of the Zoning Board of Appeals of the Village of Goshen was called to order at 7:30 pm on Wednesday, October 14, 2009 in the Village Hall by Chair Wayne Stahlmann.

Present: Garfield Clark
Neal Frishberg
Wayne Stahlmann, Chair
John Strobl

Also Present: David Donovan, Attorney

ZBA Chair Wayne Stahlmann opened the meeting with the Pledge of Allegiance.

Raymond Cicero and Rose Cicero, Tax Map Designation: Section 111, Block 16, Lot 11, located at 28 High Street

Relief requested: Variance to permit construction of a rear deck that will be 14 feet from the rear yard line. The minimum rear yard setback is 30 feet.

Present for the applicant: Ms. Cicero and Jack Knight, Contractor

Ms. Cicero presented her proof of mailings.

Mr. Knight showed ZBA members a map of the proposed deck and the house which he said dates back to 1864. He said that there will be a 4 ft. wide walkway from the kitchen door onto the deck which will be 8 ft. deep and 14 ft. wide. There will be no steps added. The house itself is 21 ft. from the rear property line. The deck will be treated lumber with a railing. He said he started the deck in March and was stopped by the Building Inspector, so it is partially built and is built on 4 x 4s. Ms. Cicero said there are other decks in the neighborhood.

Mr. Stahlmann asked for public comment.

Rick Brown said he inherited property next door to the applicant at 26 High St. He said the deck is higher than his 6 ft. stockade fence and that if the deck is extended out further into the back yard, that the privacy of the yard at 26 High St. will be lost or compromised. Mr. Knight said that the deck is about 6 inches higher than the fence.

Joseph Seperac of 143 W. Main St. said that his property borders the rear property line of 28 High St. He referred to a letter that his law office sent to the applicant concerning the water runoff from the applicant's property into his garage. He said they connected into drainage lines that run onto his property, about 7 ft. from the garage, and that when it rains, the rain enters the garage and causes water damage. Mr. Seperac said his garage floor was rotted from water damage and had to be removed. He said he wrote the Ciceros asking them to remove the pipe but that it remains.

Mr. Stahlmann said that the ZBA is being asked to consider a variance for the location of a deck and asked if the deck is in any way affecting drainage on the property. Mr. Knight said that it is not, and that he will be glad to take the pipe out.

Mr. Seperac said his concern is that the deck will cause additional drainage problems but that the main problem is the current drainage issue with the runoff onto his property.

Mr. Frishberg asked Mr. Seperac how the deck itself would affect the drainage. Mr. Seperac said that adding a deck will exacerbate the problem with the water runoff and that it will probably run onto his property.

Margo George of 159 W. Main St. said that her property backs up to the applicant's property. She said that she is upset about the drainage problems and the pipe crossing her property.

Mr. Stahlmann stated that what the ZBA is being asked to consider has nothing to do with drainage, but with the location of the deck.

Mr. Frishberg talked about the various elements that the ZBA must consider when deciding whether or not to approve a variance. He said whether the granting of the variance will change the character of the neighborhood is one of the elements.

Mr. Brown said he believes the deck will change the character of the neighborhood. He said that not one home on the same side of High Street has a deck 8 to 10 ft. off the back of their house. He said he thinks it will change the character of the neighborhood by the height of the deck and the deck itself.

Mr. Stahlmann said that he walked from driveway to driveway on High Street and couldn't see the backyard. Mr. Brown said he agrees that when you ride down the street, it is not going to change the complexion of the neighborhood, but that he has a privacy issue.

Mr. Frishberg said that historically the Board has approved hundreds of decks. He said that the Board has to consider whether the variance requested is "substantial". The deck, he said, will be 14 ft. from the property line when it should be 30 ft., which equates to about a 50% variance which "starts to border on the substantial."

Mr. Frishberg said that while there is clearly a water problem, that it is not within the province of the Board. "All that is before the ZBA is the deck, although Mr. Seperac said the deck is going to cause additional drainage and we are entitled to consider that to the extent that there is evidence of that, to the extent that we believe it is true." However, he said he doesn't think the deck will cause additional drainage problems, although he is open to hearing expert testimony on that.

The privacy issue was discussed. Mr. Brown said that if the applicant continues to go out the amount of space they want that privacy at 26 High St. is being compromised. It was noted by Mr. Stahlmann that these are two story houses with windows looking onto each other's properties. Mr. Brown said that when the end of the back of the homes stop and the yards begins, is where there is a privacy issue. It was noted that the variance is needed for the rear property line, not the side property line.

Mr. Clark said that he visited the location and doesn't think it changes the neighborhood.

Mr. Strobl said that since there is already a fence, the deck will not be intruding on the neighbor, although the deck will be closer to the fence. He said he believes a property owner should be able to use his property. He said he would like to direct the neighbors to someone who could help with their water issue.

Mr. Stahlmann asked if members of the public have anything further to add.

Ms. George said that she has objections. She said there have been numerous problems including the fact that the fence that was put up is too high so that there is no visibility to drive out of the driveway safely. She said that there are a lot of issues to resolve, including the water issue and the privacy issue stating that there is sometimes a lot of

noise and that neighbor's must be respected. She said that all of the property owners there have very limited property and need to find ways to resolve their problems.

Mr. Seperac pointed out that the deck will add 150 sq. ft. of surface area that he said will divert the water from the going into the ground naturally to being probably pitched toward his property. The rear of their property slops down to his, he said. "It will just be adding more water to my property. I think it is an issue."

Mr. Brown said that "if they have the right to build the deck, let them build the deck".

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Strobl, the Zoning Board of Appeals of the Village of Goshen hereby closes the public hearing on the application of Raymond Cicero and Rose Cicero. Passed unanimously.

Mr. Frishberg said that looking at the factors that the ZBA is required to look at, he thinks the Board is bound to approve it. He said the Board has set precedent by approving hundreds of other decks and that there are other decks on High Street, although not as high as the applicant's.

VOTE BY PROPER MOTION, made by Mr. Frishberg, seconded by Mr. Clark, the Zoning Board of Appeals of the Village of Goshen hereby approves the variance requested on the application of Raymond Cicero and Rose Cicero. Passed unanimously.

Mr. Stahlmann asked if there was some direction the Board could give the neighbors regarding their drainage issues. Mr. Donovan said, "You have to weigh what we can do on the municipal side and what is a private property issue. To the extent that there is an adverse condition that is being exacerbated by the deck, then the Building Inspector will be directed by our decision to take whatever mitigation measures are appropriate," he said.

MINUTES - Mr. Stahlmann said he will sign the minutes of the August 12, 2009 meeting of the ZBA if there are no objections. There were none.

ADJOURNMENT – The ZBA adjourned at 8:25 p.m.

Wayne Stahlmann, Chair
Notes prepared by Susan Varden