

VILLAGE OF HOMER ZONING BOARD OF APPEALS

Public Hearing & Meeting Minutes - Thursday, 16 April 2018 - 6:30 PM

Community Building - Behind Homer Fire Department - So. Main Street - Homer, NY

Board Members

Tim Maxson, Chairman
Amber Eckard
*Tammy Goddard
Adam Clifford
Noelle Rayman-Metcalf

(*absent)

Others Present

Joan E. Fitch, Board Secretary
Craig Umbehauer, CEO
Dante Armideo, Village Attorney

Applicants/Public Present

Stephanie Fox, Applicant; Pam & Tom Sullivan, Attorney Larry Knickerbocker, Attorney Victoria Monty, Mary Alice Bellardini, Charles Bernheim, Colleen Jones, Kelly Sweeney, David Yaman, Ashley & Rick Neiderman, James McKenna, Lee Dennis, Tom Neiderhofer, Stacey Pryor, Russ Darr.

The Public Hearing was opened at 6:35 p.m. with the reading aloud by the Board Secretary of the Public Hearing Notice as published in the *Cortland Standard*. Proof of Publication has been placed on file for the record.

APPEAL #471

Stephanie Fox, Applicant/David Perfetti, Reputed Owner - 14 South Main Street - TM #66.82-17-30.000 - Use Variance - Use Variance for Proposed Retail Business in an R-2 district

Chairman Tim Maxson gave basic rules for the Public Hearing to assure everyone who wished to be heard was given the opportunity to do so in an orderly fashion. The Board Secretary then read aloud the Public Hearing Notice as published in the *Cortland Standard*. Proof of Publication has been placed on file for the record.

Chairman Maxson recognized the applicant who explained to those present what she wanted to do, also as provided in a letter to Chairman Maxson from Ms. Fox's attorney, Victoria Monty, dated 20 March 2018, a copy of which has been placed on file for the record. Ms. Fox is the owner of Old Homer House, presently located at 5 South Main Street and, having received a recent grant, she would like to purchase the subject property (a two-family dwelling) for her business. She is under contract for the purchase of this property, contingent upon issuance of the requested Use Variance.

Ms. Fox would like to use her present signage at this new location. There would be no changes to the interior. There are two parking spaces in the front of the house, plus on Main Street; parking is also available behind Key Bank. Any large amount of boxes received are "broken down and I take them to the recycling center." She stated her hours, Monday thru Friday, 10 a.m. to 6 p.m., Saturday 10 to 5. Open on Sundays in November and December only. Deliveries to her business are the same as other businesses on the street.

Board Member Adam Clifford asked the applicant if she had looked for other properties; she responded she had, but all were smaller and she would have to downsize. The subject property is currently vacant and has been for about a year. In response to Member Amber Eckard's question, Ms. Fox stated that there would be no structural changes at all, just painting of the interior walls. Member Eckard also asked Ms. Fox if, since the house is in an Historic District, she had talked with anyone about any changes. The applicant had not, as no structural changes were planned. Member Eckard did not know if a business could be operated in a dwelling in an Historic District.

Member Clifford spoke on "reasonable return," and felt there was really not enough information provided to the Board to satisfy this requirement.

Chairman Maxson then asked if there was anyone present from the public who wished to speak on this matter; there were, as follows:

Mary Alice Bellardini – 30 No. Main Street – Commented that there needed to be some sort of a sound system available for these meetings and people need to be able to hear the issues. She then stated that the Landmark Society has always been worried about retaining the character of the Village. Asked for clarification of possible remodeling of the porch and/or windows. Ms. Fox responded that they planned no exterior changes at this time, only the interior. Mrs. Bellardini advised there was access available to historic architects and, if need be, they should be asked to assist.

Larry Knickerbocker, Attorney for Thomas & Pamela Sullivan of 3 Central Park – Attorney Knickerbocker's clients' property is adjacent on the west to the subject property. He had provided a letter, dated 12 April 2018, to the Board outlining the requirements for a Use Variance, and his responses to same. A copy of this letter, and all its attachments, has been placed on file for the record. He reviewed his six-page letter with the Board which set forth the reasons this Board should deny the requested Use Variance.

Thomas Sullivan – 3 Central Park – Requested use variance is very personal to him. Gave family history of moving to the Village in 1971, having invested over \$70,000. Has no ill will against appellant. Proposed dwelling is not the right place for a business. Took photos on two random days and no parking spots were available (showed them to Board members). Parking will be a problem. Has installed fence to prevent school people going thru his yard. This is a safety and liability issue. There's no parking on school days on Central Park (ten months of the year) when the store is open. Customers will use David Yaman's parking lot, come through my back yard or even park in the back yard. Asked that variance be denied.

Victoria Monty, Attorney for Appellant – Subject property has other means of ingress and egress. Church (First Religious Society) is in favor of granting the requested use variance and would be willing to affirm that. David Perfetti, in the late 1960s, had his law office on the first floor of the subject building. There has also been an insurance office on the premises, so this is not the first time that a business has been operated in this district.

Larry Knickerbocker, Attorney for Thomas & Pamela Sullivan of 3 Central Park – Responded to Attorney Monty's comments. Previous businesses were both the homeowners and use was permitted as home occupation. Church fought Mr. Perfetti on his use of the property originally; it was a lengthy lawsuit as referenced in Attorney Knickerbocker's 12 April 2018 letter to this Board. House has not been appraised as residential or commercial, and it's never been listed for sale. Applicant's offer is probably the best they've received. If a commercial operation can be put in a residential area, "of course they're going to do it." The test is "any reasonable return."

James McKenna, Representing First Religious Society – The Green – Commented that the church is neither for nor against the use variance; they are neutral. Anyone could sign a lease with us as long as all rules/restrictions are observed. Willing to answer any questions.

Thomas Sullivan – 3 Central Park – It was made explicit to me when I moved to my home that there would be no commercial use on that property. "Why am I being discriminated against?" Mr. McKenna replied they had no control over that section of the Green and, typically, it's not for commercial use. Attorney Monty commented she understood the church was not opposed to employees parking "in the driveway." Mr. McKenna again reiterated that the church was "neutral on this matter."

**With everyone having been heard who wished to be heard,
Chairman Maxson closed the Public Hearing at 7:22 p.m.**

DISCUSSION/DECISION

Chairman Maxson stated that the Board was entering its Discussion/Decision portion of the meeting and there would be no comments from the public unless they were asked a question by the Board.

Member Clifford commented on the requirements for obtaining a Use Variance. Attorney Monty had a question asking if the ZBA could act as Lead Agency under SEQRA. She did not think the subject property was in a Historical District; she would consent to the appeal being tabled in order to determine whether or not it was.

Completion of the Full Environmental Assessment Form was discussed. Attorney Monty said she would like time to provide that. Village Attorney Dante Armideo added that the application "is not sufficient."

Member Clifford advised those present that there would not be a decision made at this meeting. Member Eckard would like additional information about exterior signage in a Historic District, parking onstreet and in the driveway. Member Noelle Rayman-Metcalf had questions about reasonable return, listing of the house, and comparable sales. Member Clifford questioned "self-created."

A lengthy discussion followed, which included the contingency in the Purchase Officer, the County Planning Department's staff report, the driveway being used for residential purposes only, review of a map of the subject property, the church's not objecting to employees parking on their property, and that the granting of a use variance would stay with the subject property forever; Board members agreed that all of these things needed to be considered in their decision as well.

With no further discussion, and with the Public Hearing being held and closed, **a motion was made by Member Clifford to table the Discussion/Decision portion of this meeting for a proposed retail business in an R-2 District until a completed Full Environmental Assessment Form is received from the applicant. The motion was seconded by Member Eckard, with the vote recorded as follows:**

Ayes:	Chair Maxson	Nays:	None
	Member Eckard		
	Member Clifford		
	Member Rayman-Metcalf	Absent:	Member Goddard

Motion carried.

This becomes Action #471/7 of 2018.

APPROVAL OF MINUTES - 22 February 2018

A motion was made by Member Clifford to approve the ZBA Minutes of 22 February 2018, as submitted. The motion was seconded by Member Eckard, with the vote recorded as follows:

Ayes:	Chairman Maxson	Nays:	None
	Member Eckard		
	Member Clifford	Absent:	Member Goddard
	Member Rayman-Metcalf		

Motion carried.

This becomes Action #8 of 2018.

ADJOURNMENT

At 7:55 PM, on a motion by Member Eckard, seconded by Member Clifford, and with all Board members present voting in favor, the meeting was adjourned.


Joan E. Fitch, Board Secretary

E-mailed 5/3/18 to Mayor, KC, Vill. Atty.,
Co. Planning, CEO & ZBA Members.