Zoning Board of Appeals
Minutes
April 19, 2018

Present

Chairman Dole
Diana Powell Keery
Dale Kellerson
Mark Unvericht

Absent

Michael Flavin

Also Present

Zoning Board Attorney Eric Stowe
Zoning Board Secretary Pam Gilbert
Building Inspector Patrick Smith
DPW Superintendent Tom West
Dave Fien
David Hicks
Bill Bleier
Ed Wedow
Jane Maitland-Moran
Joan Quigley

Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of David Hicks, 141 Coleman Avenue, Spencerport, New York 14559, for a special permit and two (2) area variances to install approximately 100' privacy fence with a setback of 2', on property located at same, whereas, a special permit from the Zoning Board of Appeals shall be required for a privacy fence; and whereas, any privacy fence shall not exceed a total of 65 feet on one lot and shall not be nearer than the required side lot line, which on this property is 6.4', respectively pursuant to 340-32 A(4)(a), 340-32 A(4)(b) and 340-32 A (4)(b) in a Residential District.

David Hicks: So we are going to fence in behind our house for containment of our dogs. I have two sixty pound dogs who just need room to run. We moved our here from the city so that they could have that space to run. There is also a dog behind us who actually barks at my dogs or us when we are out. So we are just hoping to do it to eliminate the barking.

Joan Quigley: How high is the fence?

David Hicks: Six foot. I have a dog that jumps and she will jump a four foot fence.

Joan Quigley: Have you thought about electronic fence?

David Hicks: Yes, and I thinks it's cruel.

Chairman Dole: You are going to do the wood dog ear fence?

David Hicks: Yes.

Jane Maitland-Moran: Well, I talked with Mr. Hicks for the first time yesterday, he is my next door neighbor and I just happen to see him in the driveway so I stopped and introduced myself. We discussed the fence and I said I have no objection until I went home and looked out my back window and realized it would block my entire view of the creek. Now whether or not a view is my right but I wouldn't oppose it. I appreciate the fact that he is trying to contain his dogs. I guess I would make a special request since he is my neighbor. That he would leave my side which runs along most of my property. That he would leave it stained a dark color so it kind of recedes into the shrubbery.

David Hicks: We are going to leave it natural.

Jane Maitland-Moran: I understand his problem the dogs can jump a small fence. I hate to give up looking at the creek. So if he could think of another option it would be great but I won't oppose it, if they could think of another place to put it. But they have to do what they have to do.

Chairman Dole: The good side of the fence will be facing you.

Jane Maitland-Moran: Except I won't be able to see through it.

David Hicks: There is serval feet of creek you view from here yard.

Jane Maitland-Moran: Yes, but you have to be in the back yard. I am telling him to build it if he feels that's the best solution. I wish there was another place on that property where they could fence in their dogs so it wouldn't affect my enjoyment. But, I won't oppose it.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

Dale Kellerson: To clarify you are on the north side of Mr. Hicks?

Jane Maitland-Moran: Yes.

Dale Kellerson: So the property on the south is that just an open lot?

David Hicks: It is part of our lot yes. There are two parcels to our property. My grandparents just never had them combined.

Dale Kellerson: What are you doing in the very front you have a small section between the garage and the house?

David Hicks: That is being enclosed so that we can let the dogs out through the side door. Otherwise there is no way of letting them out into the fenced in area.

RESOLUTION
352/2018

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from David Hicks of 141 Coleman Avenue, Spencerport, New York 14559 for a special permit to erect a privacy fence on property at 141 Coleman Avenue, Spencerport, New York 14559; and for area variances to erect one hundred (100) linear feet of privacy fence two feet off the lot line on property at 141 Coleman Avenue, Spencerport, New York 14559;

WHEREAS, an application for a special use permit is an unlisted action, requiring review under SEQRA; and

WHEREAS, an application for an area variance for a single-family residence is a Type II Action not requiring review under SEQRA;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of David Hicks, 141 Coleman Avenue, Spencerport, New York 14559 for a special permit to erect a privacy fence on property located at 141 Coleman Avenue, Spencerport, New York 14559, is an Unlisted Action, further, that the Zoning Board of Appeals declares their status as lead agency, and based upon the information contained in the Short Form Environmental Assessment Form and evidenced supplied by the applicant, and having considered the comments from the public hearing, the Zoning Board of Appeals makes a finding that the application will have no significant environmental impact and issues a Negative Declaration.

Motion: Chairman Dole
Second: Diana Powell Keery

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

RESOLUTION
353/2018

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from David Hicks, 141 Coleman Avenue, Spencerport, New York 14559 for a special permit to erect one hundred (100) linear feet of privacy fence at 141 Coleman Avenue, Spencerport, New York 14559; and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 19th day of April, 2018, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously issued a negative declaration pursuant to the New York State Environmental Quality Review Act,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals does hereby grant a special permit to David Hicks, 141 Coleman Avenue, Spencerport, New York 14559 for a special permit to erect one hundred (100) linear feet of privacy fence at 141 Coleman Avenue, Spencerport, New York 14559.

BE IT FURTHER RESOLVED that the following conditions are imposed on this special permit:

- Fence to be professionally installed and maintained;
- Good side of fence to face out;

Motion: Chairman Dole
Second: Dale Kellerson

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

RESOLUTION
354/2018

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of David Hicks, 141 Coleman Avenue, Spencerport, New York 14559 for the following relief:

1. An area variance to install one hundred (100) feet of privacy fence on property located at 141 Coleman Avenue in the Village of Spencerport;

2. An area variance to allow a privacy fence to be placed two (2) feet from the lot line; having considered, among other things:

1. 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 variances;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variances;
3. Whether the requested area variances are substantial;
4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following

findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variances because:

   i. _____
   ii. _____

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variances because:
   i. _____
   ii. _____

3. The area variances are not substantial because:
   i. _____
   ii. _____

4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
   i. _____
   ii. _____

5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny the variance.

The Zoning Board of Appeals further determines that the variances requested are the minimum variance necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variances:

i. _____

ii. _____

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variance may have on the neighborhood or community.

The application for the area variance is hereby GRANTED.

Motion: Chairman Dole
Second: Mark Unvericht

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

The application of Ed Wedow, 50 Amity Street, Spencerport, New York 14559, for a Special Permit for the remodeling of the existing dwelling, on property located at same, whereas, remodeling or construction of any of the dwellings shall be permitted when a special permit is obtained from the Zoning Board of Appeals, pursuant to Chapter 340-9G in a R-2 Residential District.

Ed Wedow: Yes we put baseboard electric in as there was no heat in the three bedrooms upstairs, we had the electric inspected and we also took the plaster lath off the two walls in one bedroom because it was really sad. We re-dry walled it and painted. It somehow got downsized to a one bedroom and there is an issue that it is not a four bedroom place. He had the guy come for the C of O and he passed it pending this hearing.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

Building Inspector Smith: This situation again like the gentleman stated when I went to do a C of O inspection for a change of tenant when they sell two apartments. In the process we found out that the front of the house was a single bedroom apartment and it was altered without a permit to a three bedroom. So when that happened I basically couldn't do anything with the C of O because he remodeled it without a permit and the Village Code 340-9 states for any remodeling it has to come to this board. So if you give him approval then he will need to get a building permit for the remodeling he did then I can give him a C of O for the house. So other than that I have no issue.

Chairman Dole: Are you the new owner?

Ed Wedow: No, my brother and I own it. My dad lived in it for 20 years before he passed away.

Chairman Dole: I saw the sign in front.

Ed Wedow: I apologize for not getting a permit I was just fixing the two walls.

Building Inspector Smith: We did check with the assessor's office and it had been listed as a one bedroom on the front and there was no heat upstairs so he couldn't rent it out.

Dale Kellerson: I was curious too as you read the code it does call for a special permit. Who would have thought I was confused by it especially since you are just moving some bedrooms around. I don't have a problem with it.

RESOLUTION
355/2018

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Ed Wedow of 50 Amity Street, Spencerport, New York 14559 for a special permit to remodel a two-family or three family dwelling on property at 50 Amity Street, Spencerport, New York 14559; and

WHEREAS, an application for a special use permit is an unlisted action, requiring review under SEQRA; and

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Ed Wedow, 50 Amity Street, Spencerport, New York 14559 for a special permit to remodel a two-family or three-family dwelling on property located at 50 Amity Street, Spencerport, New York 14559, is an Unlisted Action, further, that the Zoning Board of Appeals declares their status as lead agency, and based upon the information contained in the Short Form Environmental Assessment Form and evidenced supplied by the applicant, and

having considered the comments from the public hearing, the Zoning Board of Appeals makes a finding that the application will have no significant environmental impact and issues a Negative Declaration.

Motion: Chairman Dole
Second: Diana Powell Keery

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

RESOLUTION
356/2018

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Ed Wedow, 50 Amity Street, Spencerport, New York 14559 for a special permit to remodel a two-family or three-family dwelling on property at 50 Amity Street, Spencerport, New York 14559; and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has conducted a public hearing this 19th day of April, 2018, and

WHEREAS, the Village of Spencerport Zoning Board of Appeals has previously issued a negative declaration pursuant to the New York State Environmental Quality Review Act,

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals does hereby grant a special permit to Ed Wedow, 50 Amity Street, Spencerport, New York 14559 for a special permit to remodel a two-family or three-family dwelling on property at 50 Amity Street, Spencerport, New York 14559.

BE IT FURTHER RESOLVED that the following conditions are imposed on this special permit:

- _____;

Motion: Chairman Dole
Second: Dale Kellerson

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

The application of Dave & Karen Fein, 75 Clark Street, Spencerport, New York, 14559, for two (2) area variances to construct a 16'x30'x23' high garage with a side setback of 3.2' on property located at same, whereas, the maximum height shall be 17 feet and the side setback allowed for this property is 5 feet, respectively pursuant to 340-14 I and 340-14 F in a R1 Residential District.

Dave Fein: I am looking to tear down the existing garage now which is 3.2' off the lot line now and put up a new garage. It will be a little bit longer then current one. The height will be 22.'4" where 17' is what is allowed. It will be in the same spot it is now but it will go back on my property a little farther.

At this time Chairman Dole closed the Public Hearing.

Chairman Dole stated for the record that the board received a letter from Linda McAndrews of 71 Clark Street. She was unable to attend tonight. She has some concerns about the drainage.

Chairman Dole then asked Attorney Stowe, Building Inspector Smith and the board if they have any comments.

Building Inspector Smith: I have never been to the property but Tom has brought it to my attention that there could be an issue with drainage. But the differences in the size of the buildings I don't believe changes it very little from what is currently there. Obviously, we couldn't let him tear down a building and put up another in the same spot when the first one was too close to the side setback without coming to you. I would say that if this is a concern and I guess that Tom should talk about the concern as far as drainage and how to fix it. I would recommend that you could always table the application and send the applicant to the Planning Board to come up with an idea on how they can fix the drainage issue to prevent water issues in the future. If that is how you want to do so that the Planning Board is satisfied with the fix and it won't be a detriment to the neighbors.

DPW Superintendent West: I did go look at the properties, I have spoke with Dave & Karen Fein and Linda McAndrews. There is a concern with the issue of water right now. The building is going to be bigger. I believe it will be 4 'wider and a little bit longer. I do believe it will cause an issue with more water into Linda's yard. I understand about the way the village is set. I don't know where to go from here usually I do this a Planning Board. My suggestion and I did talk to Dave but I didn't talk to Linda about a solution. I think that is between the neighbors. There is a way possible if he has an engineer do some surveying to put some drainage in out to Clark Street. Then we can add to our drainage to help both neighbors out. There is a solution for Dave's property and Linda's property. Again that is up to them if they work together or if Dave decides to do it by himself. There will be an issue if they build the building because of the impervious surface and it will make it a little bit worse than what it is now. Meaning the water will go there quicker.

Chairman Dole: It looks like 71 is a little bit lower.

DPW Superintendent West: Yes, the flow goes to Amity Street and a lot of times I can help people out if I can get an easement back there as long as I can help the other houses where there is a drainage issues.

DPW Superintendent West continued: The problem is I will never get an easement back there the properties are too close together. But I did tell them that if there is drainage put in from the backyard to Clark Street then I would add a drain from Amity up to in between the two properties so they could connect to it. I believe that would take care of both issues if Linda wanted to connect to it. It would take care of the issues she already has. Where you go from here as this is just my opinion but there would have to be some surveying and obviously you would have to bring that to the Planning Board to get that approved.

Attorney Stowe: I think it's important that Tom what you are saying that stretch from the rear of the property to the road is at the homeowners expense not the village expense.

DPW Superintendent West: Correct, that is what was talked about.

Attorney Stowe: We are not fixing it. It would be a condition of approval. My thought is if that is something the applicant is ok with. What would be good is to table it with the applicant's consent. Let them go do it. Work out what they are going to do and come back. If they want to do the Planning Board fix. It not you are permitted to make your determination on what you want to do as is as well.

DPW Superintendent West: My question is do they have to go to the Planning Board if it is just a drain line?

Mark Unvericht: We can do something similar if we put in a special condition they rectify their drainage issues to their mutual satisfaction.

Attorney Stowe: Who determines mutual satisfaction is the issue. I don't know if it would go to Planning.

Building Inspector Smith: If you go to the Planning Board then it would be done to Tom's satisfaction, mine, the Planning Board Chairman and the Village Engineer. Then they could come back to you and you can make your decision.

Attorney Stowe: I think a full blown Site Plan might be over kill. I think that is asking a little bit for a homeowner to do. But that being said for you to determine can it be done you will need fully engineered plans.

Superintendent West: I would need engineered plans for the drainage only. I would need to add it to our plans for storm water regulations.

Attorney Stowe: Then that goes back to the applicant.

Mark Warren: I am Dave's contractor. Dave's property is lower so putting in a catch basin in Dave's yard won't really do anything. Dave is going to do his driveway anyways maybe we could just run pipe there and connect the downspouts to the pipe from the garage and connect it to the catch basin. That would solve any additional water. Could we do something like that?

DPW Superintendent West: I am going to say no. The reason why is there is a drainage problem there now. The building has been there forever and when you build something you want to fix the issues. I understand it's the homeowner's expense. The reason I am asking for a catch basin in the back there isn't just to catch the water it is for maintenance. You are looking at about 110' from the back yard to the front. You need to have a place to clean out it there is ever a clog in the pipe and he can connect all his down spouts in the 6 to 8 inch pipe. I would need engineered plans.

Diana Powell Keery: There is a problem now, I just want to know how big of a difference is it going to be? I just want to consider how big of a difference it will be.

DPW Superintendent: It will be 4 'wider and 5' longer.

Board discussion regarding the drainage.

Chairman Dole asked Mr. Fein if they have his consent to table until you satisfy everybody's review on this.

Dave Fein: My issue on this is that this has been a problem for every house on that street. I put in that storm drain and I'm still going to have water problems on my south side. It doesn't help with my house drainage at all. Everything still has to go through mine. This is doing nothing for me. They have a garage with more roof space than I do with a downspout pointing right at their foundation on the south side. They are going to generate more than mine. There are other solutions to this problem then me paying for a storm drain through my property.

Dale Kellerson: Looking at the pictures supplied to us from Linda McAndrews that the down spouts from your house are pointing directly aiming at her house. Were as the down spouts from your garage and her garage are all going to the backyard, it looks like it all accumulates in the back yard.

Dave Fein: If she moves hers to the north end then it would elevate some water issues.

Chairman Dole: What are you doing with the second floor or the garage?

Dave Fein: Storage, because my basements wet too.

Attorney Stowe: My only suggestion is that no human occupancy in the garage. With respect to the water for the board and you want to have some resolution for the variance. That no building permits are issued until drainage plans have been reviewed and approved on the north side of property to the satisfaction of the following individuals: Department of Public Works Superintendent, Planning Board Chairman, the Building Department and the Village Engineer.

Chairman Dole: I think that is something within the right of this board for the safety, health and wellbeing of the community.

Attorney Stowe: You are charged with balancing the benefit to the applicant against the detriment to the neighboring owners.

Discussion ensued regarding the conditions/restrictions on the variance.

Dale Kellerson: 23' height seems high, Pat have you looked at the other garages in the area.

Building Inspector Smith: In this neighborhood no.

Dale Kellerson: They all look fairly tall and the height of the house itself. The garage is not going to be towering over the house.

Mark Unvericht: No if falls in line with the others.

Diana Powell Keery: Yes and we just had that one on Martha Street not to long ago.

RESOLUTION
357/2018

WHEREAS, the Village of Spencerport Zoning Board of Appeals has before it an application from Dave & Karen Fein, 75 Clark Street, Spencerport, New York 14559 for an area variance for property located at 75 Clark Street in the Village of Spencerport, to allow a new garage to be constructed on the same property with peak height of twenty-three (23) feet, whereas the maximum height shall be seventeen (17) feet; and for an area variance to allow the side setback for the garage to be a distance of three and two-tenths feet (3.2').

WHEREAS, an application for these types of area variances are Type II Actions pursuant to the New York State Environmental Quality Review Act (SEQRA), and are subject to no further review under SEQRA;

NOW THEREFORE BE IT RESOLVED, that the Village of Spencerport Zoning Board of Appeals declares that the application of Dave & Karen Fein, 75 Clark Street, Spencerport, New York 14559 for an area variance for property located at 75 Clark Street in the Village of Spencerport, to allow a new garage to be constructed on the same property with peak height of twenty-three (23) feet, whereas the maximum height shall be seventeen (17) feet; and for an area variance to allow the side setback for the garage to be a distance of three and two-tenths feet (3.2') are Type II Action and therefore subject to no further review.

Motion: Chairman Dole
Second: Diana Powell Keery

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

RESOLUTION
358/2018

The Village of Spencerport Zoning Board of Appeals, in reviewing the application of Dave & Karen Fein, 75 Clark Street, Spencerport, New York 14559 for an area variance for property located at 75 Clark Street in the Village of Spencerport, to allow a new garage to be constructed on the same property with peak height of twenty-three (23) feet, whereas the maximum height shall be seventeen (17) feet; and for an area variance to allow the side setback for the garage to be a distance of three and two-tenths feet (3.2'), having considered, among other things:

1. 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 variances;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variances;
3. Whether the requested area variances are substantial;
4. Whether the proposed variances will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created

AND, the Zoning Board of Appeals of the Village of Spencerport makes the following findings of fact:

1. An undesirable change in the neighborhood will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variances because:
   i. _____
   ii. _____

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than area variances because:

   i. _____
   ii. _____

3. The area variances are not substantial because:
   i. _____
   ii. _____

4. The proposed variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district because:
   i. _____
   ii. _____

5. The alleged difficulty was self-created, however, the self-created difficulty is not a reason for the board to deny the variances.

The Zoning Board of Appeals further determines that the variances requested are the minimum variance necessary and adequate and preserves and protects the character of the neighborhood and the health, safety and welfare of the community; and

The Zoning Board of Appeals further determines that the following conditions/restrictions shall be placed on the variances:

i. No human or animal occupancy, for storage only;

ii. Prior to the issuance of a building permit drainage issues are resolved on the north side of property to the satisfaction of the following individuals: Department of Public Works Superintendent, Planning Board Chairman, the Building Department and the Village Engineer;

Said conditions/restrictions being consistent with the spirit and intent of the zoning local law and are being imposed for the purpose of minimizing any adverse impact said variance may have on the neighborhood or community.

The application for the area variance is hereby GRANTED.

Motion: Chairman Dole
Second: Mark Unvericht

Vote of the Board:
Ayes: Dole, Kellerson, Powell Keery, Unvericht
Nays: None

Unfinished Business

Nothing requiring Board action

New Business

Nothing requiring Board action

Approval of Minutes

Motion made by Chairman Dole Seconded by Diana Powell Keery carried unanimously to approve the October 19, 2017 minutes.

Adjournment

Motion made by Chairman Dole seconded by Dale Kellerson and carried unanimously to adjourn the meeting at 7:40 pm.