

Town of Otsego Zoning Board of Appeals

Minutes – August 18, 2015

PUBLIC HEARING

15.07 – Barbara Polgar – Area variances, expansion of deck within 100 feet of Otsego Lake – 6584 State Highway 80 (#84.08-1-30.00)

Chairman Greg Crowell opened the Polgar public hearing at 7:00 PM, and noted that no one from the public was present. Crowell closed the hearing at 7:01, saying he would reopen it if anyone showed up later.

REGULAR MEETING

The monthly Town of Otsego Zoning Board of Appeals (ZBA) meeting was held on this date at the Town Office Building in Fly Creek, NY. Chairman Greg Crowell called the meeting to order at 7:01 PM and led the Pledge of Allegiance.

Roll call was taken by Secretary Bill Deane. Board members present were Crowell, Meg Kiernan (Vice-Chairman), and John Tedesco. Christopher Voulo, Michael Pelcer, and alternate members Nicholas Weir and Dean Robinson were absent. Zoning Enforcement Officer Tavis Austin was also present.

Chairman Crowell asked if anyone had a potential conflict with tonight's applicant. No one reported a conflict.

The Board reviewed the minutes of July 21, 2015, e-mailed to the members. Chairman Crowell moved to approve the minutes as written. Kiernan seconded the motion and it was approved, 3-0.

The only correspondence received since the last meeting was the July/August 2015 issue of *Talk of the Towns & Topics* (Volume 29, Issue 4); copies were distributed.

The Board moved on to applications.

APPLICATION

15.07 – Barbara Polgar – Area variances, expansion of deck within 100 feet of Otsego Lake – 6584 State Highway 80 (#84.08-1-30.00)

Applicant Barbara Polgar was present, along with her son, Rich. They want to expand their existing residence in the RA1 district, within 100 feet of Otsego Lake, adding a deck (underneath the existing deck) which would extend about 30 feet to the concrete retaining wall. The Board had determined that they would need a 35-foot rear-yard setback variance on the east (Lake) side, plus a variance from *Land Use Law* section 4.04 (lakeshore protection).

The Board members said they had made site visits since the last meeting. Chairman Crowell said he was troubled by the size of the proposed deck, whose footprint appeared to be at least as big as the house. He said he knew of no deck that large (in relation to the size of the house and lot) nearby.

Zoning Enforcement Officer Austin said that the Planning Board was concerned that the deck might cover such things as the well and septic tank. Those have since been located on the other side of the house.

Chairman Crowell read aloud the criteria for granting area variances in Section 9.03 (2) of the *Land Use Law*:

- a. 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;
- b. whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- c. whether the requested area variance is substantial;

- d. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- e. whether the alleged difficulty was self-created...

Chairman Crowell said he feels the proposed project fails on a, b, c, and e: the large deck would be out-of-character with the neighborhood; the applicant could erect a fence or replace the existing deck in kind without requiring a variance; the variance sought is substantial; and the alleged difficulty is self-created, as the applicants bought the property as is. Crowell also cited the Town's Comprehensive Plan.

Rich Polgar responded that the deck would not be visible to the neighbors; that a fence would be more of a distraction than a deck; that there are other multi-tiered decks nearby; and that the chief goal of the project is safety. He requested that the Board approve the variances.

John Tedesco noted the gradual movement of the posts on the existing deck. He advised the Polgars to have the deck and retaining wall thoroughly inspected, and suggested they consider a smaller terracing project.

Meg Kiernan said that a fence wouldn't have to be solid; it could be open fencing or railing. Crowell read the definition of "structure," which excludes fences.

Crowell asked if the applicants would consider a smaller deck, such as the same size as the existing upper deck. Rich Polgar said that would not be worth the expense. Referring to the Section 9.03 criteria, Tedesco said that he feels the project passes a, d, and e: no undesirable change will be produced in the character of the neighborhood; there would be no adverse effect or impact on the physical or environmental conditions in the neighborhood; and the difficulty (the slope of the land) is not self-created, and would be made safer by this project. He feels that, on balance, the requested variances are acceptable.

Kiernan said she feels the project fails on all five criteria: there would be undesirable change to such things as vegetation and erosion control; the benefit sought can be achieved by other feasible methods, as previously mentioned; the variance sought is substantial; there would be adverse effect or impact on the physical or environmental conditions in the neighborhood; and the alleged difficulty is self-created, as the Polgars bought the property the way it was.

Rich Polgar said that the project would provide for erosion control with rocks and geotextiles.

Secretary Bill Deane explained that, because the size of the full Board is five members, any motion requires at least three votes (the majority of the full Board) to pass. Thus, with only three members present tonight, a unanimous vote would be required to pass any motion.

Zoning Enforcement Officer Austin explained why the Polgars need area variances before they can move to the next step in the application process. He reminded the Board that they have 62 days from tonight's hearing to make a decision on the application. Deane noted that the October meeting will be 63 days from tonight, thus a decision would have to be made either tonight or during the September meeting. Tedesco moved to approve the variances sought, based on the rationale he gave earlier. There was no second, so the motion died.

Kiernan moved to deny the variances sought, based on the rationale she gave earlier. Chairman Crowell seconded the motion and the vote was 2-1 in favor, with Tedesco opposing. Lacking the majority of the full Board, the motion failed.

Chairman Crowell said that the Board would revisit the application in September, hopefully with five members present so they could come to a decision. He suggested the applicants consider scaling down their request, proposing a smaller deck that does not go all the way to the retaining wall.

Rich Polgar said he may seek letters of support from neighbors, and asked if Crowell would consider them even though the public hearing is over. Crowell said he would read such letters into the record. Polgar asked if eliminating the third deck would make the project more approvable. Crowell and Kiernan said they still would not be inclined to approve it. Deane noted that the applicants would still need the same 35-foot variance.

Chairman Crowell again asked the applicants to provide a sketch showing the elevations. Kiernan said this would make it easier to make an informed decision. The Polgars will return for the September 15 meeting.

15.08 – Patricia C. Donnelly Irrevocable Trust -- Area variances, expansion of existing residence within 100 feet of Otsego Lake – 6434 State Highway 80 (#84.00-1-41.00)

Applicants Paul and Patricia Donnelly were present, along with their architect, Roberta O’Neill. O’Neill explained the proposed project. The Donnellys want to add residential space to their existing residence within 100 feet of Otsego Lake. Zoning Enforcement Officer Austin said the addition would be above an existing deck, so there would be no change in footprint; they will need a variance from *Land Use Law* section 4.04 (lakeshore protection), and possibly setback variances. The Board examined the application package.

Chairman Crowell noted that the proposed addition would include a one-foot-wide roof overhang on the Lake side, thus changing the footprint and requiring a 35-foot variance on the east side. He asked if it would be OK for Board members to visit the site; Paul and Patricia Donnelly said that would be fine, and that members could phone her at [607-435-3052](tel:607-435-3052) to arrange a site visit.

John Tedesco moved to deem the application complete and schedule a public hearing for September 15. Meg Kiernan seconded the motion and it was approved, 3-0.

OTHER BUSINESS

Tavis Austin distributed copies of his August 4 Zoning Enforcement Officer report. He answered questions and discussed various situations. Austin asked about John Caven, who in September, 2014 had received four variances from the Board, including one of 9’6” on the east (Otsego Lake) side. Due to a change in the lakeshore location, he now requests an 11’6” variance. The consensus of the Board was that Caven would have to submit a new application.

Secretary Bill Deane asked if Austin could e-mail scans or PDFs of new applications to the members, so they would have a chance to review them prior to the meeting. Austin said he would do that whenever possible.

With no further business, at 8:32 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Secretary