

**Zoning Board of Appeals Meeting and Public Hearing**  
**June 21, 2010, 7:00pm**  
**Village Municipal Center**

Attendance: Chairman Stephen Lynch, Members Harry Haldt, Edward Fish, George Macura; and Anthony Celani

Village Staff: Mayor Jay Niles, Trustee Dean Hyatt, Village/ZBA Clerk Rick Roberts

Others: Henry Brown, General Contractor (representing Thomas & Louise Tolworthy); Mrs. Barbara Teplesky

Chairman Lynch called the Meeting to order at 7:00pm.

Ratify Meeting Minutes: Mr. Haldt moved the acceptance of the Meeting Minutes of May 17, 2010 as circulated by the ZBA Clerk. Mr. Macura seconded the motion and it carried unanimously.

Public Hearing—Area Variance Application—Thomas & Louise Tolworthy: Chairman Lynch called the Public Hearing to order concerning the Area Variance Application for Thomas & Louise Tolworthy at 7:03pm. The application concerns the placement of an accessory structure (a generator used to support the Main dwelling in times of power interruption) in a location that does not meet side and rear setbacks as established through the Village Zoning Law.

The Chairman asked if anyone had signed in to be recognized and the Clerk advised that no one had done so. Chairman Lynch then inquired if there was any input from the attendees.

Mr. Brown introduced himself as the General Contractor representing Mr. & Mrs. Tolworthy and advised that the building project has been ongoing at the site for in excess of six years. A brief period of dialogue ensued between Mr. Brown and the Board.

Mrs. Teplesky stated that she felt that the restoration project had been a great success in her view and she complimented Mr. Brown for the work completed to date. She also stated that she did not wish to oppose the Variance application and she wished Mr. and Mrs. Tolworthy continued success in their future endeavors.

There was no other public input. As a result, Mr. Haldt moved that the Public Hearing be closed at 7:07pm. Mr. Macura seconded the motion and it carried unanimously.

The Board then commenced deliberations concerning the application at hand. Chairman Lynch explained that there were five factors used to consider in formulating a decision for any Area Variance application. These criteria are detailed on page 71 of the Village Zoning Law. The Chairman stated that the Board should employ a balanced approach in formulating a determination based upon the specified criteria—the applicant does not necessarily have to completely satisfy each “test” as is the case with a Use Variance, but the Board should be able to specify that the applicant is making a concerted effort to stay within the established guidelines where possible and/or not producing more substantial changes than necessary in order to accomplish their goals in order to reach a positive conclusion concerning the application.

The first “test” examined by the Board was the question of any undesirable changes to the surrounding neighborhood.

Chairman Lynch questioned the resulting noise level that would be produced by the generator when it was in operation following installation of the shroud. Mr. Brown advised that the shroud was designed to reduce the noise level to roughly 70 decibels, which approximates the noise level of two persons carrying on a conversation. Mr. Brown added that the generator would be programmed to “cycle” or run just once or twice per month for a maximum of fifteen to twenty minutes only.

Chairman Lynch inquired as to the height of the privacy fence to be erected in the rear of the property and Mr. Brown advised that the cast or concrete fence should measure between 6’ and 7’ in height. Chairman Lynch recommended that Mr. Brown familiarize himself with the specifications set forth in the Village Zoning Law concerning fencing. He stated that copies of the same were available online or thru the office of the Village Clerk.

Mr. Celani inquired if any additional enclosures or sound-reducing equipment was being planned for this project and Mr. Brown advised that nothing beyond the shroud was being planned for at present.

Chairman Lynch asked if there was a means to increase the setbacks in any way. Mr. Brown advised that the proposed rear setback was 7’ and the doors utilized for maintenance measured 28” and “swung out” on both sides. Given that the owners would like to have all doors functioning for proper maintenance, it is not possible to move the generator any closer to the “Carriage House” (Guest Quarters). The side setback was specified at 3’ in order to “hide” the unit as well as possible. A 6’ Stockade fence exists on the boundary line to the west at present, and thus the unit would be surrounded on three sides (north, south and west) and “covered” from view by the garage to the east.

The Chairman also asked Mr. Brown to compare the height of the rear fence to the height of the generator. Mr. Brown stated that the rear fencing was proposed at a minimum of 72”. Mr. Brown stated that the height of the generator when placed on the concrete pad should be approximately 74”.

Mr. Haldt questioned the distance from the generator to the dwelling located on the adjoining parcel to the south of the property. Mr. Brown estimated this distance to be 20 feet.

Mr. Fish inquired as to the closest dwelling adjoining the proposed location of the unit. Mr. Brown advised that the closest dwelling would be the home located on the property to the south of the subject property.

Chairman Lynch advised that the ZBA had received an advisory opinion of the Village Planning Board as required by the Village Zoning Law. In addition, the ZBA Clerk has communicated with the coordinator for the Washington County Planning Board and it was agreed that this application can be treated as a matter of local concern. Following a period of discussion amongst the Board members, the general consensus was that the application did not seem to produce any substantial negative or undesirable changes to the neighborhood.

The second “test” examined by the Board was the feasibility of achieving the same result by any other method.

Mr. Celani questioned the placement of the generator in its present location. Could it be placed next to the garage or in another space on the property that would allow for the proper setbacks? Mr. Brown advised that it was the owner's hope to preserve the "open spaces" for family gatherings and/or entertainment of guests if at all possible. It was also the owner's intention to shield the generator from "direct view", and this should be accomplished via the fencing and placement of other accessory structures on the property if they were allowed to place the generator as requested.

The third "test" relates to how substantial the proposed variance is perceived to be.

Chairman Lynch commented that he did not consider the proposal, as submitted, to be substantial. Several members of the Board agreed with the Chairman's reasoning in this regard.

The fourth "test" concerns any adverse affects that the proposed variance would have on the surrounding neighborhood.

Following a brief discussion, the Board concluded that this question had been previously addressed in the first "test". No further comments were issued.

The fifth "test" speaks to if the hardship was Self-Created in any way.

Chairman Lynch stated that it would seem that the hardship is self-created based upon the choice to install the equipment and the proposed location for the generator unit. The Chairman asked Mr. Brown if the unit was perceived to be necessity. Mr. Brown advised that the owners had invested a considerable amount of money in electronics, computers, and other highly-technical equipment and that the generator was just viewed as a protection for said investment. Much of this equipment located within the primary dwelling is temperature-sensitive and thus the generator is viewed as a necessity in the event of an extended power failure during a time of extreme cold or heat.

Mr. Haldt reiterated the possibility of the generator being placed in a different location on the property. Could it be located closer to the garage or in another area that would establish the proper setbacks and negate the need for the variance application? Mr. Brown stated that other locations were still a possibility, but based upon several factors (investment, preserving open space, etc.) the owners would prefer to locate the unit as requested if at all possible.

This concluded the discussion period concerning the Area Variance application. Chairman Lynch then solicited general opinions from the Board. Mr. Macura commented favorably on the application, citing a lack of concerns by neighbors and/or adjoining properties. Mr. Fish inquired of Mrs. Telplesky if she had any concerns. Mrs. Teplesky advised that she felt that all questions that she had have been answered to her satisfaction. Mr. Celani echoed Mr. Macura's prior sentiments; if the neighborhood is not being altered in a negative way and the neighbors are not concerned, he feels that the proposed placement would be acceptable. The Chairman observed that the proposed location was, in fact, about the farthest point from the adjoining dwellings (and Mr. and Mrs. Tolworthy's home) on the subject lot.

Following the discussion period, Mr. Macura moved that the Area Variance application be approved subject to installation of the privacy fence and noise shroud as specified. Mr. Fish seconded the motion and it carried unanimously.

Chairman Lynch thanked Mr. Brown for his participation in the meeting and asked if he had any additional questions with the process. Mr. Brown inquired as to how the decision was filed and Chairman Lynch advised that he would complete a written decision and transmit the same to the Office of the Village Clerk within five (5) business days per the Village Zoning Law. *Mr. Brown thanked the Board for its time and exited the meeting.*

Area Variance Application—Granville Rescue Squad: Chairman Lynch advised the Board of the receipt of an Area Variance Application for the Granville Rescue Squad. The Rescue Squad wishes to construct a new garage for service and storage of its ambulances. The property is zoned industrially and the application is being necessitated due to the size of the lot (less than 2 acres) and lot frontage (less than 150 feet).

The Chairman directed the Clerk to seek the standard advisory opinions from the Village and County Planning Boards. Following a brief period of discussion, Mr. Haldt moved that a Public Hearing be convened on Monday, July 19<sup>th</sup> at 7:00pm at the Village Municipal Center to consider the Area Variance application as submitted. Mr. Fish seconded the motion and it carried unanimously. The ZBA Clerk will also request copies of the Building Permit Application and other materials as necessary from the Local Ordinance Officer and Rescue Squad as necessary.

Complaint—Forum Restaurant: Chairman Lynch advised of the receipt of a complaint concerning the Forum Restaurant. The complainant has stated that he has observed a gathering of people in the “Tower” of the Forum and the ZBA had heard a prior case involving Area and Use Variances concerning this area of the facility and the applications were denied. The Chairman reviewed the Village Zoning Law with the Board and advised of the penalties associated with non-compliance. In addition, a strong concern for public safety was expressed by several members given the lack of proper egress (non-compliance with NYS Fire Code).

An extended period of discussion ensued between the ZBA, Mayor Niles and Trustee Hyatt concerning the complaint as presented. At the conclusion of the discussion period, the Board agreed unanimously to pursue the complaint in the interests of public safety.

Copies of the Area and Use Variance decisions will be made available to the Board upon request. Chairman Lynch asked the ZBA/Village Clerk was asked to draft a letter to address the complaint as received with the owners of the Forum, Kevin & Donald Daigle.

Mr. Celani made a motion to adjourn the meeting at 9:50pm. Mr. Haldt seconded the motion and it carried without objection.

Respectfully Submitted,

Richard H. Roberts  
ZBA Clerk