

Town of Constantia Board of Appeals

Meeting Minutes – November 10, 2023

Call to Order

Chairman Macari opened the meeting at 7:00pm

Attendees

Voting members in attendance included:

- Chairman Ken Macari
- Daniel Retajczyk
- Mark Somers

Guests in attendance included: Don Lawless, JoAnn & Mike Stuler, Diane & Steve Schwartz , Sandra Tuori-Bell, and Amy Connolly (Secretary). Christopher and Theresa Haley were present via phone.

Board members absent: Susan Kimmel, Michael Doran

Public Hearing- Hover 1360 County Route 17

Chair Macari opened the public hearing at 7:00 pm.

Christopher and Theresa Haley are requesting a side yard variance for a gazebo on his property at 49 Lakeview Grove in Constantia.

Applicants states that a contractor placed the gazebo and was told by Mr. Haley to observe the Town ordinances. The contractor placed the gazebo 3 feet too close to the property line at the closest point.

Mr. Macari states that he visited the site and measured the placement of the gazebo. He asked if the fence was about 1.5 feet from the property line.

Ms. Schwartz states that there is a disagreement over where the property line is and where the fence is located in relation to the property line.

According to Ms. Haley, Dave Bardoun surveyed the property on behalf of the mortgage company when the Haley's purchased the property. Stakes present on the property placed by Mr. Bardoun.

Mr. Retajczyk states that the survey presented by the applicant is the official record that the Board must make their decision from. It is a stamped, professional survey. The purpose of this hearing is to determine whether or not the Hayes can have the setback but is not the venue for a property line dispute.

A three foot variance is what needs to be considered, the closest point of the structure to the property line.

Ms. Hayes states that they did not apply for a building permit at first because a structure under 144 sq ft does not need a permit based on laws found on Town website. Were told another law that is not on the website thats states because the structure was not a tool shed that they did need a building permit. Did not apply for a building permit at first because the structure is less than 144 sq ft. Attempted to follow the setbacks with measurements from the property line. A stone base was placed first by a contractor.

Mr. Lawless states that he is in attendance in support of the Schwartz's because while not negatively impacted by the building himself, he believes that the placement of the gazebo has a significant negative impact on the Schwartz's and is not considerate of the neighbors.

Ms. Schwartz reads aloud and submits a written statement and photos. The gazebo was placed too close to the living area of their property. She believes that the variance should not be granted though she understands the costs incurred.

Ms. Stuhler stated that the placement of the gazebo was not something that she thought was under discussion outside of the 3ft variance.

Mr. Macari asked the Schwartz's if the movement of the gazebo the 3 feet to the proper distance would satisfy them.

Mr. Schwartz asked what the criteria are to grant a variance.

Ms. Haley stated that the 15ft setback is often not followed in the area.

Mr. Macari states that when an application comes to the Board of Appeals for a resident to do something outside of the requirements of the Land Development Law, the Board discusses and completes the required forms and after due diligence uses their discretion to make a decision.

Mr. Retajczyk reads the section of the land development law which designates exemptions from building permits. The three board members agree that the gazebo does fit those criteria, negating the need for a building permit.

Mr. Macari states that the building permit was not needed. The applicants told Mr. Macari prior to the meeting that the contractor was told to place the gazebo at the proper distance to comply with the Land Development Law.

Ms. Stuhler states that there is a boat launch in existence which affected placement of the gazebo. Ms. Haley stated that underground power which exists already also impacts the placement of the gazebo.

MOTION Mark Somers made a motion to declare the Appeals Board as lead agency for SEQR review. A negative declaration will be filed. The motion was seconded by Daniel Retajczyk. The motion passed unanimously.

MOTION Daniel Retajczyk made a motion to declare this project as a type 2 action of non-significance. The motion was seconded by Mark Somers. The motion passed unanimously.

Members reviewed the formatted questions for "Area Variance Findings and Decisions". The form will be filed in the Town Clerk's office. Discussion followed. Mr. Macari noted that if the contractor had placed the gazebo where Mr. Hayes had asked, the application would not be in front of the Board, reiterating that disagreement between neighbors would not be resolved here.

MOTION TO CLOSE THE PUBLIC HEARING Daniel Retajczyk made a motion to close the public hearing at 7:49pm. Seconded by Mark Somers. Motion passed unanimously.

Mr. Retajczyk states that the applicants tried to follow the law but the structure was placed too close to the line by the contractor. There is a precedent for approval of other similar applications in the past. Board agrees that the small distance that the structure would need to be moved to be in compliance would not satisfy the neighbors' complaint.

MOTION Daniel Retajczyk made a motion to grant the variance requested. Changing the sideyard setback from 15 feet to 12 feet. The motion was seconded by Mark Somers. The motion passed unanimously.

Adjournment

Mark Somers moved that the meeting be adjourned, seconded by Daniel Retajczyk. Members voted unanimously to adjourn at 8:07pm.

Amy Connolly

Secretary

Town of Constantia Board of Appeals

Date of Approval