

PUBLIC HEARING AND MEETING OF THE HANCOCK ZONING BOARD OF APPEALS
TUESDAY, MAY 25, 2021 AT 4:00 P.M., HANCOCK VILLAGE HALL,
85 EAST FRONT STREET, HANCOCK, NEW YORK

The Meeting/Public Hearing was called to order at 4:00 P.M. by James Picozzi. Roll call was taken by Clerk/Treasurer Phyllis Falsetta

Present: ZBA Officer James Rotzler
ZBA Officer James Picozzi
ZBA Officer Edward White

Also Present: Phyllis Falsetta, Clerk/Treasurer
Robert Heary, Attorney for the Village,
Peter Hathaway, Village Code Enforcement Officer,
Wanda Raksyk, Bozena McNeill, Glen & Nancy Roberts and Leonard E. Sienko, Jr.

ZBA Officer James Picozzi explained to the applicants the purpose of a ZBA hearing and the questions that must be answered.

1. Purpose – Is the applicant entitled to what they are requesting
2. Need – The applicant must present evidence of necessity

Mr. Picozzi also pointed out that he reserves the right to stop the meeting in the event of an argument or inappropriate behavior.

The purpose of the public hearing was to consider an area variance submitted by Wanda Raksyk of 171 West Main Street.

Leonard E. Sienko, Jr. argued that the same application was submitted by Ms. Raksyk in April 2019 and that a decision by the Zoning Board of Appeals had already been rendered. No appeal within the allotted time frame had been submitted therefore the 2019 decision stands. Attorney Heary explained that the application has been modified therefore must be treated as a new Area Variance Application; Ms. Raksyk's current application shows that the area variance request was changed from a 6 foot footprint to a 9 foot footprint.

Mr. Sienko pointed out that the 2019 decision included instructions that Mrs. Raksysk was to follow. Ms. Raksyk had been instructed to have a survey performed, move part of the existing carport back to bring it into compliance and to bring it up to code. Other than having a survey performed, nothing else has been done. Ms. McNeill, on behalf of Ms. Raksyk, explained that they were waiting for a variance before bringing the structure up to code rather than throw more money away on the project.

Mr. Sienko's opinion is that Ms. Raksysk is not requesting an area variance but in fact a use variance. Mr. Sienko presented pictures of the structure being used as a deck and not a carport. Mr. Sienko also presented Code regarding storage under an elevated deck being a code violation.

Glen Roberts of the property adjacent to Ms. Raksyk is opposed to the variance as it would involve the use of his driveway. He also is opposed to the structure as it is showing signs of decay. Ms. McNeill pointed out again that no additional work has been performed during the last two years while waiting for their variance request to be heard.

ZBA Officer Edward White asked for clarification as to whether the structure is going to be used as a carport or a deck. Ms. Raksyk is hoping to have a place to park her car and use the space above as a deck.

After several references to the driveway matter and the prior ZBA application by Ms. Raksyk, Mr. Picozzi had to remind everyone that the ZBA is not here to decide on civil matters and this hearing is to consider

a new use variance application.

Mr. Picozzi had several statements and questions: If the variance is granted it stays with the property in the future. If it doesn't pass, Ms. Raksyk has the right to appeal. He asked Ms. Raksyk if she read and understood the certification at the bottom of the building permit application that she signed. She said she did. He then asked if Ms. Raksyk could provide the exact measurements of the existing carport/deck on the west side of the property (Bullis property). She did not know. Mr. Picozzi asked Ms. Raksyk if she read and understood the survey that had been done. She said she did and that the surveyor explained the survey. Mr. Picozzi asked if she noticed anything unusual on the survey. He then asked who built the deck and was told the Opalka Corporation. He asked what type of building plans were used. Ms. Raksyk was unable to answer. She was then asked if she provided plans to the contractor or did the contractor just build it. She answered that he just built it. Letters of approval from neighbors had been submitted with the application. Mr. Picozzi asked if the westside neighbor, Mr. Bullis was aware that according to the survey that part of the deck would clearly be on his property. She said he did and he stated that he would not have a problem if it encroached even more. Mr. Picozzi then asked if there were any alternatives to requesting a variance, to eliminate the area variance application. Ms. Raksyk answered no.

There were no further questions. A continuance of the meeting was scheduled for June 22, 2021 at 10 am.

Attorney Heary ran through the five part test with the Board. 1. Will granting the variance result in an undesirable change in the character of the neighborhood that will be a detriment to nearby properties. 2. Are any alternative options that are less substantial i.e. reducing the size of or move the deck. 3. Is the area of the requested variance is substantial (100% variance based on size of the request and the survey map) 4. Was the alleged difficulty safe created (case law states that it was because the structure was built by the present owner).

Mr. Picozzi asked Village Code Officer Pete Hathaway if he knew how close to the Rhodes' property line the deck was. Mr. Hathaway stated that he thought it was right on the property line.

ZBA Officer James Rotzler agreed that the current application was the same as the 2019 application that Ms. Raksyk submitted. Clerk Falsetta stated that once the current application was received she contacted Attorney McKertich and his opinion was that it would be considered new as the area of the request had changed. Attorney Heary also pointed out that the original building permit that drove the 2019 application was for a carport and the current building application is for a deck.

Mr. Hathaway has been unable to find anything in NYS Code that states storage under an elevated deck is not allowed. Mr. White what would preclude a carport from being used as an elevated deck as well.

Attorney Heary stated that if the variance were to be granted, the structure would have to be brought up to code. Mr. Hathaway agreed but did point out that nothing as of yet has been brought up to code while waiting for the area variance review. The decision will decide the next step.

The meeting was adjourned at 4:59 P.M.

Respectfully Submitted by:

Phyllis Falsetta, Clerk/Treasurer