

**Town of Fishkill
Zoning Board of Appeals
January 15, 2008**

Minutes

Members Present

Barry Silverstein-Chairman
Maureen Kangas-Vice Chairman
Ronald Critelli
Lynne Raver

Members Absent

MaryAnn Leenig
Marc Breimer-Alternate
April Callahan-Alternate

Other Officials Present

Janis Gomez Anderson, Esq. – ZBA Attorney

Notice of Appeal Hearing has been published in the Poughkeepsie Journal, The Southern Dutchess News and The Beacon Free Press.

Notified of the variance request were the Town Board, Dutchess County Department of Planning, The Building Inspector and the surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:15 pm by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures. The Chairman informed those present of the procedures regarding the ZBA.

Chairman Silverstein called for comments or corrections to the minutes of the November 2007 meeting. Hearing none, he called for a motion to accept the minutes as written.

Maureen Kangas made the motion to accept the minutes as written from the November 20, 2007 meeting.

Lynne Raver seconded.

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli - Aye

Lynne Raver – Aye

New Business

Appeal Number 1

Grid Number: 6256-02-617665 Address: 147 Riverview Dr
Application Number ZB08-001, submitted by Diane and Joseph Ahlbeck, requesting a 6.1 ft variance to legalize an existing 28.9ft front yard setback on their house. Said request is a violation of Chapter 150-33.A of the Code of the Town of Fishkill.

Chairman Silverstein read a communication from the DC Department of Planning citing this as a matter of local concern.

The Chairman asked for verification that the application needed to be amended to include the side yard setbacks. Janis Anderson confirmed that it did, but that it was just discovered and the Applicants were not aware of it.

Joseph and Diane Ahlbeck presented to the Board. Mrs. Ahlbeck stated that the builder put the house too close to the road. They did receive a CO from the Town. Mrs. Ahlbeck advised that they are in the process of selling and the violation came up in a title search.

Chairman Silverstein advised the Applicants that the Board discovered another violation. Janis Anderson commented that the survey submitted with the application states the setbacks at 17ft and 19.6ft. The applications states the setbacks at 32ft and 30ft. She stated that the Board needs to clarify the actual setbacks. Ms. Anderson asked the Applicants where they got their numbers from. Mrs. Ahlbeck stated that they were from the original paperwork done when they had the house built. Ms. Anderson suggested that the Applicants use the figures on the survey and amend their application. Mr. and Mrs. Ahlbeck agreed.

Chairman Silverstein advised the Applicants that they can amend their existing application. The Board is not going to postpone their Hearing. He advised that they will vote on the revised application so that, if the Board approves it, they will be allowed to do whatever they need to do and sell it because everything has been corrected.

Janis Anderson advised that the application should be revised to include 3ft on the left side and 6 inches on the right. She requested verification that the house was built in 1972. Mrs. Ahlbeck confirmed this.

Chairman Silverstein reiterated that the application is now for a front yard setback and the side yard setbacks and that it has been in existence since 1972. He stated that this is not new construction and will not be a new encroachment near a neighbors' property.

The Chairman called for questions or comments from the Board. Janis Anderson asked if there had been any additions to the house since it was built. Mrs. Ahlbeck stated that there were none. The Chairman called for questions or comments from the Floor.

Elliot Dietz, Riverview Dr, commented that the misplacement of the house is to his benefit. He has a better view of the neighborhood. Mr. Dietz asked why there is no liability when the Town gave the house a CO and then a survey was done. Chairman Silverstein stated that from his experience as a former Town Board Member he learned that the Town is not responsible and can not be sued for mistakes made by builders or the Building Inspector. The property owner holds the responsibility. Janis Anderson confirmed the statement. The Chairman stated that the responsibility is on the owner and the attorney for the buyer that what a person is buying is correct. Mr. Dietz asked what would happen if the buyer of the house accepted it as is. Chairman Silverstein stated that it is okay although an attorney may advise against it. A stipulation note may also have to be signed stating that the buyer is aware of the problem. Mr. Dietz commented that the new owner may then have a problem sell it, so it never ends. The Chairman agreed and stated that it would continue until an owner comes before this Board to end it as the current owner is doing.

Chairman Silverstein stated that since there were no major concerns, and the Board was aware that the owners were trying to sell, if there were no objections, the Board was willing to vote on the application at this meeting. Mrs. Ahlbeck stated that the buyer's attorney will not close until they receive the papers from the State. The Chairman stated that he did not know what that was but regarding the Town, the Board will complete their action at this meeting. Mrs. Ahlbeck asked if the action then goes to the State. Janis Anderson stated that setback issues do not go to the state. Maureen Kangas commented that this was strictly for the Town. The Chairman advised that if this was their only problem, once the Board votes, this action was done. Mrs. Ahlbeck commented that the attorney advised them that from here, the Board will send paperwork to the State. Nancy Lecker stated that a copy will be sent to the County to close their file. The Chairman stated that their paperwork will be available for them to pick up the next day. Janis Anderson commented that the normal procedure would be to wait 30 days to do a vote, but the Board has indicated that they want to vote at this meeting. Ms. Anderson stated that a recess must be taken to prepare the paperwork.

Chairman Silverstein called a motion to Close this Public Hearing.

Maureen Kangas made the motion to Close the Public Hearing

Ronald Critelli seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli - Aye

Lynne Raver - Aye

The Chairman called a recess at 7:25 p.m.

The Chairman reconvened the meeting at 7:48 p.m.

The Chairman advised the Board that the application has been amended and they now have the resolution to be voted on for this appeal.

Ronald Critelli made the motion to Grant the variances requested.

Maureen Kangas seconded

Motion Carried

Barry Silverstein – Aye

Maureen Kangas – Aye

Ronald Critelli - Aye

Lynne Raver - Aye

The Chairman called for additional business. Janis Anderson reminded the Board that there will not be a meeting in February. No other additional business.

Ronald Critelli made the motion to Adjourn the ZBA Meeting.

Maureen Kangas seconded

Motion Carried

Meeting Adjourned at 7:48 p.m.

Respectfully submitted,
Nancy Fitzgerald-Lecker
ZBA Clerk