

**Town of Fishkill  
Zoning Board of Appeals  
January 20, 2009**

**Minutes**

**Members Present**

Barry Silverstein-Chairman  
Lynne Raver  
Marc Breimer-Alternate

**Members Absent**

Maureen Kangas-Vice Chairman  
Ronald Critelli  
MaryAnn Leenig

**Other Officials Present**

Janis Gomez Anderson, Esq. – ZBA Attorney  
Joel Petrus - Building Inspector  
Donald Cocker – Deputy Building Inspector

---

Notice of Appeal Hearing has been published in the Poughkeepsie Journal,  
The Southern Dutchess News and The Beacon Free Press.  
Notified of the variance requests were the Town Board, Town Planning 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 7:06 p.m. 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.

The Chairman announced that Alternate Member Marc Breimer was on the Board for this  
meeting with full voting rights.

## **Minutes**

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

Lynne Raver made the motion to accept the minutes as written from the November 18, 2008 meeting.

Marc Breimer seconded.

Motion Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Marc Breimer - Aye

## **New Business**

### **Appeal Number 1**

Grid Number: 5956-04-881030      Address: 11 Briarwood Dr

Application Number 09-001, submitted by David Hoffman, requesting a 3ft variance creating a 32ft front yard setback where 35ft is the minimum in an RMF3 Zoning District to construct a front porch. Said request is a violation of Chapter 150-33.A of the code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

The DC Department of Planning citing this as a matter of local concern

The Town of Fishkill Planning Board. Chairman Silverstein noted that the Planning Board Chairman recused himself from this application. The remaining Board Members discussed the application and cited this as a matter of local concern

The Chairman called for the representatives. David Hoffman presented to the Board. Mr. Hoffman stated that he is requesting a 3ft variance to construct a front porch. He commented that the porch would add to the character to the neighborhood and advised that one of his neighbors is present in support of the project.

Mr. Hoffman commented that his property is on the corner curve and the house, including the current entrance, is at the minimum 35ft setback. The porch will replace the steps that are currently there.

Mr. Hoffman stated that his property has a lot of frontage being on the curve and described his house as being a colonial with a flat front. When entering the house, the front door opens out and there is no room to stand on the porch and open the door at the same time. He stated that several of his neighbors have porches, which gives the neighborhood a community feel and he and his wife are new residents and feel that the addition of the porch would add to the character and help them interact with the neighbors.

Lynne Raver asked if he has done any other improvements to his home. Mr. Hoffman stated that he has not done any construction. He has done some landscaping.

Chairman Silverstein asked for verification that the steps to the front door come out to the required setback and the porch would run along the front of the house and, with the steps, would only encroach 3ft. Mr. Hoffman confirmed this and added that the property is pie-shaped. The builder pushed the house forward to give the property a useable back yard.

The front walk is awkward as you need to walk around and then across the front of the house and then up the steps. Mr. Hoffman stated that their intension is to construct the porch to have a seating area and the steps would come off the driveway area, eliminating the need to across the front of the house.

Marc Breimer asked if they had a rear deck. Mr. Hoffman stated that they did. He commented that it was original to the house and they have plans to replace it with a more formal deck. They are in the process of getting a building permit for it, hoping to have all of the construction done at the same time.

The Chairman called for any additional comments or questions from the Board. None voiced. He called for questions or comments from the Floor. Hearing none, he called for a motion to Close or Adjourn this Public Hearing

Marc Breimer made the motion to Close the Public Hearing

Lynne Raver seconded

Motion Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Marc Breimer - Aye

### Appeal Number 2

Grid Number: 6255-00-311431      Address: 70 Van Wyck Lake Rd

Application Number 09-002, submitted by Philip & Susan Mallozzi, requesting a 9ft variance creating a 41ft rear yard setback where 50ft is in minimum for a R-40 Zoning District to legalize a rear deck. Said request is in violation of Chapter 150-33.A of the Code of the Town of Fishkill.

Chairman Silverstein read communications from the following:

The DC Department of Planning citing this as a matter of local concern

The Town of Fishkill Planning Board citing this as a matter of local concern

The Chairman called for the representatives. Susan Mallozzi presented to the Board. She stated that the house was constructed in 1976. The deck is original to the house. She and her husband purchased the house the home in 2002. They contemplated constructing an addition and had a new survey issued. The survey revealed that the deck was within the required 50ft setback.

Mrs. Mallozzi presented pictures to the Board showing the deck and the rear of the house. Mrs. Mallozzi stated that her neighbors are present for support of her request. She stated that they do have plans to replace the deck in the future but would like to have the current deck legalized to eliminate problems in the future.

Lynne Raver asked if there is anything behind their property. Mrs. Mallozzi advised that there is not. Their property butts up against the Sharp Reservation property. She also stated that the adjoining neighbors, left and right, are not visible from their house.

Chairman Silverstein asked if the variance was granted, what happens if they want to replace the deck. Janis Anderson advised that the deck could be replaced but must be the same footprint. She stated that if the Applicants want to increase the size of the deck or change the shape in any way, a new variance will need to be requested if the new deck encroaches into the setback. Chairman Silverstein reiterated that if the variance is granted, the current deck would be legal and they could sell the house if they wanted too. He commented that if at any time the deck is replaced, any changes to the design of the deck would need a new variance. He stated that the variance was only for what was currently there. Mrs. Mallozzi stated that she understood but asked if she wanted to add stairs to the side, would she need a variance. Don Cocker commented that if the stairs did not increase the non-conformity, a variance would not be required.

A question was asked from the Floor as to how an error like this could happen, especially since the house has had two owners since it was built. Chairman Silverstein stated that he could not answer it. He commented that there have been several applications to the ZBA because residents are closing on the purchase or sale of a home only to find out that something is not in compliance. Marc Breimer commented that surveys are done by different people and there may have been an error on a previous one.

The Chairman called for additional comments. Marc Breimer commented that if there were close active neighbors to the rear of their property, he would have a concern, but since the deck has been there for 30 years and there are no complaints from the Sharp Reservation, he does not see any problems with it.

Mrs. Mallozzi advised that only one end of the deck is in the setback. Marc Breimer stated that the property line is on an angle, and that is the way that some of the properties are in that section of town.

The Chairman called for questions or comments from the Floor. A couple of residents commented that they were here to support the Mallozzi's.

The Chairman called for a motion to Close or Adjourn this Public Hearing

Marc Breimer made the motion to Close the Public Hearing

Lynne Raver seconded

Motion Carried

Barry Silverstein - Aye

Lynne Raver - Aye

Marc Breimer - Aye

The Chairman advised the Floor that the Board would discuss the applications and they would be voting at this meeting. He stated that the Board would have to take a recess so that the attorney could produce the documents for the decisions.

Mrs. Mallozzi asked if they should stay for the vote. The Chairman commented that they are free to stay or they could contact Nancy Lecker in the morning for the decision.

David Hoffman asked the Chairman if the variance was granted was there a time limit as to when the construction must begin. Chairman Silverstein advised that there is a one year time limit to begin.

### **Deliberations**

#### **09-001 David Hoffman**

Chairman Silverstein stated that he has no problem with the request. He commented that there was very little that could be done given the shape of the property.

Lynne Raver stated that the design looked nice

#### **09-002 Philip & Susan Mallozzi**

Chairman Silverstein reiterated that the deck is existing and there is nothing profound regarding it. He stated that he had no problem with it.

Marc Breimer agreed and commented that it has been there for 30 years with no complaints.

Lynne Raver also agreed and had no problems with it.

The Chairman called for a motion to recess to prepare the documents for voting

Marc Breimer made the motion for a recess

Lynne Raver seconded

All in Favor

ZBA meeting recessed at 7:22pm

The Chairman called for a motion to reconvene the ZBA meeting

Marc Breimer made the motion to reconvene

Lynne Raver seconded

All in Favor

ZBA meeting reconvened at 7:41pm

Janis Anderson advised the Board of the details regarding the criteria for the finding of facts for their decisions.

**Vote:**

ZB09-001, submitted by David Hoffman, variance to construct a front porch.

Lynne Raver made the motion to Grant the variance request

Marc Breimer seconded

Motion carried

Barry Silverstein - Aye

Lynne Raver - Aye

Marc Breimer - Aye

**Vote:**

ZB09-002, submitted by Philip & Susan Mallozzi, variance to legalize a deck.

Marc Breimer made the motion to Grant the variance request

Lynne Raver seconded

Motion carried

Barry Silverstein - Aye

Lynne Raver - Aye

Marc Breimer - Aye

The Chairman called for any additional business. Hearing none he called for a motion to Adjourn the ZBA Meeting.

Marc Breimer made the motion to Adjourn the ZBA Meeting

Lynne Raver seconded

Motion Carried

Meeting Adjourned at 7:45 p.m.

Respectfully Submitted  
Nancy Fitzgerald-Lecker  
ZBA Clerk