

TOWN OF DAY ZONING BOARD OF APPEALS

PUBLIC HEARING, JANUARY 19, 2012

Members Present: Dave Davidson, Chairman
Judy Traeger
Lorraine Newton
Donald Poe
David Avigdor, Town Attorney

Members Absent: June Dixon

Public Present: Leon and Petra Szyfman, Applicants
Brad and Stephanie Salerno

Proof of notice having been furnished, the Public Hearing for Leon and Petra Szyfman, Tax Map #32.19-1-24 was opened by Chairman Davidson at 7:05 p.m.

Chairman Davidson requested to have the Secretary read into the record a certified and notarized letter from adjacent property owner, Adam Salerno (copy attached). Chairman Davidson asked for any comments from the public.

Brad Salerno, brother of Adam Salerno (authorized to speak via certified letter of Adam Salerno and attached), stated in reviewing the letter submitted by the Szyfmans', there were several issues he wished to address:

- ∞ By locating the shed to the edge of the property, it enhances the Szyfman property by making it appear larger. However, it would adversely affect the Salerno parcel because by locating it closer to the Salerno property line, it gives the appearance of making the Salerno property look smaller to the detriment to the Salerno property values.
- ∞ He believed an inspection of the Szyfman parcel would reveal several other locations to site the shed which would not require an area variance.
- ∞ A review of the letter submitted by the Szyfman indicated this location was chosen to allow for open access to the Szyfman well.
- ∞ The letter also refers to how small the shed structure is, that it does not require a foundation and it only requires flat land to erect it on. Even if it is located in the area in front of their well, the shed is such a small structure, it could be lifted out of the way to perform maintenance on the Szyfman well.
- ∞ At the time the Szyfman well was dug, the driveway of Salerno was utilized by the construction crew with the permission of the Salernos, however, there was destruction to locations of the driveway. The Salernos did not bring this issue to the Szyfmans for remedy.
- ∞ Trees which are located in front of the shed are not as substantial as the Szyfman's submitted letter would indicate and had been freshly planted after the Salernos objected to the removal of existing trees which gave privacy to each parcel.

- ∞ There is also the possibility of erecting a small retaining wall and level the area in front of the proposed location and erect the shed on that site without the necessity of a variance.
- ∞ The Salernos related their feelings to the Szyfmans regarding an additional shed on the parcel (a variance has been previously granted for a 24x24 garage which is five feet from the common border of Salerno/Szyfman). Mr. Salerno stated the Szyfmans informed that they would abandon their plans to build the shed.

Petra Szyfman stated the following:

- ∞ The project was never abandoned.
- ∞ There are areas of their property which are continually wet with water seeping out of the ground.
- ∞ Flat areas on the parcel are bumpy and heaving in the spring.
- ∞ Representatives of the well drilling company advised the Szyfmans the area in front of the well must remain accessible for maintenance.
- ∞ Regarding damages to the Salerno's driveway during the well drilling process, the Szyfmans stated it was a point of contention with the company owner. Chairman Davidson stated while it has been his policy to allow those in attendance speak, the issues of the driveway and wells does not pertain to this area variance application.
- ∞ The shed can only be located in the area indicated on the survey map.
- ∞ The shed will not obstruct the view of the Salernos.
- ∞ The Szyfmans do not believe the siting of the shed eight feet off the property line will impact the property value of the Salernos. How property values are determined were reviewed by the Szyfmans (size of the property, improvements made, and in this area, access to the lake.
- ∞ This shed will neither add to the value of the Szyfman parcel nor decrease the value of the Salerno parcel. The Szyfmans presented a letter from The Trackey Group Real Estate, Lake Luzerne, New York (Jasen Trackey, Broker/Owner) dated January 17, 2012 which stated: "I was contacted by Leon and Petra Szyfman to give my professional opinion on the effect an 8x10 nonpermanent garden shed would have on the value of their neighbor's property located at 2291 North Shore Road, Day, NY 12835. After inspecting the site and the proposed location of the garden shed, it is my opinion that a shed 8 feet from the boundary line will have no negative effect on the value of the adjoining property. If any further information is needed please feel free to contact me at my office number or at 518-696-7055." Mr. Trackey was unable to be present at this Public Hearing. Town Attorney Avigdor stated for the record that the Szyfmans may present the letter as part of their application. However, if the broker were present, the other parties present would have the right to question the broker and the Board Members should take that fact into consideration.
- ∞ The Szyfmans did not believe the shed would cause any undesirable change in the neighborhood.
- ∞ Seven feet where 15 feet is required is not substantial.
- ∞ The shed will not have an adverse physical or environmental effect on the neighborhood.

Mrs. Szyfman stated Mr. Trackey has provided contact information if anyone wishes to speak to him regarding this letter. Town Attorney Avigdor stated it is likely the Public Hearing will be closed this evening unless the Szyfmans are requesting that the Public Hearing be kept open. Mrs. Szyfman stated Chairman Davidson made a statement that the decision would not be made this evening. Town Attorney Avigdor stated the Board has 62 days to make their decision at the conclusion of the Public Hearing. He further stated if the Szyfmans wished to have Mr. Trackey make a presentation before the Board, the Szyfmans could request that presentation be made at the next meeting. The Szyfmans stated they did not wish the Public Hearing remain open. The Secretary read the letter into the record.

Chairman Davidson stated if the two new members of the Board wished to visit the site, they could notify the Szyfmans prior to their visit. Town Attorney Avigdor stated he would like to inform the new members that Board Members do not inherently have the right to visit a property simply because they are Zoning Board Members and the property owners applied for a variance. He further stated on the ZBA application there are separate signature lines, i.e. a signature for just the application and a separate signature line to allow the Board Members access to the parcel. Board Members will be informed application by application if permission has been granted to go on to the parcel. The Szyfmans will allow Board Members to visit the site.

Mr. Salerno stated in light of the fact that he cannot question the realtor, he would like to make the following statement: "He has been in the real estate business for nearly 14 years and his wife is also a realtor. Two properties can be the same size but it is the different characteristics which help determine a value. Also, it is not an inherent right of a property owner to have a garden shed on their property. He would also give the Board Members permission to visit their property to see the area from their perspective. The garage which was granted two variances would serve the same purpose as the proposed garden shed. He believed the Board Members should enforce the existing setback regulations in this application and not grant the area variance." Mr. Salerno produced an email in which Mrs. Szyfman states she will be abandoning the project (this email was not made a part of the file). He further stated a neighbor informed his family that Mrs. Szyfman made a statement that she would be applying for the variance in the winter in the Salerno's absence. Mr. Salerno stated he was only making these statements because he believed his brother's integrity was being questioned.

Stephanie Salerno stated there is no hardship on the Szyfmans if a garden shed is not allowed as it is not a necessity and is a fully functioning property. The Salernos are requesting that their boundaries not be encroached upon for a garden shed.

Chairman Davidson stated this Board would be considering all the criteria for granting a variance at the close of the Public Hearing. Town Attorney Avigdor stated for the benefit of the two new members, he would review the process in great detail at the close of the public hearing. He stated further that he was very supportive of Chairman Davidson statement to waive a decision on this variance until the February meeting.

Board Members Newton and Traeger stated they would visit the site. Board Member Poe stated he tried to find the specifications of the proposed garden shed online but was not able. Mrs. Szyfman stated the manufacturer is Lifetime. Board Member Poe stated his concern was the weight of the shed and the weight of a similar shed made of the same materials and of the same dimension at its heaviest was 233 pounds which he would consider very moveable. Mrs. Szyfman stated when the Board Members visit the site, they can see the shed and would come to the conclusion that the shed would not be able to be physically once it is erected. Board Member Poe indicated he would also visit the site.

Chairman Davidson stated when he visited the site, there was an area behind the garage where Mrs. Szyfman stated she had considered locating the shed. Mrs. Szyfman stated she felt locating the garden shed in the area near the garage would be a greater point of contention with the Salernos than the proposed site in the application. Chairman Davidson stated locating the shed next to the garage would not necessitate a variance. Mrs. Szyfman disagreed stating it would be the same issue as the garage and would require a variance. Chairman Davidson stated the area nearer to the Szyfman house would remove the necessity of a variance because it would be at least 15 feet from the property line as required by zoning regulations. He further stated during his site, Mrs. Szyfman did indicate at least one area where the shed could be located and be in compliance.

Town Attorney Avigdor stated the Board has heard the statements of both the applicants and adjoining property owner's representative in attendance and will reach their own conclusions.

Mr. Salerno stated his concern was when Board Members visit the Szyfman property; discussions will continue on a one-sided basis and he would request that the visits to the site occur when the Szyfmans are not present. Board Member Poe wished to alleviate Mr. Salerno's concerns by stating this Board is bound by certain guidelines and regulations.

Chairman Davidson asked for any other questions or comments from Board Members or others present. There were none. Chairman Davidson closed the Public Hearing at 7:35 p.m.