

## VILLAGE OF CAYUGA HEIGHTS

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**Zoning Board of Appeals**  
**Zoom Meeting ID#100 842 54007**

**Monday, March 7, 2022**  
**7:00 p.m.**

**Present:** Chair: L. Staley; R. Parker; S. Barnett; M. Friend, M. Tate; Code Enforcement Officer B.  
**Cross:** Attorney R. Marcus; Deputy Clerk P. Rich; Lauren Butts (Agent); Jeff Gorsky

1. **Call to Order:** Chair L. Staley called the meeting to order at 7:05 p.m.
2. **Approval of Minutes of Zoning Board of Appeals meeting: July 12, 2021**

### **Resolution #2101**

**BE IT RESOLVED THAT:** The Village of Cayuga Heights Zoning Board of Appeals approves The July 12, 2021, minutes as presented.

**Motion:** S. Barnett

**Second:** R Parker

**Ayes:** L. Staley; R. Parker; S. Barnett; M. Tate

**Abstentions:** None

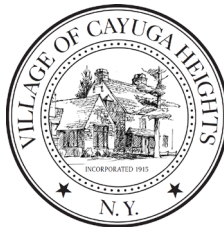
### **3. Variance Request:**

An application for 408 E. Upland Road (tax parcel 10.3-6) to construct a new building with a front setback of 31.87', a side yard setback 10', and a rear yard setback of 13.66', all of which are less than the 35' setback(s) required by the Village of Cayuga Heights Zoning ordinance Section 305-38.: Building setbacks; and will have a calculated lot coverage of 25.4% which exceeds the maximum coverage of 25% allowed by **Village of Cayuga Heights Zoning Ordinance Section 305—39:Lot Coverage.**

- B. Cross: 408 E. Upland Road has a special use permit by the Planning Board because the footprint of the project increased from an existing under 5000' sq. ft. to the cutoff threshold. At 5000' sq. ft. any such project of similar nature is subject to special use permit. In addition to the special use permit that was reviewed and approved by the Planning Board, site improvement features were also subject to site plan review by the Planning Board and they concluded the site plan was acceptable.

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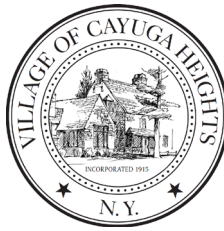
There are some physical features about the property that are not compliant with the area regulations, or as we call them bulk regulations in Zoning, related to set back and lot coverage. In this case all three setbacks need relief from the basic application of the Zoning regulations. All three front, side, and rear yards will need variances. Although not a direct read as 35' because the height of the building is not particularly high, the smallest amount of setback for all three is 35'. In the front yard I believe the number that is being proposed is 32', therefore there would be a need to get relief of that number since it is not the full 35'. The side yard is being proposed down to 10' which is less than the 35' required and the back yard is 13.66' which is also less than the required 35'. Each of these setbacks will need a variance. In addition to the setback variances, the original application calculated the lot coverage based on the footprint of the foundation, which is the normal method for calculating lot coverage and allows for roof overhangs up to 3'. As it turns out the overhang on the north side of the building which is the frontage, or the store front of the building is 5' which overhangs on the sidewalk and gives a covered sidewalk feature. The Zoning rule is written that overhangs that do not exceed 3' are not required to be included in calculation but that if it does the entire overhang must be included in the lot coverage. There have been a couple of recalculations completed. One is to include entire roof area inclusive of the setbacks on the side and rear of building. I do not think these calculations are correct, so we recalculated to include the entire overhang in the front which exceeded 3' and that number came out to be 25.4% with the maximum allowed being 25'. This is the summary of the technicality of what is being requested. Brent presumes that Village Attorney would recommend that they should be separate resolutions for each.

A project such as this would be subject to normal process of Environmental Impacts. The project is obligated to provide the information for the Village of Cayuga Heights to review. The Planning Board had to review the Environmental Impacts, Site Plan review, and Special Use Permit being earlier declared Lead Agency and took on the task of completing Environmental Impacts. The Zoning Board of Appeals is not obligated nor have the right to complete SEQR; therefore, this project is currently being reviewed by the Zoning Board under the determination made by the Planning Board that there were no negative adverse impacts.

- Chair L. Staley: Asked B. Cross, when you recommend separate resolutions do you mean; one for lot coverage and then separate resolutions for the front, side, and back?
- B. Cross: Confirmed yes. For instance, if you approved one and not others it will be covered.
- Chair L. Staley: Asked of the applicant if they had any presentation or information they would like to present.

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- Chair of the Planning Board F. Cowett: Stated for the record, The Planning Board is required when there are variances involved to make recommendations to the Zoning Board on whether the variances required by the project should be granted. The Planning Board discussed the variances and voted on a resolution recommending that the variances be granted.
- L. Butts (agent) for applicant offered to show Zoning Board members presentation via laptop
- Chair L. Staley: Asked L. Butts (agent) if there was anything new or different from what was presented to the Planning Board?
- The Zoning Board members decided they had all the information they needed at this time and requested L. Butts (agent) to address questions as needed.
- Chair L. Staley: Confirmed with L. Butts (agent) that there is only one main entrance to the building and only one entrance into parking lot which is all on the side of the building. Confirmed that the tall trees will be taken down for the solar panels.
- L. Butts (agent): Confirmed the tall trees on the south and southeast side will be taken down for solar panels. We spoke to the neighbor regarding the fence, and she wishes for the fence to remain. We will have plantings along the applicants' side of the fence.
- R. Parker: asked L. Butts (agent) if plantings will be within 10'?
- L. Butts (agent): Confirmed there is 10' from the proposed building to the fence line and then there is another 10' from the neighbor's property line so it is 20'.
- Chair L. Staley: Stated there are windows on that side of the building but they are not high enough to infringe on neighbors' privacy? The tall cypress trees, do they belong to the neighbor?
- L. Butt (agent): Confirmed the neighbor will continue to have her privacy and the tall Cypress trees do belong to a neighbor of the property.
- S. Barnett: Asked if there is enough room with the plantings to have 3' around the property and asked if plantings are thick enough so neighbor does not have to look at a brick wall?
- L. Butts (agent) Approached the Zoning Board and showed via laptop how the plantings will look, and the space provided around property. It was also explained how the proposed building is a

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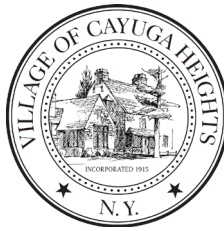
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little lower than the existing building. The 4' fence remains but due to the grading the line of the fence in some places it will be 5' to 6'.

- S. Barnett: Asked L. Butts (agent) if they would be digging down?
- L. Butts (agent): Yes, there will be a little cut on the edge for the grading along the side, as we lower the proposed building. The drainage on the back is going into the front yard first.
- R. Parker: I am looking at the specific plants, if it should turn out that in 3-5 years some of them die, what happens?
- L. Butts (agent): We have selected a lot of hardy plants/shrubs, but that would be a maintenance for J. Gorsky.
- R. Parker: My issue is some are more suitable to wet land moisture, and some are for dryer land. Will these plants be happy together? I understand you do this professionally but what will happen if some do die? How far out is your authority?
- J. Gorsky: We are putting up a premier building, all shrubs and plantings will be maintained. If they happen to die or do not look so good, they will be replaced. We want to maintain a premier look for our building.
- R. Marcus: Technically you can have condition on a variance for the maintenance on certain specified plantings.
- S. Barnett: Asked if the Planning Board had any conditions regarding maintaining plantings?
- M. Tate: They have four conditions but not for maintaining plantings.
- R. Parker: We can include a condition to maintain vegetation barrier.
- S. Barnett: Asked F. Cowett the chair of the Planning Board if they included maintenance of vegetation in their conditions?
- F. Cowett: We did not consider maintenance of plantings as a condition. We discussed the plantings at both Planning Board meetings and what we discovered is that the resident on the southern side and the resident on the western side were both pleased with the plantings that were proposed and we were satisfied with that.

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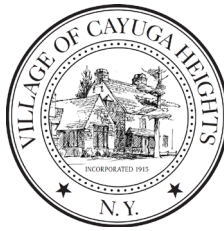
- Chair Staley: Asked if anyone had any other questions for the applicant?

#### **4. Meeting Open to the Public: 7:27 p.m. and closed at 7:27 p.m.**

- L. Staley: Asked Attorney R. Marcus if the Planning Board needs separate resolutions and separate set of 5 questions for the lot coverage of the front, side, and rear?
- R. Marcus: Suggest doing them together, I don't mean to say that is it's a rule or that would be my response for the same question or every variance. It is appropriate in this case as it is for a single building and all the variances required are the result of the placement of the single building (aside from the minor lot coverage is a variance). Everything else is determined by the siting of the building.
- R. Parker: My personal concerns are preceded by the Planning Board decisions. One that stays in my mind is that our variance stays with the land not the building. What would happen if the next person who purchases that land/building decides to demolish that building and add a two-story building?
- R. Marcus: That would be a new set of variances. If there was something about it other than what is being proposed, they would need to come back for a new set of variances.
- S. Barnett: Suppose a new person coming in years from now and proposing to build on the north Side. Because it's commercial they would have to go through this entire process again?
- R. Marcus: It would depend on the specifics of the project. The distinction of building on the north side of the lot versus the south side of the lot brings into play the adjacency the residential district versus the commercial district.
- R. Parker: It doesn't benefit us to say if there is any subsequential height it must be within the 35' setback?
- R. Marcus: No

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The Village of Cayuga Heights Planning Board is lead agency and completed SEQR, no SEQR form is required by the Zoning Board of Appeals.

The Zoning Board of Appeals, then considered each of the five required questions:

**Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by granting the area variance.**

Adjacent neighbors stated at Planning Board meeting they are happy with the plans for the new building at 408 E. Upland Road. Vehicle traffic is moved away from the residential area and there are no significant changes to the character of the neighborhood. The Planning Board has reviewed plans in detail and has recommended that the Zoning Board approve these variances. The site is developed with an office building already.

**Finding:**

YES NO **X**

**Whether the benefit sought by applicant can be achieved by some method feasible for the applicant to pursue other than the variance.**

Placement provides for increase in drainage and a rain garden in front. Benefits cannot be achieved without variances due to revised parking zoning. Proposed building placement relocates parking lot away from neighbors. Decreases curb cuts from two to one and decreases the asphalt.

**Finding:**

YES NO **X**

After listening to the recording changes made.

**Whether the requested area variance is substantial.**

Lot coverage and front setback are not substantial. South and west setbacks are substantial. Current site has no drainage facilities: the variance provides increased drainage and there are no restrictions to animal movement.

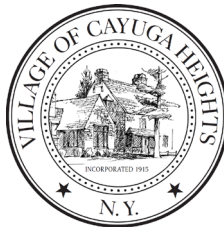
**Finding:**

YES **X** NO

**Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.**

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Lead agency Village of Cayuga Heights Planning Board determined the variance will have no adverse effect on the environment and has no restrictions to wildlife. Current building has no drainage facilities new building will be adding Hydrodynamic Separator for stormwater management.

**Finding:**

YES NO X

**Whether the alleged difficulty was self-created.**

Owner could maintain current building. Other options to add drainage to current property could be sought.

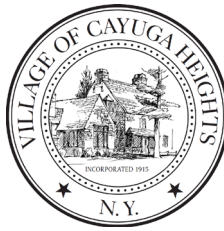
**Finding:**

YES X NO

- M. Tate: We need to discuss conditions if the Zoning Board passes variance.
- Chair L. Staley: We would set a motion that would include conditions.
- R. Parker: I feel very strongly that we need a statement that one of the conditions needs to be to maintain a vegetative buffer/privacy screen.
- S. Barnett: In the past when we have discussed vegetative buffer B. Cross has not been enthusiastic about having to be responsible five years down the line supervising vegetative buffers, is that still true, Brent?
- B. Cross: I would say in general that is an accurate statement.
- R. Parker: I feel if there was no vegetative buffer it would make a big difference. Maintaining a vegetative buffer doesn't mean they have to maintain the desirable species they are putting in.
- Chair L. Staley: Due to the climate change you can't necessarily say the same plants are going to be good.
- S. Barnett: They need to maintain something to give the neighbor some privacy.
- R. Parker: I think something natural needs to be there instead of a higher fence to buffer the commercial area from the residential.

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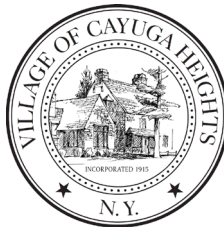
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- F. Cowett: I want to say for the record that the Zoning Law requires that there be a vegetative buffer.
- S. Barnett: When the Zoning Law states vegetative buffer what does it mean? We are talking about something high enough for privacy.
- R. Parker: If we say vegetative buffer for privacy, that guarantees it's a little higher, correct?
- R. Marcus: It's no harm in adding that in even if it's in the Zoning Law.
- S. Barnett: Is vegetative privacy screen the terminology we should use other than buffer?
- R. Marcus: Reminded the Zoning Board that there is a fence.
- R. Parker: The fence is low.
- S. Barnett: The fence is see-through.
- L. Butts (agent): Do we need to state that we will maintain the vegetation on our side of the fence?
- S. Barnett: The Zoning Board is saying you are required to keep those plants up, if we agree to pass the variance.
- Chair L. Staley: Is it because it is a commercial property that we have this requirement?
- R. Marcus: Confirmed, yes.
- J. Gorsky: I would like to voice one concern that an individual's definition of a buffer can vary from another. Currently the resident on the south is very pleased with our plantings. If she moved or had someone else live there and they decide they do not like the plantings, or they are not up to their standards for privacy, what happens then?
- B. Cross: I can fully understand J. Gorsky's concerns. If a new individual moved into the property and voiced issues regarding the plantings, I would explain the variance to them and inform them they can attend the Zoning Board meeting and challenge the variance as anyone can.

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- F. Cowett: The Zoning Law is under § 7.6 Building Setbacks: b. A vegetative screen shall be installed to mitigate visual, sound, and other impacts of the commercial use (s), subject to Planning Board approval.
- R. Parker: I make a motion to approve the variances for lot coverage and setbacks with the conditions that the project be built substantially as presented to the Planning Board.
- S. Barnett: I second the motion.

### RESOLUTION 2102

**BE IT RESOLVED THAT:** The Village of Cayuga Heights Zoning Board of Appeals grants the variances for lot coverage and setbacks at 408 E. Upland Road with the conditions that the project be built substantially as presented to the Planning Board.

**AYES:** L. Staley, R. Parker, S. Barnett, M. Tate, M. Friend

**NAYES:** None

**ABSTENTIONS:** None

- B. Cross: Informed the applicant the variances for lot coverage and setbacks have been approved anyone can appeal within 30 days.
- R. Parker: Asked F. Cowett Chair of Planning Board to make sure the lighting on new project at 408 E. Upland Road is not a hindrance to neighbors.
- F. Cowett: Assured the Zoning Board that the lighting for the project is not near the neighbors building, it is in the north part of the parking lot.

**New Business:** No new business.

**Meeting Adjourned:** 8:12 p.m.

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