

Chairperson Pam Knapp called the regular meeting of the Zoning Board of Appeals of the Town of Walworth to order at 7:02 PM. Members present: Karel Ambroz, Jim Hinz, Michael Bagne and Pam Knapp. Tony Laga was absent. Town employee present: Phil Williamson, Code Enforcement Officer, Norm Druschel, Building Inspector and Patti Marini, Town Board Member.

Karel Ambroz made a motion, seconded by Michael Bagne to approve the minutes of May 7, 2007 as presented.

Roll Vote:	Michael Bagne	Aye
	Pam Knapp	Aye
	Jim Hinz	Aye
	Karel Ambroz	Aye
	Tony Laga	Absent

Motion carried.

1. Application of Home Power Systems for Area Variance located at 416 Everwild Lane to allow home standby generator that encroaches on the side setback. Applicant seeks relief from Walworth Town Code Section 180-12G(2) side setback. Property is zoned: R

Chairperson Pam Knapp questioned, Phil Williamson, "Does this subdivision have a different side setback from the 15 ft. written in the codebook?" Phil answered, "Yes, the setback is 10 ft.; typically the subdivision setbacks are determined at the time the plans are approved." (see Parkview Green – Phase 1, Final Plat #98286GEO, approved 5/10/99).

Chairperson Knapp opened the public hearing.

Jim Swetman of Home Power Systems was present to represent Sue Desmond, the owner of the property at 416 Everwild Lane. Mr. Swetman stated that the generator was already installed at the residence. He explained that Home Power Systems installs generators in about 65 towns and villages and has a detailed process in place in obtaining building permits. Permit applications are sent in at least a week in advance to allow the building inspector time to review the permit and get back to Home Power Systems. The standard installation procedure is not to do any installation without a building permit in place.

Mr. Swetman stated, "Part of what happened, I believe, is that there was a miscommunication between the Town Building Department, Norm and myself as to where the generator would go and the time frame involved. It was a mistake on both of our parts; yes, we did go ahead and install the generator that morning without a permit in hand, but we did have a verbal approval from Norm that the location submitted was okay. At noon when we sent to get the permit, after the generator was installed, Norm informed us of the 10 ft. setback, but at that point it was too late as it was already installed. We are now stuck in the middle." Mr. Swetman submitted a call log to the Zoning Board as proof of their follow-up and the attempts to make contact.

Mr. Swetman further stated that he had approached Sue Desmond about moving the generator to another location at the back of the house, but she was reluctant because of the additional cost for installing sixty feet of gas pipe and electrical conduit. Mrs. Desmond was concerned about safety of gas pipe running across the basement and through the garage. After discussion between Home Power Systems and the homeowner it was decided to seek a variance.

Mr. Swetman explained that the standby generator is not a detriment to the neighborhood as it is partially hidden by shrubs and is inconspicuous. Additionally, it is the quietest generator that Home Power Systems sells. A color photograph of the placement of the generator was submitted to the Zoning Board.

Chairperson Knapp questioned the application and what appeared to an error. The application stated that the generator was located on the garage side of the neighbor's house, when it was actually on the opposite side. Mr. Swetman said that it was indeed an error and which he attributed to the fact that the application was completed by and the Operations Manager of Home Power Systems and not by himself.

The question was asked, "How far from the lot line is the generator?" Mr. Swetman answered, "It is about 4 ft from the house to the generator and about 6 ft. from the generator to the property line."

Chairperson Knapp questioned whether there were other locations where the generator could be placed? What about the back of the house? Mr. Swetman answered that there were other acceptable locations, but the homeowner was not agreeable to them at this time.

Chairperson Knapp questioned if there was a safety concern about the gas pipe running across the basement and through the garage. Mr. Swetman said that the generator would be installed according to the manufacturer's instructions and there would not be a safety issue.

The Board asked Norm Druschel several questions about the application. Mr. Druschel explained that during the time that Mr. Swetman was in the process of obtaining a permit he was out of the office at a conference and therefore was not able to review the permit. Upon his return to the office, Norm acknowledged that there was a cell phone call from Mr. Swetman, but he did not recall a conversation saying that the location was okay. When a Home Power System employee (not Mr. Swetman) came to the office for the permit, he was told that the location was not in compliance, but at that time the generator had already been installed.

Discussion ensued between Mr. Swetman and Norm Druschel regarding the call log. There appeared to be some disagreement regarding the chain of events and how they happened. Both sides agreed that there was miscommunication. Mr. Swetman pointed out that they are aware of the rules and he felt that he had a verbal okay to install the generator. He admitted that he should have had the permit in hand according to the Town Law, but stated that he is now simply coming before the Board to represent the homeowner in obtaining a variance.

Karel Ambroz asked if there are any sections of the Town Code that the Board should be aware of?

Phil Williamson read from the Town Code the following:

"180.4. Structure – Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground."
(Phil Williamson stated that a shed is considered a structure by definition).

"180-58(A). Building Permits. Required. No building or structures shall be erected, added to or structurally altered until a permit therefor has been issued by the Building Inspector. Except upon a written order of the Board of Appeals, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter."

Chairperson Knapp closed the public hearing.

Karel Ambroz made a motion, seconded by Michael Bagne to deny the application of Sue Desmond for an area variance.

I, move, after considering the benefit to the applicant and the detriment to the health, safety, general welfare of the neighborhood or the community that would occur as a result of the variance being granted and taking into consideration the five factors set forth in Section 267-b(3a) and finding:

1. The granting of the variance will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties because there are air conditioning units on nearby properties and the generator is hidden by shrubs and landscaping.
2. The benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue because the generator can be placed at multiple locations on the property that would not require a variance.
3. The area variance is substantial because it encroaches on the side setback and is 40% of the required setback.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood because it is in keeping with the character of the neighborhood.
5. The alleged difficulty was self-created; however, because the install company, Home Power Systems, installed the generator without a permit in hand.

This Board finds that the findings it has made as set forth in factors 2, 3 and 5 outweigh the findings it has made as set forth in factor 1 and 4 and substantial emphasis be given to factor 2, 3 and 5. and by reason thereof, the Board concludes that the variance be denied since the detriment to the health, safety and general welfare of the neighborhood or the community outweighs the benefit to the applicant.

Roll Vote:	Michael Bagne	Aye
	Pam Knapp	Aye
	Jim Hinz	Aye
	Karel Ambroz	Aye
	Tony Laga	Absent

Motion carried.

Karel Ambroz made a motion, seconded by Michael Bagne to adjourn the meeting.

Chairperson Knapp adjourned the meeting at 8:20 PM.

Respectfully submitted,

Gail Rutkowski
Zoning Board Clerk