

ZONING BOARD OF APPEALS MEETING HELD APRIL 25, 2013.

PRESENT: C. Brent Elford, Chairman
Michael N'Dolo
Village Attorney Thomas Peterson
Mark Marion
Sharon Lloyd

ABSENT: Sharyn Marchione

Also Present: Dave Blair
Thomas Bergin
John Fitzgerald
Phyllis Wildberger
Sharon Walsh
Marybeth Max
Joshua Cottrell
Bob Sweet
Mary Jo Lanahan
Attorney Don Hillmann
Peter Sheridan
Terry Brown
Barbara Baker
Tony Bourassa
Michael Roets
Katie Cottrell
Carrie Woerner
Linda Connors

Chairman Elford called the meeting to order at 7:05 P.M.

APPEAL 2013-02: Dave Blair, 26 Albany Avenue.

Mr. Elford stated that Mr. Blair is here for an area variance due to the Zoning Board of Appeals striking the building permit for 26 Albany Avenue. Mr. Blair is requesting the following variances :

Front Yard	FROM 20 feet.....TO 0 FEET
Side Yard (east)	FROM 10 feet TO 3 feet
Rear Yard	FROM 30 feetTO .8 feet
Lot coverage	FROM 52.8%.(pre-existing).....TO 69%
Footprint	FROM Same as pre-existingTO same on 3 sides, extended on west side

The board reviewed all the setback requirements.

Don Hillman, Attorney for the applicant, stated that he was here for the last meeting. Mr. Blair purchased the property at the Saratoga County tax sale, the existing building was in very poor condition. Mr. Blair demolished the existing structure and presented plans for a new house to the Code Enforcement Officer. A permit was issued for the construction of a new house which is nearly completed.

At the last Zoning Board meeting, the permit was struck for being in violation of the setback requirements. Mr. Blair has reapplied for a building permit which was denied by the Code Enforcement Officer in Malta.

Mr. Hillman presented a Power Point presentation of Mr. Blair's application. A copy of the narrative that was submitted by Mr. Blair will be attached to the minutes.

The property owner is willing to work with the neighbors on solutions for the problems which include but are not limited to:

- The removal of windows from the back wall.
- Install 1 hour fire rating siding on the rear and east side wall of the building.
- Remove over hang from rear wall so home is not over rear property line.
- Install gutters on the rear wall to direct storm water from neighbor's property.
- Cut back front porch and overhang to keep building off the property line.
- Remove front cantilever so building is behind Village property line.

Mr. Elford commented that the exact footprint is not just a ground measurement. The overhangs are a serious issue, not part of a variance. How far can an overhang be cut back to allow for the installation of a gutter?

Mr. Hillman replied that Mr. Blair is willing to cut back the overhang to remove it from over the neighbor's property line, and then install a gutter. There was discussion about the trimming of the overhang.

Mr. Blair stated that he will be 4" from the property line with a gutter installed.

Mr. Elford commented that they are looking for a 0 variance of the north side of the building. There is also an issue with encroachment on to Village property. The pre-existing house was not on Village property.

Mr., Hillman commented that the building is just over the property line. The cantilever is part of the structure of the building, it cannot be trimmed. It is not an issue for the Zoning Board of Appeals. They will be going to the Village Board to ask for an easement for this side of the building.

The Board and Mr. Hillman reviewed photos of the strip on garden between the previous house and the new house. The new house does not have the room for that strip of garden. Mr. Hillman stated that the strip of land is the same.

Dave Blair commented that the survey that was done by John Gay shows the porch as the same in the front of the house.

Ms. Lloyd commented that encroachments do not travel with the sale of a property. The issue in the back of the house is the same with the encroachment on the overhang onto the neighbor's property.

Mr. Hillman commented that the other houses on the street are in violation of the front setbacks.

Ms. Lloyd stated that the houses on this street and the Village are over 100 years old. The houses are grandfathered in. The Village is listed on the NY State and National Register of Historic Places. If Mr. Blair had been acting in good faith he would have had the fire protection on the rear of the house, provided for Stormwater and every square inch of the house would be on his property, not overhanging the neighbor's and Village property. The builder of the house has the burden to know the New York State Building Codes.

Ms. Lloyd stated that she spoke with DEC and the National Preservation Office about this house. This house does not fit into the Village in many ways. It's a larger house with a smaller porch.

Discussion continued about the installation of the 1 hour fire rated siding on the rear and east side of the house. Mr. Blair will be installing the fire protection.

Mr. Hillman commented that these are mitigation issues they have agreed to work on with the

Village.

Mr. Elford commented that there needs to be discussion about SEQR. There also needs to be discussion with the Village Board concerning the encroachment onto Village property.

Mr. Elford commented that this is Round Lake which is a unique and special place. The SEQR form, page 1 was completed by the applicant. The Zoning Board of Appeals has to complete the form to determine if this is type 1 or 2. Mr. Elford has looked in to this matter; he spoke with several people and was told that it requires a type 2 SEQR form.

Ms. Lloyd commented that there are three types of forms for SEQR, type 1, type 2 and unclassified. There is protection in place for the Village.

MOTION by Ms. Lloyd that prior to making a decision on the SEQR, type 1 or type 2, this issue be presented to NYS DEC and the NYS Historic Preservation and have them respond in writing, SECONDED by Mr. Elford.

UNANIMOUSLY APPROVED

MOTION by Ms. Lloyd that the Round Lake Zoning Board of Appeals be listed as the lead agency for the SEQR process for 26 Albany Avenue, SECONDED by Mr. Elford.

UNANIMOUSLY APPROVED

Ms. Walsh stated that the very first day when the backhoe was disturbing all the trees, she expressed her concern to Mr. Gizzi. The proper channels were not followed. No one was ever informed what was going on with the property. Everyone had concerns; we all know the history of the house.

Mrs. Wildberger commented she did address her concerns with Mr. Gizzi. She told him that they were getting closer to her house with the new construction. She was not aware that she has to put her concerns in writing. Is Mr. Blair liable for the trees that he disturbed during construction? What happens if a tree falls on her property?

Peter Sheridan asked how many times the architect or engineer visited the site?

Dave Blair replied that he had a draftsman do the plan.

Mr. Sheridan commented that the demolition requires a type 1 SEQR form.

The public comment period was closed.

Mr. N'Dolo stated that he believes that Mr. Blair was acting in good faith; he was acting on the advice of the Code Enforcement Officer.

Ms. Lloyd stated that after the first meeting, going home, there were lights on in the house. She could see someone in there working late at night. When they saw her they moved behind a wooden structure. There was unusual building going on at 10:30 P.M.

Mr. Blair replied that he has a day job. He works nights in the house. He is not a builder; he works as an accountant for a construction company

Mrs. Wildberger asked about the furnace exhaust on the rear of the house just a few inches from her house. The exhaust vent is pointed towards her house. Is this legal, has it been inspected. Mrs. Wildberger presented a photo of the exhaust vent to the Board.

Mr. Blair stated that the vent was inspected by the gas company before the gas was turned on. The furnace has been running for most of the winter.

Josh Cottrell stated that he will look at the gas exhaust.

Mr. N'Dolo reviewed the five points for granting an area variance:

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

There has to be a balance between the benefit to the applicant versus the welfare of the community or delineation of nearby neighbors.

Ms. Lloyd commented that she would rather have the original house than the newly constructed house.

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

Other options would be to dismantle the house, given the house is already built; alternative options would have to be found. Can the house be torn down once it has been built?

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

What the applicant is requesting is substantial. This could be determined by the original footprint.

Ms. Lloyd commented that there are still many points outstanding before making this decision.

- 4. Whether the proposed variance will have an adverse effect or impact of the physical or environmental conditions in the neighborhood or district.**

Mr. Elford commented that the board does not have the documentation that is necessary to answer this question at this time.

Mr. N'Dolo commented that there are storm water issues that need to be addressed. The applicant needs to provide a plan for drainage for the property.

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Mr. Elford commented that this is a very grey area; it still comes down to the SEQR review in general.

Mr. N'Dolo commented that the zoning board needs to talk through the SEQR review.

Ms. Lloyd asked Mr. Peterson how much time the Board has to make a decision.

Mr. Peterson replied that the Zoning Board has 62 days to make a decision.

Mr. Elford read a letter from John & Jane Vallelunga, dated December 18, 2012 with their concerns on the construction of a new house on the neighboring property, 26 Albany. A Copy of the letter is attached.

MOTION by Mr. Elford to table the discussion on this appeal until the next regular meeting of the Zoning Board of Appeals, May 23, and begin with the SEQR discussion, SECONDED by Mr. Marion.

UNANIMOUSLY APPROVED

Mr. Elford thanked everyone for coming to the meeting. The Board really needs all the parts to this matter prior to making a decision.

MOTION by Mr. Marion to adjourn the meeting at 9:23 P.M.

MEETING ADJOURNED

Respectfully submitted,

Lois J. Whitbeck,

Village Clerk