

REGULAR MEETING OF THE ROUND LAKE ZONING BOARD OF APPEALS HELD AUGUST 28, 2014.

PRESENT: C. Brent Elford, Chair
Sharyn Marchione
Michael Allen

Sharon Pineo
Mark Marion

ABSENT: Tim Palmer

Also Present: Thomas Peterson, Village Attorney
Terry Brown
Don Hillman, Esq.
Katie Cottrell
Deborah Albrecht
Mary Jo Lanahan
Christine Van Patten
Richard Theissen
Nancy Theissen
Ken Rawley

Phyllis Wildberger
Jack Fitzgerald
Dave Blair
Josh Cottrell
Peter Sheridan
Barbara Baker
Michael G. Roets
Sharon Walsh
Carrie Woerner
Jeff Wildberger

Mr. Elford called the Zoning Board of Appeals to order at 7:00 P.M.

The pledge of allegiance was recited.

Appeal 2014-02: Dave Blair & Josh Cottrell, 26 Albany Avenue, Round Lake, NY 12151

Mr. Elford stated that the Zoning Board is going to be reviewing the application to determine if a variance should be granted.

Mr. Peterson stated that the Judge spent a great amount of time reviewing this case. The Zoning Board of Appeals is to discuss and review this application as if it is for the first time it's being heard.

Ms. Pineo commented that if it's a brand new appeal, then the Zoning Board of Appeals is meeting as if a new building permit has been denied. There is no new building permit.

Mr. Peterson replied that this is an application for a variance.

MOTION by Ms. Pineo to go into executive session to discuss this application,
SECONDED by Mr. Elford.

UNANIMOUSLY APPROVED

MOTION by Mr. Elford to return to regular session of the Zoning Board of Appeals meeting,
SECONDED by Mr. Marion.

UNANIMOUSLY APPROVED

Mr. Elford commented that the Zoning Board has an application that has been going on for some time. There is a lot of emotion associated with this appeal. Mr. Elford will ask for public comment later in the meeting before the final vote.

Mr. Elford read a letter from John & Jane Vallulenga dated 8/28/14. In this letter they state that they have not come to an agreement with Dave Blair as stated in the June 4, 2014 minutes. A copy of this letter is attached to the minutes.

Mr. Elford stated that reading this application compared to the May 2013 application, has no change, in that the variance requests are identical with the difference being for the removal of the neighbors' agreement. Mr. Elford presented a document to the Board members showing the ratio of lot size to structure size of houses in the vicinity of 26 Albany Avenue. The structure at 26 Albany Avenue is larger than all but three homes in the vicinity. Those three homes maintain a high ration of lot size to structure size whereas 26 Albany Avenue covers a significantly larger portion of the lot. The Board reviewed the information and compared several of the houses in the neighborhood.

Mr. Elford stated that if a variance was granted, this would have to go before the Planning Board for site plan review.

Ms. Pineo asked why we would want to grant a variance knowing that the building is not in compliance with a number of violations.

Mr. Hillman commented that when they talked one year ago, his client agreed to install a drywell for the Stormwater problems.

Ms. Pineo asked for the location of the drywell. They have also promised to install gutters on the house.

Mr. Hillman stated that a majority of the homes in this Village do not meet the setbacks.

Ms. Pineo replied that these homes were built over 100 years ago. That is why we try not to continue this practice.

Mr. Allen stated that he was not on the Zoning Board when this application came before to the Board. He is trying to figure out the timing and events for the application. A building permit was issued with the understanding that the new building would meet the footprint of the old house with the exception of the west side where a garage was built.

Mr. Elford reviewed the issues of the setbacks and encroachment on Albany Avenue, the neighbors to the south and east of the property.

Mr. Hillman stated that the applicant will cut back the overhangs to meet all the setbacks.

Ms. Pineo read an introduction for retired Rear Admiral James Carter, B.S., LI. B., J.D. was recommended to me as an expert consultant in municipal and historic law by the NYS Office of Historic Preservation. He is admitted to practice law in, but not limited to, all courts in the State of New York, the United States District Court (Eastern and Southern districts of New York) and the United States Supreme Court. He has been a full partner in two New York Law firms, Von Olste and Carter & Carter and Donnelly, P.C.

He has been Counsel and/or Special Counsel to the Village of Belle Terre, Belle Terre and Brookhaven Town, NY. He has also been Administrative Officer in the Village of Manchester and Old Bennington VT and has several on various zoning and review boards in the last few years. He currently occupies himself serving as Administrative Officer for the Town of Peru and the Village of Manchester.

Ms. Pineo read a three page memorandum from Mr. Carter on the variance application of David Blair, for 26 Albany Avenue. A copy is attached to the minutes.

Mr. Hillman commented that Mr. Blair and Mr. Cottrell built this house with a building permit in 2 ½ months. There were no written complains about the property.

Ms. Pineo stated that it is the builder's responsibility; he signed that building permit, to comply with all the local & state laws for the construction of this house. It is the builder's duty to consider the neighbors and their property, there was no consideration shown to the neighbors.

Mr. Blair stated the he disagrees with that statement, as soon as someone complained they did stop working. They were not told about any written complaints.

Ms. Pineo stated that there was no consideration for the rain water onto the neighbor's property, no consideration for the damaged trees, built a house on neighbor's property. The plans did not have an engineer or architect stamp. Did either person visit the site?

Mr. Hillman commented that the problem that we have is that the house is there. What is the ending?

Mr. Blair stated that they will mitigate the impact on the neighbors; they agree some of the house is close to the neighbor's property.

Mr. Hillman stated that some of the same problems that existed with the old house have not changed for the new house, they want to find a comprise to this issue. The house was built with the CEO approval. This was built for a young family with children. The house can't stand empty and vacant. The financial stress is terrible. Mr. Blair and Mr. Cottrell have agreed to work on mitigation with the Code Enforcement Officer.

The applicants and the Code Enforcement Officer talked about the overhangs on the house and the other issues that would need to be addressed.

PUBLIC COMMENT

Mayor Sacks commented that the overhang on the front porch and the area over the garage are approximately 4 feet over Village property and into the street. This all has to be removed off village property.

Mary Jo Lanahan commented that the only way she could get a back porch was to use what was old storage space. The Vallulenga purchased property across the street where the porch had fallen down. The ZBA granted a variance to rebuild the porches as allowed under the Zoning laws.

Mr. Elford replied that he remembers that discussion on the steps that would come right along the side of the house mostly on the neighbor's property.

Mrs. Wildberger asked what happened if they put a dry will on the back or west side of the property. She would have puddles in her yard, what would happen to the trees. How are they going to install gutters on the rear of the house without going on her property?

Ms. Pineo showed recent photos of the trees and how they have started to lean. These trees are closer to the house. The ZBA members and the applicants reviewed the photos.

Ms. Walsh stated that she has lived in the Village for 38 years, in her current home for 8 years. Her current house was in the same condition as the one that was removed on Albany Avenue. With respect to the Village history and zoning laws, she restored her house. She really feels that this is what the Village is about.

Mr. Theissen stated that there have been comments about the height of the house. The original house was only a 1 ½ story house, not the height that the new house is now. Mr. Theissen stated that he was at the first auction when the Smith house was sold. The house was sold to someone who let the house go back to Saratoga County. Mr. Theissen stated that he had briefly thought of purchasing the house. It was at the second auction when Dave Blair purchased the house. The removal of the house was very fast, there were dump trucks in a line up Lake Avenue with a large team of workers. The foundation was in the ground in just a few days.

Kate Cottrell stated that this is a side business; both Dave and Josh have 9 to 5 jobs. They sub-contracted the removal of the house. This was a project to put them on the map. She does not want people walking out of the room thinking that they are monsters.

Mr. Roets stated that every morning he walks by the house; he believes the house is terrible. He call Bob Gizzi a number of times, he was told that the new house is going in on the same footprint.

Jeff Wildberger stated that he told Bob Gizzi; before the foundation was poured that it was not the same as the old house. Mr. Gizzi told Mr. Wildbergers wife to shut up, they don't know what they are talking about.

Mayor Sacks commented that there were several residents that questioned the foundation and complained to Mr. Gizzi.

Mr. Hillman stated that the law also says that the Code Enforcement Officer has the authority to allow some changes.

There was also a discussion in regards to the height of the structure and while previously the applicant stated that the building was below the height threshold, the CEO stated that it was above the threshold of which the applicant agreed saying that the architectural drawings were not reliable and you can't go by them.

Mr. Hillman reminded the Board voted 4 to 1 to give a variance. Added note as per Mr. Elford: While the above comment was made by Mr. Hillman it is historically incorrect – the Board voted 4-1 to grant the variance with the agreement from neighbors and remove the easement requirement from the Village for the overhang on the north side onto Village property (since the applicant was offered to cut back the overhang making the easement a non-issue). However the meeting was approached as a rehearing requiring a unanimous vote where the one dissenting voter based their decision on enforcing the original agreement between the ZBA and applicant.

MOTION by Mr. Elford to deny the variance for Dave Blair & Josh Cottrell, SECONDED by Ms. Pineo.

Mr. Elford asks the members to vote aye to deny the variance and vote nay to approve the variance and the reason for their vote.

Vote:

Mr. Elford votes aye to deny the variance, he believes the request is substantial, self-created, and is a negative change to the neighborhood.

Ms. Pineo votes affirmative, she believed this is self-created and is a negative change in the neighborhood.

Mr. Allen votes affirmative, it does create a very substantial change to the neighborhood and that it is self-created.

Mr. Marion also votes in the affirmative, he agrees it has a negative effect on the neighborhood fiscally and environmentally and it is definitely self-created.

Mrs. Marchione votes affirmative, the neighborhood is impacted; this is also a substantial request for a variance.

VARIANCE DENIED

MOTION by Mr. Elford to go into executive session to discuss pending litigation, SECONDED by Mr. Marion.

UNANIMOUSLY APPROVED

MOTION by Mr. Elford to return to regular session of the Zoning Board of Appeals meeting, SECONDED by Ms. Pieno.

UNANIMOUSLY APPROVED

MOTION BY Mr. Elford to adjourn the meeting at 8:30 P.M.

MEETING ADJOURNED.

Respectfully submitted,

Lois J. Whitbeck
Village Clerk