

**Zoning Board Meeting
Thursday, May 25, 2017**

Present:

Brent Elford, Chair
Dan Curtis
Harry (Mick) McDonough

Mark Marion
Tom Peterson, Atty.
Sharon Pineo

Attending:

Phyllis Wildberger
Jeff Wildberger
Barbara C. Baker
Katie Cottrell
Josh Cottrell
George Yasenchak
Tonya Yasenchak
Jane Curtis

Dick Theissen
Michael Roets
Peter Sheridan
Nancy Kinkead
Rob Kinkead
Ken Rawley
Denise McDonald

Chairman Elford called the meeting to order at 7:16 p.m.

Public Hearing:

Mr. Elford opened the meeting noting the subject of discussion for this evening was 26 Albany Ave. Public Comment will be heard for this Public Hearing portion of meeting. A courtesy reminder of meeting rules was reviewed citing respect to speakers and applicants.

The Pledge of Allegiance was recited.

Comment period open: Chairman Elford read from a note dated May 25, 2017 submitted by Jane and John Vallelunga. Attached as Exhibit A of this record.

Phyllis Wildberger requested review of the new plans submitted by applicants, Mr. and Mrs. Cottrell. Sharon Pineo provided a copy, requesting the Board allow Mrs. Wildberger time to review the plans and reserve comment at a period later in the meeting. Mr. Elford agreed the plans would be opened for public comment during the end of this meeting.

With no further comments, a motion to close the Public Hearing was made by Mr. Elford; Seconded by Dan Curtis. Public Hearing was closed.

Subject: 26 Albany Avenue Variance Application.

Mr. Elford opened the Zoning Board Meeting of May 25th noting the subject of this meeting is the variance application for 26 Albany Avenue.

Dan Curtis made the motion to approve the minutes as prepared from the September 22, 2016 Ms. Pineo seconded. Minutes unanimously approved.

Mr. Elford addressed Mr. Sheridan as Code Enforcement Officer, requesting as standard process he state the reasons for application denial. Mr. Sheridan noted:

- setbacks
- lot coverage
- lot size

The front setback should be 30' - it is 3'; East side should be 10' - it is 2'; West side should be 10' - it is 10'4"; the rear should be 20' - it encroaches.

Mr. Elford discussed the original footprint and stated the following: Review of Page 102 of September minutes noted an agreement by the applicant to amend or bring back the West side wall to the original footprint. New plan shows coming in 7', the original footprint is 10' 6". The issue and concern remains that wall. Ms. Pineo shares this concern. The agreement made in that meeting was not met. If there are ways that applicant can remedy, it is open for Board discussion.

Rear Overhang and Gutters:

Review of previous minutes; Mr. Elford refers to page 102, line 18-20. There are additional concerns along the rear, which was 1' 1" on the original house, which was reduced to 9.5" with the new house that was built. There continues to be concern around the overhang coming off the back and how far that overhang would be considering the neighboring property. Variances are based on going from the ground to the scaffold; ground level may be 4' back; with a 1' overhang – plans show only 3' back.

Site plans still show an overhang in the rear – the assumption is that this will be changed and the plan was to put gutters around the whole house. Ms. Cottrell stated they are planning on cutting back and changing the orientation of the roof so that we don't have overhanging gutters and drainage going towards that lot. Discussion continued around changing the back of the house – point made that there will still be run-off from the back.

Board reviews plan for the rear elevation. The plan shows placing gutters around the whole house, taking them down to a draining field; however, run-off to the back of the house is still a concern. Mr. Elford asks how close to the property line the house will be at its narrowest point in the rear. Ms. Cottrell indicates plus or minus 1.1'. Cottrell Engineer indicates it would be about 8". Mr. Sheridan indicated from the foundation in the rear to the property line is .7'; so 8.5". Ms. Cottrell notes there are 3 or 4 surveys being looked at regarding those 4" making it difficult to find accuracy. Ms. Pineo discussed the survey the Village had done. Mr. Sheridan stated the Village survey was done in February 2013, and that survey indicates .7'. Historically the Village will look to that survey. Mr. Elford agrees that this will be discussed.

Mr. Elford requests review of discussion and clarification of rear yard. By code it should be 30', right now the requested is 29'4" to bring us within 8". Concern raised is about the overhang from the gutters. Is it 8" before the gutters - or 8" after the gutters. From the basement wall to the property line is 8". Cottrell Engineer notes there will be a little bit of reveal and then the gutters – the edge of the gutter would be 3-4" off the property line. It would not be over the property line.

Porches:

Discussion ensued around porches on the home, both previous and current plan. Ms. Cottrell notes that they are going by the survey of the original house with a 4' x 8' porch on the East side, and then a porch on the West side; there are no survey measurements for that side - by ruler it measures approximately 5' x 11'5". Mr. Curtis questions whether or not the desire is to keep this within the footprint of the old property, including the porch – or not including the porch. Mr. Curtis questions the exterior porch, and whether this is keeping within the footprint of the old property. It was noted that the porch that was there previously had no foundation. It's a debatable point for Board discussion. Reference was made to the September minutes and mention of Southwest porch.

History – Zoning Board:

Reference was made to the vision of the Village when the old Village Board established the setbacks. They lived here, acknowledged the tiny lots and the nature of the Village – and they knew that if a house was to be demolished, that 20, 30 and 10' setbacks would preclude putting another house in place. Another house would not be able to be placed. Part of these setback requirements was to protect the nature of the Village and the safety of the surrounding neighbors. What is in place now can be a fire hazard. The vision was to preserve what we have but to map out something different in the event of replacement. It was firmly stated that the old house was completely torn down, and because this is new construction, the Board is not required to allow new construction to a footprint by law. Mr. Elford acknowledges and agrees.

Mr. Elford expressed his thought that what fits in the Village is a house that is the same size of the house that was there before. Mr. Curtis in agreement. The big issue remains that Western wall. Mr. Curtis notes that a building of that size would fit within the character of the Village, because it would be in fact the same size.

Current Zoning:

Ms. Cottrell stated that within the Village Code there is a Changes In Structure and Use provision, and reads provision Ch. 180.10 to the Board, drawing attention to Ch. 97.2, Dangerous and Unsafe Buildings regarding exterior walls. Ms. Cottrell expresses her belief that the old structure fell within 97.2. Ms. Cottrell continues to note that the Village had discussed tearing down the house before they purchased it, so even though it was a blank empty lot – it may never been approved to build if someone came in to replace that exact house – noting that there is a provision within this Code to 'build and replace'.

Ms. Pineo states that at no time did the Village have an Engineer or Architect go in, nor was there an environmental expert go in and deem that the house was irredeemable. Point made that this is considered new construction.

Atty. Peterson notes that the fact that the structure may have been an unsafe building as defined by Ch. 97 does not mean that it can be "removed and replaced," and that the provision cited in Ch. 180 talks about use, noting that this is not a use issue – it is a setback and area issue. He is therefore of the opinion that neither apply. Atty. Peterson stated that he has researched Codes that address original footprint and cannot find specific reference.

Mr. Curtis comments that it is prudent to consider the characteristics of the application and the specific merits relative to the five tests in front of the Board at this time. He is of the opinion that the proposed house looks like a house in Round Lake. If it were to occupy the same footprint as the previous structure - it would be on the same lot coverage. Ms. Pineo states that this house is in the Village, and in that - it is undesirable, but acknowledges efforts made to conform to the overall appearance of the Village. With regard to the building that was there, Ms. Pineo makes reference to the Village being a National Historic District.

Existing House / Facade:

Mr. Sheridan spoke to the fact that the neighbors in the rear and to the East are looking at blank walls. Reference was made that the plan drawings on the East wall shows windows. Ms. Cottrell notes they went by the NYS Fire Code which dictates how much percentage penetration you may have. Plan alterations were discussed and there will be architectural interest added to deter current appearance. Mr. Sheridan clarifies that if there is less than 3' – no windows, no penetrations. At 5' you can get a census for windows.

Cottrell Engineer disagrees with Mr. Sheridan and notes that they are at 3', not less than 3'. Mr. Sheridan notes that he spoke with the Surveyor who said that the foundation is 3', maybe 2'11"- that it is right there; if you put siding on that building you will be over 3'.

Mr. Curtis comments that this is a matter to be addressed by the Planning Board.

Mr. Elford agrees stating that this Boards primary goal and objective is to look at setbacks, variances and granting relief.

Relief Requested / Five Tests in Review:

Mr. Curtis points out that there is no request for relief for lot coverage. For the purpose of this meeting we are only looking at set-backs and variance; he solicits Board for interpretations to the tests in review.

Mr. Elford:

- The front being a cut back; he would likely grant that part of the front variance.
- The rear does not like this variance, but in reality, the rear overhang cannot extend over the property line.

Discussion about the East side: Ms. Cottrell clarified placement of doors and steps. Regarding East side facing Vallelunga's, Mr. Elford would be willing to grant an 8' relief on a 10' requirement.

Discussion about West side: West side has what appears to be a driveway. Plans show coming in 7'; the old structure was in 10.5' (West Wall). Mr. Curtis stated that in terms of lot coverage then – it is not any more than houses that have been on the previous property. Mr. McDonough expresses his opinion that in keeping with the historic character of the Village, he does not see that this is out of character with the Village.

Discussion about previous builder:

A building permit was issued that should not have been. All agree that this is a unique situation that the Village has not historically had to address. Moving the footprint in is giving the applicants a reasonable home to live in.

Questions rose:

- Do the current drawings satisfy drainage?
- Where are the front stairs going out relative to the property line?
- Are stairs included in overall footprint – or extend beyond?

Agreement – there is no clarity.

There should be a formal written request for lot coverage to grant variance, as well as a provision for a driveway variance. There was agreement that Planning Board will address this.

Discussion ensued around the substantiality of relief requested in comparison to the way other properties are oriented. Is it substantial as a percentage to the total number of feet required? What this addresses is considered a substantial request to the variance requested. The requests amount to 36 % relief of current setbacks.

Drainage: Mr. Curits asks if there has been any study to the environmental impact of this plan. Atty. Peterson – we had been provided a drainage study originally, and did not hear anything negative concerning that report. Mr. Cottrell asks whether that was for the existing house, and whether that study would need to be adjusted to the current request.

Ms. Cottrell spoke regarding the storm management plan after adding the basement noting the one negative was the placement of the basin that goes into the ground got close to the tree line. With the new proposed plan it can be shifted further away to avoid problem. Other negatives were mentioned such as traffic, dust, noise. There was agreement that drainage is the priority concern at this time.

Stairs:

Mr. Sheridan – regarding front stairs; would be about 4” from the street. Does not meet the relief as requested. Ms. Cottrell states there are adjustments that can be made expressing understanding that the home would lose sitting porch area.

Foundation:

Discussion took place regarding foundation, noting there was not a basement/foundation before and there is now. Discussion around what side of neighboring homes (Vallelunga or Wildberger) would be altered.

Basement Egress:

Engineer comments regarding basement egress requirements. Egress options were reviewed.

Other Matters/Concerns:

Ms. Pineo discusses down-sides if Village grants relief . Applicants can turn around and sell home without making any changes, leaving the Village holding issues. Ms. Cottrell notes for the record that they are not planning on selling it, nor do they believe they could sell it and make the money they have put into it at this point.

Atty. Peterson references the International Building Code with regard to a provision which notes that if there is a pending charge of a violation regarding a building –it cannot be sold.

Ms. Pineo recites a duty to perform reference with regard to knowledge of codes, noting the undertaker has a duty to perform to a certain standard. There is a lawful duty to act to perform to a standard. Mr. Curtis requests to see a copy of this law. Atty. Peterson acknowledges that persons legally have a duty to perform; however, we have building inspectors who look at such matters and issue permits after making a professional determination. The law is that this Board, under these circumstances, may take into consideration the fact that the building permit was issued, whether it was found to have been issued illegally, the Board does not “have” to, but the Board “may”. The Board decision does not have to be bound to an erroneously provided building permit.

Ms. Cottrell makes reference to “Estoppel”. Discussion took place acknowledging court involvement regarding this property. Statements made that the court indicated at that time that the applicants were not liable because of the building permit that was issued.

Next Actions:

Atty. Peterson: In the current application we do not have a formal request for relief for a certain area of coverage, and since we are comparing the zoning code with the coverage, and not the old building with the coverage, this needs to be considered. The Board needs to decide whether it is required that this be written and we need to come back – or, whether the Board is going to entertain an oral application to add this to the list of items for which relief is requested.

Mr. Elford summarized next actions, stating the Board would like to see a formal request inclusive of seeing the new house appears as laid out on the Village survey to view the front stairs and how far they will come out.

Mr. McDonough asked the Board to offer the applicants a note of confidence whether the design in place is going to be acceptable to the Board or not before they invest more time.

Public Comment:

Mr. Elford opened the meeting back up to public comment, asking that opinions and emotion be put aside so the Board can consider facts that have not been discussed to this point.

Ms. Wildberger spoke and asked to review the right elevation and whether there was a door or steps, is there a side porch, and will there be digging again. There is concern about where the trees are and that branches are falling now in their yard, and also concerned with high winds and trees coming down. Ms. Cottrell stated that they had discussed taking compromised trees down and replacing them. It was noted that the trees were right on the property line – that there is barb wire through the trees.

Ms. Wildberger stated her issues with the back wall in the current home, noting the pervious home had nice windows. Ms. Cottrell stated that they have discussed what exterior design options they can work with for the façade - shutters, trim, etc. The applicants exterior engineer discussed exterior options. Ms. Wildberger expressed her discontent with coming to these Board Meetings and this has been going on since 2012. We need to do something.

Mr. Sheridan noted his concern of setting precedence with granting relief in this matter, and that future zoning requests seeking the same would be problematic. Atty. Peterson stated he does not

share this concern, acknowledging this an unusual situation, and refers to the mention of precedent as Estoppel. Estoppel is a theory that does not apply to local government.

Mr. Elford references Zoning Board Decision Making in a legal case, reading “*if an agency can provide rational explanations supported by objective factual basis, it may reach a different result on essentially the same facts*”.

Mr. Elford asks for any further comments.

Richard Theissen spoke, referring to the letter of May 3rd regarding setbacks. Mr. Theissen referred to the earlier discussions about a person’s knowledge of the builder/contractor business. He noted his personal attempt to bid on 26 Albany Ave. years before with plans to restore the building, but cost was beyond what he was willing to pay. When the house was demolished, the buyer, who worked for Shultz Construction, had clear knowledge of the business. He reviewed what occurred during the demolishing of this home – which was clearly not a restoration – not a renovation, but a new build. Mr. Theissen noted his discontent with hearing the banter at this meeting about setbacks. This is a new build – a big house – and well over the original footprint. Mr. Theissen noted his years spent on the Zoning Board when relief requests were appropriately reviewed using zoning, setback, and occupied space rules as guidelines for decision making. It is Mr. Theissen’s opinion that this new build has violated every single setback, calling this an embarrassment, noting the disregard to the setbacks being considered. The bottom line is that the person knew what they were doing from day 1, and they are not being honest. He further noted that the applicant has a responsibility to everybody around them and the right thing should be done.

Mr. Sheridan noted that there was no site plan presented at the time of the new build. He further noted that residents began calling noting there was something wrong. Michael Roets spoke, referring to the demolition and his call to previous Zoning Officer Mr. Gizzi, with Mr. Gizzi stating that a new house will be built on the exact footprint. Mr. Roets noted his discontent as he watched the house being built – but not on the original footprint.

Ms. Cottrell commented that a survey was done on the property in 2012 and indicated that in November of 2012 a copy of the survey, the plans and a picture of the house to Mr. Gizzi and Mayor Sacks, noting they did have measurements and knew what was going in. Ms. Cottrell noted that appropriate permits were obtained; demolition permit and building permit. She commented on the Dec. 18th letter from the Vallelunga’s received at the Village, and that Mr. Gizzi came to do the footer on Dec. 19th and never mentioned the letter. Four inspections followed. Ms. Cottrell reviewed a chronology of events.

Ms. Wildberger mentioned Mr. Gizzi and discussions she had with him about footers, and she was told to “shut up,” that she didn’t know what she was talking about. Ms. Wildberger asks how much longer will this go on.

Ms. Pineo mentions that before the Zoning Board can make a decision, further documentation is requested from the applicants to clarify unanswered concerns. Then applicants have to go before the Planning Board to get approval of overall aesthetics of the house. Ms. Pineo states that the Board is attempting to find a balance – it is either tear it down – or to grant mercy, that these meeting have now become mercy hearings. Mark Marion speaks up noting his difficulty

understanding the obligation and notes that the Board would not have let this house be built and asks why the house is being allowed to stay. Atty. Peterson acknowledges that the Board is currently engaged in deliberating as a Board, and that the subject should continue to be deliberated by the Board.

Mr. McDonough again asks for consideration to give the applicants some indication of direction of this Board. Mr. Elford notes that the current design is much more in line with original footprint, and closer to passing the tests for relief. Mr. Elford states that it is the duty of this Board to evaluate to what degree, if any, the Board will grant relief requested. Decisions are made on a case-to-case basis, and should not be considered as setting precedent.

Ms. Pineo discusses balance and notes that within the NYS Law, consideration must be given to the burden upon the applicant and where they find themselves, and what relief can or might be granted.

Foundation and maintenance was again discussed and the potential harm to abutting properties. Damage appears to be done – the Board has an obligation to take what is before them and make a decision. Ms. Pineo offers possible solution and asks that we have the Village Engineer look at current plans and offer best options. Discussion continued with regard to second opinion of Village Engineer to determine best direction.

Mr. Theissen speaks to three concerns:

- 1) May 3rd Notification is it tabled – Mr. Peterson - Yes
- 2) What is the status of the court cases? – Mr. Peterson – there are two court cases – the Supreme Court case has a conference scheduled for May 26th with Judge Nolan. Cooper & Savage represent the applicants. The other action questions whether the walls on three sides of the existing building are properly set because they are on the same location of the old walls. The town court found that because they are in the same location – that there is no setback violation, noting his belief this is incorrect because Village Law has to provide that you can build on an old footprint or portions of an old footprint – and we do not have that in our Local Law. We have appealed this in County Court and we are waiting for a decision.
- 3) Addressing Mr. Curtis and Mr. McDonough – while he appreciates their input, he does not think they should be voting on these items because they are not Engineers, and they appear to be fostering moving forward and giving whatever is wanted without any idea what the impact this relief has on the neighbors. Noting his personal respect for both, he is surprised at the direction prior to coming up with a common vote of the Board.

Mr. McDonough responded with his thoughts on being fair and reasonable. He acknowledges that it is the Board's obligation to consider the impact on all parties involved including neighbors, and acknowledges that they are not Engineers.

Ms. Cottrell stated that they did not make the decision to move forward with building and buying out their former partner without knowledge of the work that needed to be done and without consideration of all involved. Their goal was to make best decisions for themselves, neighbors, and all involved. Ms. Cottrell noted that they did not want to walk away and leave the house as it was and leave someone else to deal with the issues – they did call on their moral compass –

weighing financial hardships and outcomes whether negative or positive. Ms. Cottrell notes she previously met with Dixie and Peter to review plans that were going to be presented, and was not met with objection.

Summation:

Mr. Elford reiterated what was requested from the applicants before moving forward:

- Plan for stairs coming out the front
- Lot coverage variance request
- Drainage plan sketch showing where it is situated
- Plan of the size of the home superimposed on the Village survey for a one-to-one view
- Applicant's Engineer report sent to Village Engineer

Atty. Peterson stated that he needs to examine where the Village Engineer's expense for this review is going to be covered.

Further discussion about basement walls, egress walls and having the Village Engineer consider a feasibility study offering a second opinion on modification/movement of walls that are too close to neighboring property.

Atty. Peterson requested clarification on whether or not we are agreeing to engage the Village Engineer for review and second opinion of applicants plans. No decision on engaging engineer was reached at this time.

Mr. Sheridan spoke to the potential problems with foundation and earth disturbances when renovations needed to modify the existing house and remove trusses would necessitate bringing in cranes and large equipment to do the work.

In review, Mr. Elford provided a final summation of requests made to the applicants:

- The stairs coming out the front
- Lot coverage variance
- Drainage plan sketch showing where it is situated
- Home layout superimposed on the Village survey for a one-to-one view

In response to Mr. Sheridan's concerns, Mr. Elford asked about plans for removing trusses and further construction work. Mr. Curtis stated that this is not an issue for the Zoning Board that this Board does not have anything to do with site plan; Mr. Sheridan spoke up noting that this Board does have to approve site plans before approval can be granted to move forward, and that this cannot be passed off to the Planning Board. Mr. Curtis responded noting that it is not one of the five legal tests that the Zoning Board has to consider.

Discussion ensued around the five legal definitions that the Zoning Board is obligated to review and that how construction is going to occur is not within this Boards obligation. Ms. Cottrell noted that they have spoken with the Wildberger's about pending construction work with their agreement of expectations. She further noted they do have a plan for how the work will be done, and that they have room on one side of the house for the beginning of dismantling the house, and

storage for building materials. Storm water management would be done after construction. There is order of operations for how construction would roll out.

Mr. Elford brought discussions to a close with formal notice of next Zoning Board meeting to be on June 22, 2017, thereby ending this evening's discussion at 9:58 p.m. The subject remains open with further review to be continued on June 22nd.

Respectfully submitted,
Robyn A. Shaffer
Treasurer, Village of Round Lake