

**Zoning Board Meeting  
Thursday, June 22, 2017**

**Present:**

Brent Elford, Chair  
Dan Curtis  
Harry (Mick) McDonough

Mark Marion  
Tom Peterson, Atty.  
Sharon Pineo

**Attending:**

Katie Cottrell  
Josh Cottrell  
Kim Berry  
Gary Putman  
Steve Coryer  
Rachel Zielger-Sheridan  
Terry Conrad  
Dick Theissen  
George Yasenchak  
Michael Roets  
Mue Ziegler  
Matt Coisna

Kim Sheridan-Dugmore  
Bob Sweet  
Paul Block  
Lois Frederikson  
Phyllis Wildberger  
Jeff Wildberger  
Florence Cruz  
Ken Rawley  
Marybeth Max  
Denise McDonald  
Matt Coldrick

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Chairman Elford called the meeting to order at 7:02 p.m.

Mr. Elford opened the meeting noting this as a continuation of the May 25<sup>th</sup> Zoning Board Meeting regarding 26 Albany Avenue.

The Pledge of Allegiance was recited.

**Subject: 26 Albany Avenue Variance Application (continued)**

Mr. Elford recited the rules for the Board voting decisions indicating each Board Member would have two (2) minutes to state their decision and rationale for that decision. Mr. Elford acknowledged that the expected action items from prior May 25<sup>th</sup> meeting were received from the Cottrell's.

May 25 2017 Zoning Board Minutes were discussed with two changes reviewed and noted. Mr. Curtis brought the motion to approve the May 25th minutes, with changes discussed. Seconded by Mr. Elford. Unanimously approved.

Discussion ensued with regard to the property setbacks and variance forgiveness requested. Mr. Curtis requested review of the variances to ensure accurate information was presented for decision making at this time, stating that the Department of State encourages a Zoning Board of Appeals (ZBA) to go for the minimum variance necessary.

Mr. Peterson clarified that the applicants do not need to alter their request; however, if the Board grants relief different from what was requested, the applicants can withdraw. The Board can exercise judgement based on whatever type of relief is most appropriate given the facts and overall needs of the applicant and the community. The Board is not bound to record a new request at this time.

Mr. Curtis noted that in preparation for a decision, the Board will consider the five (5) balance test considered by the ZBA, with each voting member weighing them accordingly in making subjective decisions, and whether the legalese they do use, agrees with the State Law which requires the application to show that the benefit the applicants stand to receive with the variance will outweigh any burden to the health, safety and welfare that may be suffered by the community.

Discussion ensued regarding relief requested for the side yard East. It was concluded that the variances requested are both under three (3) feet, and that no penetrations would be allowed. Board members discussed the relevance of this information and noted this has been already reviewed by this Board and furtherance of discussion belongs with the Planning Board. Ms. Pineo points out that it has been this Board's pervue to determine adverse environmental effects, and detriments to nearby properties. Further discussion continued regarding windows.

Ms. Pineo opened review of the recommendations cited in the Village Comprehensive Plan and read from this Plan. The question was raised if any of these recommendation have been codified in the Village Law. Mr. Peterson indicates that he does not find that the Zoning Code was amended to include the provisions recommended in the Comprehensive Plan. Ms. Pineo rebutted this response noting that Round Lake is not a typical Village with it's physical layout comprised of small lots and campground atmosphere; therefore, the Board should not be straight-jacketed to consideration of only the 5 points of the area variance criteria. Mr. Sheridan also spoke on the Comprehensive Plan and stated that this is what the Village voted on, and that the Planning Board uses this Plan and that this is the law of the Village. This is what is used and was approved by the Village Board back 10-15 years ago and is part of what the Village uses in decision making about the Village.

The applicant's Engineer discussed the survey stating that they took the survey that was given to them by the Surveyor, which has the house as it stands now. Looking at the Plot plan that was submitted, the left rear corner is at three (3) feet. The house is not parallel. He noted that the front of the right corner, after adding sheathing and siding and moving the window to the far front as possible, every window is 3 feet from the property line.

Mr. Sheridan responds that if any portion of the wall is at 3 feet from the property line, the whole wall is affected, as stipulated in the Code. Ms. Pineo discussed her conversation with the Dept. of State, and that it noted if any portion of a wall is less than 3 feet from the property line, the entire wall needs special consideration for fire safety/rating reasons.

The issue with the wall was acknowledged among Board Members who noted that any further engineering detail discussion is a matter for the Planning Board as it is clearly not related to the dimensional alterations of the lot.

Discussion ensued with regard to State Code and the level of discussion being reviewed, acknowledging differing interpretation of the Code. Mr. Curtis suggested that before making a final decision, there would be benefit to seeing a written legal interpretation of the Code from either Village Attorney/ Engineer that clarifies - whether or not - if a segment of a wall comes under 3 feet from the property line– the whole wall is outside of code.

Mr. Elford reviewed what is there versus what was there and concludes that the Village would be/is facing a fifty percent (50%) redo and therefore the wall is considered a new build. With a new build comes new Fire Code, and new variance requests. Either scenario presents a house different from the original house. Mr. Sheridan points out it is new construction. Ms. Pineo read pertinent information from the Comprehensive Plan.

### **ZBA CODE 180-22 (D)**

Board reviewed and discussed Section 180-22(D) of the Code which notes that the ZBA can only reduce the size of a lot by twenty-five percent (25%). Atty. Peterson reviewed and commented on the provision noting “...*provided however, that no rear yard shall be less than 15 feet in depth*”, which then seems to prevent what is before the Board at this time. Atty. Peterson further notes his researched based understanding of the law that “*no town or Village or City can take away from the ZBA its statutory authority to vary the Zoning Code.*” Based on this research and interpretation, Atty. Peterson stated that he does not believe this provision of the Village Code prevents the ZBA from granting relief to this or any other section of the Zoning Law.

Atty. Peterson clarifies that the ZBA, where applicable, is a legislative body that rewrites the Zoning Code for a particular parcel of land.

Discussion ensued with regard to May 3<sup>rd</sup> letter with a request directed to the applicants to state that set-backs requested are still the same. Ms. Cottrell verified current setback requests are as follows:

Front:	3 feet, 2 inches is the closest (with 8” overhang)
Side Yard East:	2 feet, 2 inches
Rear Yard:	3 ¾” (with gutter)

### **Area Variance Requests:**

Standard lot coverage requirement is 20%  
Current requested lot coverage is 57.14%  
Original lot coverage was 52.8%

Ms. Cottrell noted, if porches on the original house were counted - it would have been 56% coverage, then restated that current plan is 57.14% coverage.

### **DRAINAGE**

Discussion ensued regarding gutters and resulting water flow on back side of house. Ms. Cottrell stated water will flow into storm water drain ditches to underground from the East side, around

the front, and catch gutter flow. Another option would be a sump pump. Again noted that further discussion was for the Planning Board.

Question raised on how work will be done without trespassing on neighboring lots. It was noted there is four feet to the lot line. Ms. Cottrell stated that the steps are tucked into the porch so that the bottom step is still within the porch area before stepping on the ground.

Discussion continued with regard to drainage and how/if it will affect neighboring properties.

### **TREES/LANDSCAPING**

Ms. Cottrell noted that they are in agreement with Wildberger's with regard to trees that are jeopardized, and probable replacement landscaping. Cottrells do not believe work will involve going on the Vallelunga property.

### **EQUIPMENT**

Question raised whether or not a Crane would be needed; Cottrells stated that use of a crane is to be determined; alternative options were discussed.

### **WEST WALL OF PROPERTY**

The applicants are bringing the West wall back significantly.

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Mr. Elford introduced a descriptive analysis he completed in an effort to better interpret the zoning balance test for this Boards decision process. The analysis included a sample of 47 like properties within the Village to draw comparisons and fit for the Village. Analysis findings and current percentages of relief requested were discussed. Ms. Pineo rebutted the relevance of this descriptive analysis.

### **PUBLIC COMMENT PERIOD**

Mr. Elford opened the Floor for comment.

Mr. Sheridan restated that 26 Albany Avenue is new construction and cannot be compared to other houses in the Village. There is a Code in the Village for setbacks and new construction. 180-22 is giving values to the Zoning Board and relief that can be granted.

Mr. Elford addressed attendees with regard to rules of Public Comment and the 2 minute rule.

Kim Berry addressed the Board and reviewed her letter presented to the ZBA prior to this June 22<sup>nd</sup> meeting (attached). Ms. Berry noted that there is no appearance of change from prior meetings as mentioned in her letter.

Other community members that offered comment: Mr. Sweet, Mr. Rawley, Mr. Coldrick, Mr. Theissen, Mr. Roets, Mr. Putman, and Mrs. Wildberger.

## VOTING / MOTIONS

Mr. Elford explained the voting process and addressed Board Members requesting each member state their Yes or No decision followed with reference to the 5 point balance test to provide rationale for their decision for relief requested.

It was determined that the Board will be voting and making a decision on collective relief requested as opposed to individual Yes or No votes on each separate issue. Atty. Peterson recommended that as the Board has already addressed issues individually and therefore this should be a conclusive vote for approval or disapproval.

Mr. Curtis makes a motion to approve the minimum necessary setbacks to achieve the plot plan that has been submitted as well as a motion to allow for the minimum necessary lot coverage to, which appears to be 57.4 percent. If it can be less than 1' 10" than it should be.

In furtherance of this motion, if approval is granted, applicants must submit complete site-plan application within sixty (60) days (e.g. submit application first opportunity, but provide any additional documents necessary to have a complete application within the sixty day period). If not, variance lapses.

Upon receipt of site-plan approval, work must commence within thirty (30) days and continue until complete, with no more than ten (10) days off-site at a time. If CEO (Mr. Sheridan) deems work abandoned, variance lapses.

If at any time the CEO determines that the work is materially inconsistent with variance or site-plan, give written notice and, if not cured within ten days, variance lapses.

Mr. Elford seconds this motion.

Discussion ensued with regard to prior concerns – Mr. Sheridan requests variances be expressed in exact figures.

Atty. Peterson made recommendation that language in establishing variances include “minimum necessary, but in no event greater than...”. All in agreement.

Front Yard: Minimum necessary, or no greater than 3' 2" (three feet, two inches)

Side Yard: Minimum necessary, or no greater 2' 4" (two feet, four inches)

Rear Yard: Minimum necessary, or not greater than 3<sup>3</sup>/<sub>4</sub>" (three and three quarter inches)

Mr. Sheridan, on behalf of Planning Board, agrees language is sufficient.

## DECISIONS

### Balance Test Criteria

Village Law § 7-712-b(3) provides in relevant part: “In making its determination the zoning board of appeals (ZBA) shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

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;
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;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district; and
5. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision for the board of appeals, but shall not necessarily preclude the granting of the area variance.

As with the use variance, the ZBA must “grant the minimum necessary variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.”

After carefully examining the zoning balance test criteria, the Board Members voted as follows:

| Board Member    | Vote | Consideration                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sharon Pineo    | No   | <p>#1. <i>“there are detriments – there are safety issues; detriment to character - it’s a plastic house. This is a historic village. This is of undesirable character and a detriment to nearby properties.”</i></p> <p>#2. <i>probably not</i></p> <p>#3. <i>The request is substantial; it’s more than 100% of the distance allowed; its more than double the coverage.</i></p> <p>#4. <i>This is repetitive to #1. historical character is the essence of this Village.</i></p> <p>#5. <i>Read from the Comprehensive Plan: Yes this was self-created because the partnership signing the agreement said they would comply with all zoning. There is a duty for a contractor to perform to a certain level and to know zoning; as such the builder was not entitled to go forward with an invalid permit.</i></p> |
| Harry McDonough | Yes  | <p>#1. <i>The current structure is undesirable, however, with the changes proposed the structure will more appreciably reflect the size and Victorian nature of the Village; the footprint will be reduced close to what it had been. This is at a considerable expense to the applicant.</i></p> <p>#2. <i>Realistically nothing short of taking down this home –</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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|              |     | <p><i>will make it better meet the setbacks; the proposed plan is the best that can be done.</i></p> <p><i>#3. It is substantial but there are competing considerations to be discussed within #5.</i></p> <p><i>#4. They have addressed concerns with proposed changes to size, roof lines, drainage systems, storm water, and partial deconstruction of property. Collaborating with neighbors is important.</i></p> <p><i>#5. The property owners were given a permit and commenced with the building. The fact is that this permit was deemed invalid, however, it was not identified as such until the house was almost fully constructed. The fact that it was built without forceful and early intervention by Round Lake officials is a large part of this equation and must be strongly considered. I believe approval of this variance is the right decision.</i></p>                                                                                                                                                                                                                                    |
| Dan Curtis   | Yes | <p><i>#1. It is not whether or not we like the project – it is whether or not the dimensional alterations being proposed represent a material change from what is going on in the neighborhood. Review of the research analysis done by Mr. Elford will show the dimensional changes proposed are not a significant change from what already takes place in the Village.</i></p> <p><i>#2. There is no way to build a structure on this property without change – it has negative space – it is impossible to achieve anything on this property without some variance.</i></p> <p><i>#3. As noted by the Dept. of State, it is difficult to quantify substantiality. Request is substantial.</i></p> <p><i>#4. It was agreed upon at the last meeting that these issues have been mitigated, and I do not see significant environmental issues that we can take into account here.</i></p> <p><i>#5. Agree with the fact that this project began with invalid issue of a permit. The applicant does face some culpability; however, to make a decision on balance of these 5 tests, the right vote is Yes.</i></p> |
| Mark Marion  | No  | <p><i>#1. Not in favor of the variance.</i></p> <p><i>#2. Benefit cannot be achieved by feasible means.</i></p> <p><i>#3. Setbacks requested are too much –more than substantial, it is extreme.</i></p> <p><i>#4. The rear of the home is on the property line. Nothing can be done to this property without going onto neighboring properties. As new construction I would not want this property abutting property lines.</i></p> <p><i>#5. These are investors, and they are risk in investments and things did not go well for them. Applicants let prior partner off the hook which makes this more of a self-created difficulty. This should be on him.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Brent Elford | Yes | <p><i>#1. Considering the analysis done on home comparison,</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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|  | <p><i>the proposal carries a design that fits within the Village.</i></p> <p><i>#2. It is negative space; ZBA consideration had to happen one way or another; how it is designed and moved forward is the deciding piece.</i></p> <p><i>#3. The requests are substantial because they need to be substantial.</i></p> <p><i>#4. Issue has been exhausted. What has been put in place for storm water, will collect it.</i></p> <p><i>#5. The initial idea of coming to the ZBA indicates that you yourself created a change – that’s why you are asking for a variance. You want this to happen.</i></p> |
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VOTE RESULTS:

3 Votes      YES  
2 Votes      NO

Variance Request APPROVED

Mr. Curtis made a motion to adjourn the meeting; seconded by Mr. Elford.  
Meeting was adjourned at 9:04 pm.

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