

ZONING BOARD OF APPEALS MEETING HELD FEBRUARY 21, 2013

PRESENT: Kevin Cronin, Chair Sharon Lloyd
Mark Marion Michael N'Dolo
Sharyn Marchione

Also Present: Dixie Lee Sacks Sheldon Hoffman
Dave Blair Peter Loyola
Sharon Walsh Phyllis Wildberger
Adam Hover Jackie Morrell
Peter Sheridan Laura Hartnett
Diana Marchand Tony Bourassa
Jim Finkle Mary Jo Lanahan
Jeff Wildberger

The meeting was called to order at 7:10 P.M.

Appeal # 2013-01: Phyllis Wildberger 15 Lake Avenue and Sharon Walsh, 13 Lake Avenue, Round Lake for an appeal of a building permit issued to Dave Blair for the construction of a single family house on 26 Albany Avenue.

The Village Clerk read the notice of the Zoning Board of Appeals that was published in the Dailey Gazette, said notice was posted in the hallways of the Municipal Building and the neighbors were mailed notices of the meeting.

Mr. Cronin stated that with all his experience with both the Town and Village Zoning Boards, he has never had an appeal like this. The Board will hear from the applicant then the homeowner followed by public comment.

Phyllis Wildberger, 15 Lake Avenue has several concerns about the new house that was constructed on a neighboring property, 26 Albany Avenue. These issues are:

- Mrs. Wildberger was told that the new house was to be built in the footprint of the original footprint. The new house is not in the original footprint, the old house did have a garage. The new building is in excess of the previously structure.
- The eaves on the new house are over her roof/property. You can see where the water runs off the new house onto her roof/property. She is concerned about the foundation on the rear of her house.
- Mrs. Wildberger has asked about the fire rated siding on the rear and west wall of the new house. She cannot get an answer as to requirement of the fire rating on the house. This house is approximately 5 or 6 feet from her house.
- There is a problem with storm water runoff the property. The sump pump drains onto Albany Avenue down onto her property at the corner of Lake Avenue and Albany Avenue.

Mr. N'Dolo asked for clarification of what Mrs. Wildberger and Ms. Walsh is appealing on the building permit. Is the permit to be amended or revoked, what they are asking.

Mr. Cronin commented that it's unclear what the zoning Board can do. The applicants are clearly the aggrieved party but it's unclear what they are trying to do. Mr. Cronin stated that he can't find any case law for something like this.

Mrs. Wildberger again stated that her eaves are over her roof. She has several concerns about her property.

Mr. Cronin commented that he understands her concerns.

Ms. Walsh lives at 13 Lake Avenue; she also has several concerns about the new house on Albany Avenue.

- It is definitely not in the same footprint as the previous house. There was never a garage on the property; therefore it is out of the original footprint.
- The house is in violation of front and side setbacks.
- They are in violation of fire rated siding required on the rear and side of the building.
- This should have gone through all the Boards for approval.

Mrs. Marchione ask how it did not go before any of the Boards.

Mr. Cronin replied that it should have come to the Zoning Board but the Code

Enforcement Officer approved that plans.

Mr. N'Dolo commented that they have his sympathy, but what can the Zoning Board do about this?

Ms. Walsh commented that this house is so far out of compliance and out of character in the village. She is also concerned that this house will create a precedent in the Village. The Village needs to start over, look at the zoning, so something like this doesn't happen again.

Mrs. Wildberger stated that she spoke with Mr. Gizzi, CEO on two separate times about the footprint and asking about the property markers. Her brother was with her when she spoke with the CEO; she was brushed aside when she questioned the footprint. She has lived her life, she is concerned about her house.

Mr. Cronin spoke with Bob Gizzi, there was a stamped survey. Dave Blair has a survey done prior to the demolition of the old house.

Ms. Walsh commented that part of the question is the building permit in violation of NY State and Village codes. She believes that it is.

The Zoning Board of Appeals members reviewed the survey of the original house and compared it to a survey of the current house.

Dave Blair stated that he has 4 feet of property on the east side of the house and he meets the 10 foot side setback on the west side of the property. Bob Gizzi and Mayor Sacks told him that if he stayed in the same footprint, he would be okay.

Mr. Cronin stated that the back wall was 25.8 feet with an additional open porch on the side for a total of 34 feet on the rear wall. There clearly was no structure on the west side that came all the way to the front of the house. There was a porch on the east side of the building that was not included in the plans for the new house. He looked carefully at the survey and spoke with NY State Codes. The structure that was built exceeds the footprint.

Mr. Cronin commented that the drainage is certainly a concern. There is now a sump pump in the basement that drains where? The large roof which extends over the property line will drain snow and water onto the neighbor's property. There is now a large foundation under the house which will act as a dam, creating more drainage problems.

Ms. Lloyd stated that if it in fact is making the water drainage an issue this needs to be addressed. Would this have been addressed by the Zoning Board if the application had been sent for a variance?

Mr. Cronin replied that he is not sure but certainly by the Planning Board for site plan review.

Mrs. Wildberger asked what distance between her house and the new house is.

Mr. Cronin replied that the angle in the back wall seems a lot closer, approximately 1 foot to the

property line but the eaves of the roof overhangs onto her property. The front porch on the original porch was 10-12 feet from the front property line, now the new house has a large wall there.

Ms. Lloyd asked what the square footage is of the new house.

Mr. Blair replied that the square footage for the new construction is 1326.25 square feet; the old house was 1084 square feet.

Mr. N'Dolo asked for an explanation why the building permit was issued as it was.

Mr. Blair stated that he purchased the property as the County tax auction. There was no foundation, the roof leaked, there were mold issues, and the house was not in good condition. On November 2, he had a survey done of the property. He then submitted drawing to Bob Gizzi for his approval. Mr. Blair stated that he relied on information given to him. He is willing to work with the neighbors on the issues they have on the house.

Peter Loyola introduced himself to the Board; he is a Landscape Architecture, Engineering & Planning, and P.C., who will work with Dave on water runoff. There was discussion about the installation of a French drain, water from the sump pump in the basement and the impervious services on the property.

Ms. Lloyd asked how many trees were cut down.

Mr. Blair replied that one tree was removed the other trees were trimmed.

Ms. Lloyd commented that the Board was told there is 4 feet between the houses, and then we are told there is 5 feet between the houses. What is the requirement for fire rated siding according to the NY State Code. Can the village get this regulation in writing?

Mr. Gizzi stated that he can get the NY State Code in writing.

Mr. N'Dolo stated that the Village can't give relief on a NY State Fire code.

Ms. Lloyd stated that we have two big issues, runoff and drainage.

Mrs. Wildberger asked about the roof overhang onto her property. She is concerned that all the extra water will damage her foundation.

Ms. Walsh commented that everyone agrees that the house is over the footprint, just look at the house.

Mr. Cronin asks what type of mitigation they want. They need to define what they want done.

Ms. Walsh replied that they want all the things that would have been addressed by the Zoning Board of Appeals and the Planning Board. The fire codes, the overlapping roof lines, the building outside the footprint and drainage to name just a few issues.

Mr. Gizzi commented that the old roof line is not different from the new house. the rear line of the house was built where the old wall was.

Mrs. Wildberger replied but the new roof is a lot higher than the old roof. How can it be the same when he moved the house over the small side porch was on the west side of the house?

Mr. Cronin stated that after speaking with the Village Attorney, the Zoning board can strike or deny the building permit.

Sheldon Hoffman commented that this has open issues that the village Board, Planning board and Zoning board need to address. There is concern that this could set a precedent in the Village.

Some good points that were brought up are fire codes, drainage and water runoff.

Laura Harnett ask why nothing was done before the house was 88% done. How is anyone going to get into the garage, where are the steps on the front porch going to go, in the street? There are a lot of basic common sense issues that need to be addressed.

Mary Jo Lanahan stated that she watch the house being constructed. She told the Code Enforcement Officer that the house was out of the footprint. Nothing was done about it. She had taken care of the lawn for the former owner; she is familiar with the property.

Peter Sheridan commented that the house overhangs the garage into the street. How is the DPW going to plow the streets?

Heidi Parker commented that the house is completely out of character in the Village. It looks awful.

Mr. Blair that there will be a walk from the rear entrance to the house, then alongside the house to the front porch.

Mayor Sacks stated that starting in March, the village Board will be reviewing the Village Zoning laws and revising the laws so that something like this does not happen again. This situation is out of control. The village is very concerned about the drainage, the front steps cannot be in the Village Street.

Ms. Lloyd asked if the ZBA strikes the permit subject to review, we would need a drainage plan which would have to be reviewed by an independent party. What about the cantilever on the front of the house and the fact that it is not in the original footprint.

Mr. Gizzi stated that he made a mistake with this house, maybe it probably should have gone to the Zoning Board. From now on everybody who comes to the Village for a permit will not have to go to Zoning. If someone wants to build they are going to have a survey. Almost every house in the village is on someone else's property. There should be a survey for this complaint since she is complaining about the overhang.

Mr. N'Dolo suggested that a resolution of the problem would be to allow the parties to discuss

what solutions could be made, including the drainage issues.

Ms. Lloyd commented that there are other options. The board would adjourn without action or strike the building permit. The Zoning Board of Appeals has 62 days to make a decision.

Mr. Gizzi commented that he would like to see them resolve the issues prior to the issuance of a Certificate of Occupancy.

There was discussion concerning the issuance of a stop work order. The CEO can issue a stop work order but the Zoning Board of Appeals can't order the CEO to issue the document.

Mr. Cronin stated that he believed that Dave Blair constructed the house all in good faith.

Mr. Peterson suggested that Mr. Loyola put together a drainage report and drainage solution and work with the CEO to investigate the fire rating for the siding. Is Mr. Blair agreeable to this and is he willing to pay for the Village Engineer to review the drainage plan?

Mr. Blair agrees.

Ms. Lloyd commented that it is the Code Enforcement Officer duty to know the NY State fire codes, local building codes and storm water management.

It was again suggested that the neighbors, the Code Enforcement Officer and Mr. Blair meet to walk around the building and discuss the outstanding issues. The neighbors feel rail roaded, they want to be considered and have their concerns addressed.

MOTION by Ms. Lloyd to adjourn the meeting, there was no second to the motion.

MOTION NOT APPROVED

MOTION by Mr. N'Dolo to request that the developer follow up with a meeting of the neighbors to walk around the house provide a solution to issues that have been identified such as fire code rated sheathing, storm drain, heating exhaust SECOND by Mrs. Marchione.

Ms. Lloyd – aye

Mr. Marion – aye

Mr. N'Dolo – aye

Mrs. Marchione – aye

Mr. Cronin – nay

MOTION APPROVED

APPROVAL OF MINUTES

MOTION by Mrs. Marchione to approve the minutes of the September 6, 2012 Zoning Board of Appeals meeting as corrected, SECONDED by Ms. Lloyd.

Ms. Lloyd – aye

Mr. Marion – abstain

Mr. N’Dolo - abstain

Mrs. Marchione – aye

Mr. Cronin – aye

MOTION APPROVED

MOTION by Mr. N’Dolo to adjourn the Zoning Board of Appeals meeting at 9:45 P.M., SECONDED by Ms. Lloyd.

MEETING ADJOURNED

Respectfully submitted,

Lois J. Whitbeck

Village Clerk