

## ZONING BOARD OF APPEALS MEETING JUNE 24, 2015

**PRESENT:** Chairman Brent Elford  
Mark Marion  
Sharyn Marchione

Sharon Pineo  
Michael Allen

**ALSO PRESENT:** Kate Cottrell  
Mayor Dixie Lee Sacks  
CEO Peter Sheridan  
Phyllis Wildberger  
Jeff Wildberger  
Danielle Rigney  
Mue Ziegler  
Debbie Rice  
Rachel Ziegler-Sheridan  
Kim Sheridan-Dugmore  
Lindy Guttman  
Jon Cullinan  
Michael Roets

Josh Cottrell  
Attorney Thomas Peterson  
Richard Theissen  
Barbara Baker  
Diane Marchand  
Scott Rigney  
Mary Jo Lanahan  
Terry Conrad  
Ken Rawley  
Nancy Theissen  
Bob Stromberg  
Maggie McDonough

Chairman Elford called the meeting to order at 7:00 P.M.

The pledge of allegiance was recited.

### **APPEAL 2015-1:**

Kate Cottrell states they have put together a new site plan based on the discussions from the last meeting. Initial comments address 'big grey wall', pergola roof having decorative impact, parking area size, dry well going along house. Katie Cottrell shows the original footprint and new footprint overlays on projector. Discussion continued regarding the porch and how it is more open than original and has more square footage. See attached drawings.

Additional discussion of changes:

- Back of the house has fire rated sides
- Remove door from east to west side
- Fireplace moved to corner
- no exhaust on neighbor's side
- Flat surface of house vs. small bump out
- Two back windows need to be removed

Sharon Pineo mentions the small porch on the west side of the house – enclosed porch with small concrete steps that were not part of the original house and should not be included in stated footprint.

Brent Elford states based on no additional space being removed from west side  
Kate Cottrell states it will be a covered porch taking encroachment from front of house and adding to west side. There are several items that make the house look bigger.

Sharyn Marchione asks what is the actual square footage of the house.  
Kate Cottrell replies .04 acres, 48" x 40" lot and other square footages.

Sharon Marchione states that the foundation should be moving back with the rest of the house. Foundation in front porch and garage moved back.

Mike Marion states that he's worried it would fill with water and mud.

Kate Cottrell states it would take precaution to make this work.

Josh Cottrell states would have to be worked out. Further discussion continued regarding the foundation.

Peter Sheridan states the proposed rear porch is part of the footprint. When calculating the original porch vs new porch. It would still be part of the foundation.

Sharon Pineo states that should the foundation remain at its present size anyone could add an addition up on that foundation.

Brent Elford states the living space has changed but not the mass of the structure. Still concerned over the size of house, still concerned about what you are seeking for footage. Fitting into the Village, the closer the house comes to the original footprint the "happier" he becomes.

Sharyn Marchione asks if we have ever gotten to the point of maintenance for the rear of the house.

Kate Cottrell states that the neighbors to the east and the west would not allow them on their property. Tried to meet with them but issues such as liability became a sticking point. Kate Cottrell stated she can get a court order to do maintenance on their building so if we fall we would be liable – all liability falls on us.

Sharyn Marchione stated that we don't want to have someone coming into a new home where they would need to get a legal document to perform maintenance on their house is not favorable.

Brent Elford states that we have had this discussion and it was not received well.

Kate Cottrell states that the Vallelunga side is no longer impacted. On their property, the Wildberger side the property, 2.5 feet on back wall just slightly more than the original house. Kate Cottrell states that they took a rotted, dilapidated house and replaced it with a new clean modern house.

Sharon Pineo stated to Kate Cottrell that you refer to a dilapidated old house. There are people in this room who grew up in that house. The woman who owned that house was well loved in this Village. That house was one of the houses that was on the National Historic Registry of our Village. It has been stated before that you were not aggressive in building this house. I say that you were aggressive. Condemning and taking down one of our historic homes

without an opinion from an environmental or structural engineer, was aggressive. Building a new house without any consideration of, or discussion with the neighbors was aggressive. Creating drainage problems by building a foundation where there wasn't one before, was aggressive. Building on Village property, was aggressive. Constructing a house that is so much taller than the former house - one where the roof overhangs the neighbor's roof and creates water run off on their roof, was aggressive. The blitzkrieg pace with which this house was built, was aggressive. Building the house without fire barriers so close to the neighbors' house, was aggressive. Building such a huge house on such a small lot was aggressive. Placing the gas vent to exhaust onto the neighbor's back porch, was aggressive. Asking for a zero variance, is aggressive. Building a house so close to the next house that maintenance on the new house will forever require trespassing in the neighbors' yards, was aggressive. Your general lack of concern for the character of, or the impact on the neighbors and village was aggressive. Kate Cottrell states as much as we would like the house to be a small cottage, however, all the neighbors can attest that Dave and Josh were down and looked at the foundation. Josh came to do some painting. Stop work order was in effect then.

Sharon Pineo asks were you in partnership with Dave Blair.

Josh Cottrell replied, yes he was.

Kate Cottrell states the conversation she had with Phyllis can't be described as aggressive. They could prove to the neighbors that they are very concerned, a lot of care, be agreeable enough to finish this house. They care about the house and what people think about it. She hopes by now that they can see that they care.

Sharon Pineo mentions Kate Cottrell's falling down dilapidated house comment. Village is now reduced to 96 original historic homes. She states that she will not vote for a plan with porches on the foundation. It's still the same size house and she will not be voting for it.

Michael Allen states that it has been a very emotional case. The pervue of the ZBA is usually in feet/inches. East side – 3', Front 1.8 – new plan, West side – don't need variance, South side – would not have granted variances. He doesn't think he would approve a variance.

Josh Cottrell states the south side was to be built on the original lot line. Unfortunately we have the ability to see what has been done.

Brent Elford states to the public. This is the opportunity to add details that the Board may not be aware of. Direct and comments to the Board not the applicant.

Jeff Wildberger stated that the original house did not have a foundation.

Maggie McDonough asks about prior meetings and were the owners told what the ZBA is concerned with and was the applicant given direction?

Sharon Pineo replied yes and mentions Local Zoning Law 180.22 section B

Kim Sheridan-Dugmore mentions that if variances are given for the requested setbacks this may set precedents that might cause problems for the ZBA with future appeals.

Brent Elford states that we have an appeal before us, we could give them another 30 day extension, or by not acting we effectively deny the appeal.

MOTION by Brent to accept the variance application as put to us tonight, we will go through and evaluate with the balance test, SECONDED by Mr. Marion.

## **MOTIOON APPROVED**

### **Balance Test**

1. Would the variance result in an undesirable change in the character of the neighborhood or a detriment to nearby properties? **YES reasons:** Size of house, ratio of sq ft to lot size far exceeds neighboring and similar houses

#### **Discussion:**

Mark Marion commented that is it feasible to cut off the west side.

Sharyn Marchione commented that they could come back with another application if we vote pro or con.

Michael Allen commented they could just leave the house and it would just sit there unoccupied. Fear that it would just sit there as it has been for two years.

Brent Elford commented that NYS stated that they can make them remove the house.

Thomas Peterson stated more likely than not, taken down by owner.

Sharon Pieno commented that the house was built with an invalid permit.

Josh Cottrell asks about cutting off front and rear of the house, is it feasible, does it make sense?

Brent Elford stated our decision is what is on the ground. The lines have come in. The closer the house comes into alignment the better.

2. Can the benefit sought by the applicant be achieved by a feasible alternative to the variance? **YES reasons:** Feasible yes, cutting back to original footprint  
Discussion: Talked about fitting into the village, this is an incredibly large house.
3. Is the requested variance substantial? **YES reasons:** Amount of relief is 70-98%  
Discussion: Request is substantial (BE) Rear and front are in extension to west and are what extend the footprint .
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood? **YES reasons:** size of house, aesthetics to Village  
Discussion: Mr. Elford stated that this is a huge impact to the trees, covering a lot of space, drainage, gutters. Split 60-40 on this.  
Sharon Pieno commented clearly had an adverse effect on the people who live close by and an adverse effect on the Village. The effect on the Village is that is has been reduced by one historic house.

Sharyn Marchione asked if there was proof of damage to Wildberger's foundation and basement – hard to see.

Jeff Wildberger stated that our foundation was hit when they dug the footings for their foundation. It does not appear that there is any damage to the foundation at this time. But time will tell.

5. Is the alleged difficulty self-created? **YES reasons:** Client always has option to reduce to the original footprint. Discussion: Historically building permit was issued – later found to be illegal. The fact is that the Board agreed on variances with conditions based on the existing structure while balancing the needs of the Village. Conditions removed in the Article 78 – came back, ZBA believed they are doing the best they could under the circumstances. You mention the 881 law – created issues with neighborhood. The builders are responsible – it is their creation.

Sharyn Pieno commented that the contractor has duty to perform to certain laws. Contractor needs to know zoning laws and code. The law is clear that contractors are professionals they are required to understand the laws and requirements.

#### **VOTE**

**Brent Elford:** While I empathize with the situation this has and may put your family into, I am here to protect over 200 homes in this Village. It's been a very long and difficult situation for you and the neighbors. **DENY**

**Sharon Pineo:** It's just too big. **DENY**

**Mark Marion:** Feels that by voting to deny will be putting the Village in a difficult position as to what to do next. **ABSTAIN** Mr. Elford stated that by abstaining it will now take a majority vote.

**Michael Allen:** Plans as proposed have an impact on neighbors – I do believe this hardship is self-created. **DENY**

**Sharyn Marchione:** I have respect for Mark Marion's vote. **DENY**

The application has been denied.

**APPEAL 2015-2:**

Guttman/Stromberg – 13 Troy Avenue, are looking to do work on grilling deck and porches.

Peter Sheridan listed deck on rear with no building permit. They are now seeking to enclose deck.

Michael Allen asks would deck be removed on Burlington side, their request a cantilevered window seat as part of the enclosed porch.

Tom Peterson asks if we are here just to approve the enclosures.

Michael Allen asks if we are in the business of approving things that have already been built?

Tom Peterson asks if deck was built to code.

Peter Sheridan states he thinks so.

Bob Stromberg states the plan would be to take down and replace with new material new entrance to kitchen, same shape.

Sharon Pineo commented that the rear set back 30.'

Brent Elford asks if we grant variance to build new grilling deck would take down old deck?

Michael Allen do we count the deck as part of the foot print or addition

Mary Jo Lanahan states that the new porch was built over the old steps.

Peter Sheridan states he didn't think the deck was an issue. Thought the side porch enclosure as near to the property line would be an issue.

Tom Peterson states he is concerned about an illegal deed.

Bob Stromberg states was the rear porch was built on the steps.

Lindy Guttman states that the builder assured her that this was not a problem.

Sharon Pineo states the existing deck will all be removed, that is, what was illegally built.

Lindy Guttman states there is no timeline for the project, they just want to get it done.

Sharon Pineo comments to put aside the approval of the existing deck they will need variance for the construction of a new deck.

Brent Elford states they don't need a variance for the rear deck, only the side deck and cantilever.

Bob Stromberg asks about coming back for zoning variance for grilling deck. Is it necessary to remove to continue with new deck?

Brent Elford stated if the applicant wants to change the application Ohe can, otherwise, no.

Peter Sheridan asks how can they put a new deck.

Error on what they have asked the Board for, the deck already exists.

Peter Sheridan states that it is about 7' from grilling deck to property line.

Mary Jo Lanahan states that she and Lindy have different ideas of where the extension is...Put roof on extended deck.

Brent Elford comments how does the impact he's chosen create negative impact on neighborhood?

Lindy Guttman states that survey shows the rear deck is clearly on her property.

Brent Elford states there is a neighbor impact.

Mary Jo Lanahan comments that she knows they have enjoyed the deck and she doesn't have a problem with the rear deck.

Discussion ensued about an old grill and property lines.

**Balance test:**

1. **Yes**
2. **No**
3. **Yes**
4. **No**
5. **Yes**

Motion to appeal relief of the grilling deck to approximately 23 feet, no closer to the property line than exists today.

**Vote:**

Brent Elford YES

Sharon Pineo YES

Michael Allen YES

Mark Marion YES

Sharyn Marchione Yes

Application is approved

Move to landing and steps northwestside of the house.

Looking at what they want to enclose but also want to bump out 22”.

Michael Allen states his overall concern is the house is very close to the road to have a 22” extension towards Burlington Avenue. Windows could be broken, it’s a safety issue.

The cantilever would be 8.8” from edge of the road and the wall 10’ 5” from the road.

Sharyn Marchione states the purpose is to extend the kitchen space.

Discussion ensued about the bump out and the footprint.

Motion to appeal variance of 22” (2” from property line for cantilever)

**Balance test**

1. Yes
2. Yes
3. Yes
4. Yes
5. Yes

**Vote:**

Brent Elford NO  
Michael Allen NO  
Sharon Pineo NO  
Sharyn Marchione NO  
Mark Marion NO

Application has been denied.

**MOTION** by Mr. Elford to adjourn the meeting at 10:07 P.M.

**MEETING ADJOURNED 10:07pm**

**Respectfully submitted,**

**Lois J. Whitbeck**  
**Village Clerk**