

# TOWN OF NORTH EAST ZONING BOARD OF APPEALS MINUTES

March 17, 2016

The regular monthly meeting of the Town of North East Zoning Board of Appeals (“ZBA”) took place on Thursday March 17, 2016 at 7:30 PM in the Town Hall, Millerton, NY. ZBA members present were Chair Julie Schroeder, Edith Greenwood, Carl Stahovec and Jon Arnason. Board member Patti Lynch-VandeBogart was absent. Also present were Hilarie Thomas, John Allee, and DeLora Brooks.

**David Elwell, owner of  
23 Reagan Road in the A5A Zoning District  
Tax parcel # 7269-00-190462  
Public hearing on the application for:**

- 1. A special permit for an accessory apartment in a pre-existing, non-conforming accessory building.**
- 2. A variance requesting a reduction of the required 5 acre lot size to 3.41 acres.**
- 3. A variance requesting a reduction of the required side yard of 50 feet to 22.5 feet to allow the conversion of the pre-existing barn to an accessory apartment.**
- 4. A variance to allow more than a 10% expansion of the floor area of an existing structure being converted to an accessory apartment.**
- 5. A variance to allow a reduction of the required side yard of 50 feet to 22.5 feet for a proposed addition to the existing barn.**
- 6. A variance to allow a reduction of the required side yard of 50 feet to 14.7 feet for a pool house.**
- 7. A variance to allow a reduction of the required side yard of 50 feet to 12 feet for an in-ground pool and skirting.**
- 8. A variance to allow a reduction of the required front yard of 100 feet from the center of the street to 20.6 feet for a shed.**

Chair Schroeder opened the public hearing at 7:35 PM by reading the notice of public hearing notice into the record.

Hilarie Thomas, counsel at Downey, Haab & Murphy and John Allee, architect, appeared before the ZBA on behalf of the David Elwell, property owner of 23 Reagan Road. The 3.41 acre parcel is located in the A5A zoning and is a pre-existing non-conforming lot. Thomas stated that when her client purchased the property in 1998 the lot already contained an historic single family Colonial style residence circa mid-1800s, a garage/carriage house, and a barn. Thomas stated that until Elwell purchased the parcel in 1998, the deed had not changed hands in over 100 years. In 2003 Elwell was granted a building permit to erect a 60.3 x 22.3 barn to be built on the footprint of the original barn which was to be demolished. A site plan indicating alleged property lines, drawn by the applicant, was included in submitted materials. The barn received Certificate of Occupancy # 02-04 in 2004.

Elwell next applied for and was granted a permit to construct a swimming pool in 2005. Certificate of Occupancy #37-08 for the pool was issued in 2008.

In 2007, an application to construct a 27' x 18'square foot pool house was denied by Kenneth McLaughlin, Code Enforcement Officer for the Town of North East, (CEO), on the grounds that the proposed structure did not comply with the Zoning Law for the Town of North East in regards to the required front yard setback of 75 feet from the street line or 100 feet from the center of the street, whichever requires the greater setback from the street line. Relying on the applicant's drawing of the supposed property lines, the proposed pool shed was 64 feet from the front street line. Elwell made application to the ZBA for a variance of the required front yard which was granted on April 19, 2007 after the Zoning Board had made a site visit at which time measurement was made to confirm the distance from the street line.

Thomas further stated that the original barn was demolished and rebuilt on the existing footprint in 2003. The structure was used to house a coffee roasting operation from that time until 2015 when the coffee roasting machines were moved to a newly created site on Route 22. Once the barn was no longer occupied, Elwell applied for a building permit to enlarge and redesign the barn as a residence. Upon a physical inspection of the property, the deputy CEO determined that the barn appeared to encroach into the side yard setback. The CEO requested that Alee, Elwell's architect, provide an "as built" survey for the property. Elwell hired Wesley Chase, a licensed land surveyor, to produce an official survey. The survey revealed that not only was the barn/proposed residence violating the required setback, but also several other structures as enumerated above where in violation of setback requirement.

Arnason stated that Elwell has taken several mortgages against this property over the years: therefore, he would have expected that at least one of the lenders would have required an official survey as part of their application paperwork. Thomas stated that the firm of Downey, Haab, and Murphy has represented Elwell for many years and her research of the documents on

file has produced neither copies of a survey nor a record that one had been created. The most recent mortgage is held by Salisbury Bank & Trust and Thomas is certain that a survey was not required.

Thomas stated that her client is also seeking a special permit to create an accessory apartment in the existing barn to house his elderly parents and a caretaker. Elwell desires to add a two story addition to the existing barn, enlarging the barn by an additional 637 square feet. Thomas stated that the proposed upstairs addition will allow for the caretaker to have a separate living space including a bathroom and bedroom. Both parties will have access to a common kitchen. Allee presented the ZBA with plans for the interior details for the proposed accessory apartment. Allee stated that the footprint of the barn is 1,930 square feet.

Board members briefly discussed the various buildings on the property and how they can be brought into conformity with the Zoning Law.

A site visit to 23 Reagan Road was scheduled for April 2, 2016 in order to get a feel for the proportions of the existing barn and the layout of the property

A motion was made by Arnason to recess the public hearing for the Elwell applications until April 21, 2016. The motion was seconded by Greenwood and passed unanimously.

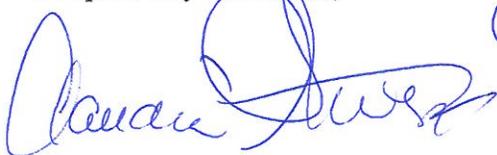
A motion was made by Greenwood to open the regular meeting of the Zoning Board of Appeals. The motion was seconded by Arnason and passed unanimously.

### Minutes

A motion was made by Stahovec to accept the minutes of February 18, 2016 as corrected. The motion was seconded by Greenwood and passed unanimously.

A motion to adjourn was made by Arnason, seconded by Greenwood and passed at 9:02 PM.

Respectfully submitted,



Claudia Stevens  
Secretary of the Town of North East Zoning Board of Appeals

Approved 5/19/16

(1) Greenwood (2) Lynette-VandeBogert