

TOWN OF NORTH EAST
ZONING BOARD OF APPEALS
MINUTES

May 19, 2016

The regular monthly meeting of the Town of North East Zoning Board of Appeals (“ZBA”) took place on Thursday, May 19, 2016 at 7:30 PM in the Town Hall, Millerton, NY. ZBA members present were Chair Julie Schroeder, Edith Greenwood, Carl Stahovec, Patti Lynch-VandeBogart and Jon Arnason. Also present were Robert Nathan, David Elwell, Steve Leven, Andrea Milan, Clyde Miller, David Cappellaro, Hilarie Thomas, John Allee and Mike Segelken.

Robert Nathan, owner of

939 Route 83 in the A5A Zoning District

Landscape Plan

Tax Parcel #6969-00-525370

Chair Schroeder opened the meeting at 7:35 PM.

On July 16, 2015, Robert Nathan, owner of a 6.01 acre parcel located at 939 Route 83 in the A5A District, was granted a setback variance to construct a two story addition to an existing non-conforming one family residence. A condition of the variance was that Nathan return to the Board within one year to present a landscape plan for the area between the addition and Route 83. The plant material was required to be a minimum of eight feet in height to provide screening of the new addition to the same degree as currently provided during the summer months.

Nathan presented a landscaping plan that outlined two types of trees to be used; Ilex Opaca (commonly known as Holly) and Tsuga Canadensis (commonly known as Hemlock). Nathan explained that the trees are indigenous to the area and that light levels, salt exposure and deer population were all taken into account to provide the proper screening for the addition. Nathan explained that he expects to begin construction in August so he expected he would need an extension on the variance.

Board members briefly discussed the landscaping plans. A motion was made by Arnason to approve the plan and seconded Greenwood and approved unanimously.

A motion to recess the regular meeting in order to conduct a public hearing was made by Greenwood, seconded by Arnason and passed unanimously.

David Cappellaro, representing Steven Evangelista, owner of

11 Kimball Way in the R3A Zoning District

Public hearing for Dimensional Variances of Section 98-13 D (4) and Section 98-13 D (6) and Section 280a of the NYS Town Law

Tax Parcel # 7271-00-516020

At 7:45 PM Schroeder opened the public hearing on the above referenced application by reading the public hearing notice.

David Cappellaro appeared before the ZBA on behalf of Steven Evangelista, property owner of 11 Kimball Way. The 0.45 acre parcel is located in the R3A Zoning District. Access to the parcel is provided by a right-of way over Kimball Way. Cappellaro stated that the variance was needed in order to create a second bathroom and to expand the mudroom of the house. The residence currently sits within 20.5 feet of the south side yard and 33 feet 4 inches from the west facing front yard of the lot. The proposed addition would decrease the side yard to 12 feet 3 inches and would decrease the front yard to 28 feet 4 inches. Cappellaro stated that the proposed addition could not be put on the back side of the house due to the location of the septic system.

The size of the house, as well as the location of the septic, was briefly discussed by the Board. The question of whether or not the setback variances applied to a property that does not abut on a public road was brought up by Schroeder. The Board felt it wise to err on the side of caution as the Code Enforcement Officer (CEO) had denied Evangelista a building permit feeling that the variances were required.

Board members discussed the non-conformity of the lot and if the proposed addition would significantly change the lot or the residence. Greenwood asked where the other bathroom was in the residence. Cappellaro confirmed there was one upstairs and this addition would add a second bathroom to an existing mudroom of the residence.

The deeded right of way was briefly discussed by Board members to ensure that the parcel was accessible to emergency vehicles, the right of way being more than the minimal 12 feet required by the town law.

A motion to close the public hearing and to reopen the regular meeting was made by Greenwood, seconded by Lynch-VandeBogart and passed unanimously.

Board members discussed the impact that an addition could have on the lot and surrounding lots. A SEQR was determined to not be necessary.

A motion to grant the variances applied for was made by Arnason, seconded by Lynch-VandeBogart and passed unanimously at 8:05 PM.

**David Elwell, owner of
23 Reagan Road in the A5A Zoning District
Tax parcel # 7269-00-190462
Public hearing on the application of 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 requested a motion to reopen the public hearing for the Elwell application at 8:07 PM. A motion was made by Greenwood to reopen the public hearing, seconded by Lynch-VandeBogart and passed unanimously.

Mike Segelken, Deputy CEO, was asked by Chair Schroeder to give a summary of his recent inspections of the barn renovation. He stated that in October of 2015 he was called to investigate construction at 23 Reagan Road and found work being done without a permit. A formal stop work order was not issued but verbally relayed to Elwell's architect Allee. Plans to convert the barn into living space were submitted and a building permit was issued on November 4, 2015. At the time of the October visit, Segelken requested a survey of the property that was submitted on December 23, 2015.

Schroeder reviewed the Building Department file on the Applicant's property. In 2003 Elwell was granted a building permit to build a 60.3 x 22.3 barn to rebuild the barn on the original footprint. A plot plan, notarized by the applicant, was included in the submittal materials to indicate the property boundaries. The barn received Certificate of Occupancy #: 02-04 in 2004. Elwell then 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, CEO for the Town of North East, on the grounds that the proposed structure did not comply with Section 98-12 D (4) of the Town zoning law pertaining to front yard

setbacks whereby no part of any building or structure shall extend nearer to the street line than 75 feet or nearer to the center line of the street than 100 feet. According to the plot plan submitted with the application, the proposed pool shed was no more than 64 feet from the front street line. Elwell made application to the ZBA in and was granted an area variance for construction of a pool house on April 19, 2007.

Allee stated that he had redrawn the plans submitted at the first meeting to meet the criteria of allowing no more than a 10% expansion of the floor area of an existing structure being converted to an accessory apartment. The new plans negated the need for the variance listed as #4 in the public hearing notice. Arnason questioned if the stairs could be built inside the building. Allee replied that the rise and run accessibility could not be met by placing the stairs on the side wall inside the barn.

Arnason questioned if the addition could be put on the other side of the barn. Allee answered that the erosion control for the other side would be too difficult to ensure a safe foundation for the addition and would impinge on the septic fields.

Arnason questioned if the garage could be expanded to accommodate the tractor storage area. Allee commented that to do that would require changing the roof entirely of the garage and would create more hardship than if the shed for the tractor was added to the barn.

Thomas spoke briefly about the uniqueness of the property. The triangular shaped lot abuts a decommissioned landfill to the northeast and the Harlem Valley Rail Trail on the west.

The variances requested were briefly discussed by Board members. Chair Schroeder reviewed sections §98.48.2 (C) - §98.48.2 (F) of the code for an accessory apartment which requires a minimum of 300 square foot floor area, a maximum of two bedrooms, and the requirements to allow the expansion of an existing structure. Board members questioned the ability of the septic to handle another bedroom. Allee confirmed that the septic would be upgraded for the addition. The necessary requirements for the variances were discussed at length in order to ensure that the requirements of the code were met as well as meeting the needs of the property owner.

The privy/outhouse building was discussed regarding its proximity to the road. Segelken said he was concerned about its location given that the power lines run directly above the shed that is currently being used to house an electrical panel and the garbage cans. The shed sits almost on Reagan Road. Greenwood questioned the assertion that the privy has always been next to the driveway as the location of the driveway has changed over the years. Thomas commented that it would be a hardship to move it. Stahovec countered that the building would have to be smaller or moved back for the building to be safe from road maintenance and the overhead powerlines.

A review of Part I of the Long Form EAF was completed. The Board determined the proposed special permit to be an Unlisted Action under SEQRA and decided to conduct an Uncoordinated Review. The appropriate changes to Part 1 were made and explained. The SEQRA forms were found to be incomplete and therefore the review was tabled until the fourteenth and fifteenth pages were available.

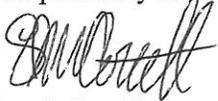
A motion to recess the hearing until June 16, 2016 at 8 PM was made by Arnason, seconded by Lynch-VandeBogart and passed unanimously.

Minutes

Zoning Board members reviewed the unapproved draft minutes of March 17, 2016 and the minutes for April 21, 2016. A motion to approve the minutes with the discussed typographical changes was made by Greenwood, seconded by Lynch-VandeBogart and passed unanimously.

A motion to adjourn was made by Arnason, seconded by Lynch-VandeBogart and passed unanimously.

Respectfully submitted,



Sarah Cottell
Acting Secretary

Approved: June 16 2016