

TOWN OF NORTH EAST  
ZONING BOARD OF APPEALS

MINUTES

July 21, 2016

The regular monthly meeting of the Town of North East Zoning Board of Appeals ("ZBA") took place on Thursday, July 21, 2016 at 7:30 PM in the Town Hall, Millerton, NY. ZBA members present were Chair Julie Schroeder, Edith Greenwood, Jon Arnason and Carl Stahovec. Patti Lynch-VandeBogart was absent. Also present were Dietmar and Rosemarie Link, Rachel Berg, David Rabe and Kristie Schmidt.

**Application of Rachel Berg for an area variance regarding a side yard setback  
57 Quarry Hill Drive in the A5A Zoning District  
Tax parcel # 7274-00-460257**

At 7:35 PM, Chair Schroeder opened the public hearing on the above referenced application by reading the hearing notice.

Rachel Berg, owner of a 2.9 acre parcel located at 57 Quarry Hill Drive in the A5A District, bought the parcel in April of 2016 with the intent to build a single family residence. In order to construct a gravity-fed waste disposal system, approved by the Dutchess County Board of Health in 1971 and again in 2016, the proposed residence would have to be located 25 feet from the western property line instead of the required 50 feet. If the proposed residence were to be located at 50 feet from the property line, a gravity fed system would not work because the system would be at the same or greater elevation than the residence's effluent exit pipe. A septic pump would be required which would increase the cost and make the operation of the system subject to electric power outages and pump failures.

Arnason asked for an estimate of the cost to put in a pumped system. Berg replied that the system would cost around \$7,000 to install with more cost to maintain. Berg pointed out that moving the house from the proposed footprint to another place on the lot where the house could still be gravity fed would still place the house within the 50 foot setback.

Chair Schroeder asked if the septic system could be moved to a lower elevation so that the house would not encroach on the setback. Berg stated that the firm used to submit the plan would need to redo the percolation and soil tests to find another appropriate place for the septic system. Berg commented that the cost would be a hardship for her. Arnason asked if there was any other reason than the septic system placement for the house to be put within the side yard.

Stahovec commented that it would only require new tests for the application to be resubmitted to the Board of Health. Arnason commented that it seemed that the septic system plan had been submitted without considering the setback. Berg explained that a surveyor had commented about the problem after the application to the Board of Health had already been

submitted and accepted. Schroeder stated that at the time the waste disposal system plan was originally submitted in 1971 the side yard setback was only 25 feet.

The letter received by the Board from the NYS Office of Parks, Recreation and Historic Preservation was briefly discussed. It was determined as being inapplicable due to the total lack of understanding of the request on the part of the NYS planner.

Stahovec commented that the depiction of the house on the survey map did not match the artist rendition or the preliminary plans submitted to the Board for review. Stahovec questioned the location of the deck and whether or not this would encroach further into the setback than the already requested reduction. Berg explained that the deck would be placed on the opposite end of the house and would comply with the required setback. Board members agreed that the house depictions and other plans for the house specifically did not match.

Chair Schroeder questioned what positioned the house in the way it was proposed, at an angle putting one corner of the house in the setback. Berg commented that she was not interested in the western view of the property. Arnason commented that the western neighbors could build a house close to the eastern property line of their lot to maximize their view of the land. Board members agreed that this could place two residences fairly close together. The buffer between the two would be reduced to what the Board felt was an unacceptable distance.

Stahovec made a final comment about his question as to why it would be costly to resubmit the plans to the Board of Health and create a septic plan that would not require the proposed house to be within the setback. Board members agreed that it seemed a fairly simple change so the house would not require a variance. Schroeder suggested discussing the matter with the Board of Health in order to ascertain what would be involved.

Dietmar and Rosemarie Link, owners of the western abutting parcel to the applicant's lot, told the Board of their concerns regarding their desire to sell their parcel. The Links commented that they were concerned about a prospective buyer being put off by the closeness of another residence. Rosemarie Link questioned if the variance would infringe on the desirability of their property and discourage a buyer because of the proximity of the proposed house. Schroeder commented that the setback for the subdivision lots, at the time of purchase by the Links, had been 25 feet only to be changed later to 50 feet. The Links commented that their only concern was about the future sale of their property. Greenwood commented that unless they currently had a buyer for the property that a future buyer would be aware of the proposed house and could make a decision based on what was there.

Stahovec commented that he had no desire to cause the owner the undue hardship of a new septic plan but that the depiction of the house as well as the ease of relocation of the waste disposal system presented an option for the applicant to not require a variance. Arnason commented that the relocation of the septic field to change the placement of the house seemed fairly straightforward. Berg commented that the cost of the septic placement change would be a hardship upon her. Chair Schroeder commented that the Board could be aware of the issues of cost when it came to feasibility, but that the Board could not consider cost without a detailed analysis.

Greenwood and Arnason agreed that an undesirable change would result if the application was granted. Board members agreed that the benefit sought by the applicant can be achieved by some other method feasible for the applicant (98-62(C)). Board members agreed that the requested variance was substantial and that there could be an adverse effect to the conditions of the neighborhood. The alleged difficulty was self-created by the applicant purchasing the property with presumptive knowledge of the zoning requirements.

Chair Schroeder asked Stahovec if he had comments on the cost of the septic tests. Stahovec commented that the costs of the resubmission should not be substantial. Arnason commented that the cost of the resubmission should not be taken into consideration because the need for the variance was created by a mistake on behalf of the firm used to create the plans.

Arnason made a motion to close the public hearing and to open the meeting, seconded by Stahovec and passed unanimously at 8:30PM.

Board members discussed the variance and that the variance would not be necessary if the septic field was moved. The Board, after reviewing the Short Form EAF, classified the action as Type II and deemed it exempt from further review under SEQRA.

Arnason made a motion to deny the requested variance seconded by Greenwood and passed with Chair Schroeder abstaining from the vote.

## **Minutes**

The minutes from June 16 and June 29 were reviewed by the members of the Board. A motion was made by Stahovec to accept the minutes as presented, seconded by Arnason and passed unanimously.

A motion was made at 8:45 PM to adjourn the meeting by Greenwood, seconded by Arnason and passed unanimously.

Respectfully submitted,



Sarah Cottell  
Secretary to the Zoning Board of Appeals  
Approved: October 20 2016