

Village of Tarrytown, NY

One Depot Plaza, Tarrytown, NY 10591-3199
ph: (914) 631-1885

Zoning Board of Appeals Minutes 5/12/2014

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
May 12, 2014; 8:00 p.m.

PRESENT: Chairwoman Lawrence; Members Maloney, Jolly, Brown, Weisel; Counsel Shumejda; Village Engineer McGarvey; Secretary Bellantoni

APPROVAL OF THE MINTUES – April 14, 2014

Ms. Brown moved, seconded by Mr. Jolly, and unanimously carried, that the minutes of April 14, 2014, be approved as submitted. Motion carried.

CONTINUATION OF PUBLIC HEARING – Honda - 480 South Broadway

This application was adjourned at the request of the applicant.

CONTINUATION OF PUBLIC HEARING – Lee - 54 Highland Avenue

This application was adjourned at the request of the applicant.

NEW PUBLIC HEARING – Chmielewski - 52 Sunnyside Avenue

The Secretary read the following Notice of Public Hearing:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, May 12, 2014 in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by

*Laura Chmielewski
52 Sunnyside Avenue
Tarrytown, NY 10591*

for a variance from the Zoning Code of the Village of Tarrytown for property located at the above address regarding the installation of an air conditioner condenser unit within the side yard setback requiring the following variance:

- *Obstructions in yards: (§305-47B)*
- *One side yard: Required: 10 ft. / Existing: 9 ft. / Proposed: 6 ft.*

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.90, Block 60, Lot 10 and is located in an R7.5 (Residential) zone.

All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

*By Order of the Zoning Board of Appeals
Dale Bellantoni, Secretary*

Dated: May 1, 2014

The certified mailing receipts were submitted and the sign was posted.
Board members visited the site.

Laura Chmielewski, owner of the property, stated that she is before the Zoning Board for approval for an air conditioning condenser unit to encroach 4 feet into the side yard setback. She explained that it is a very narrow property and the only place to put it is where her contractor indicated on the copy of her survey. All of her neighbors were notified as required and she spoke to her neighbors on that side of the house; they have no objection. She said they are getting the quietest unit possible.

Mr. McGarvey asked if there will be a noise attenuating cover. Ms. Chmielewski said they will do whatever it takes to make it as quiet as possible. Mr. McGarvey asked what will be between the unit and the property line. Ms. Chmielewski said there is a line of shrubs and a maple tree, which will partially conceal it. Mr. Maloney said the tree is not for screening because the A/C unit will be set back much further where it cannot be seen.

Chairwoman Lawrence asked if there is no other place in the rear of the house to put it. Ms. Chmielewski said no because there is a stairway and garage door in the back of the house.

Ms. Brown asked if they currently have window units. Ms. Chmielewski said no and it is very hot.

Mr. Jolly asked if we know the decibel level. Mr. McGarvey said this is an air conditioner condenser unit which is different than a generator; it is much quieter.

Chairwoman Lawrence asked if anyone would like to speak.

Mr. McGarvey said it is a two-story house but only one zone for the whole house. Ms. Chmielewski said yes.

Ms. Brown asked how large is the house? Ms. Chmielewski said about 1,800 square feet.

Mr. Jolly asked why she was putting it in that spot. Ms. Chmielewski said that is literally the only place it can go without blocking anything.

Chairwoman Lawrence read the following environmental review by Michael Blau, Environmental Review Officer dated May 12, 2014:

I have reviewed this application for a variance for an air conditioner condenser to encroach on the side yard setback and find the proposed variance appears to pose no significant adverse environmental impacts.

Mr. Maloney moved, seconded by Mr. Jolly, to close the public hearing. All in favor; motion carried.

Mr. Jolly moved, seconded by Mr. Maloney that the Board determines there will be no significant adverse environmental impact as a result of granting the requested variance for 52 Sunnyside Avenue. All in favor; motion carried.

Mr. Maloney moved, seconded by Ms. Brown, subject to the approval of the Building Inspector and conditioned upon having an attenuating jacket installed on the condenser if necessary in order to meet the noise levels allowed by the Village of Tarrytown and having arrived at the following Findings required by the ordinance:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance;
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. That the requested area variance is not substantial;
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Grants the requested variance as stated above for 52 Sunnyside Avenue. All in favor; motion carried.

NEW PUBLIC HEARING – Karlsson - 120 Cobb Lane

The secretary read the following public hearing notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, May 12, 2014 in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

*Linus Karlsson
Karla Olmedo-Karlsson
120 Cobb Lane
Tarrytown, NY 10591*

*for a variance from the Zoning Code of the Village of Tarrytown for property located at **120 Cobb Lane** regarding the construction of a new two car garage, requiring the following variances:*

A variance from Section 305-25, Table 1 of the Zoning Code entitled Maximum Floor Area:

Permitted for R-20 Zone: 5,200. Existing: 7,116; Proposed: 7,500.

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is located at 120 Cobb Lane and is shown on the Tax Maps of the Village on Tarrytown as Sheet 1.10, Block 1, Parcel 38 and is located in a R20 (Residential) Zone.

All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one (1) week in advance of the meeting.

By Order of the Zoning Board of Appeals.

Dale Bellantoni, Secretary

Dated: May 2, 2014

The certified mailing receipts were submitted, the sign was posted and the board members visited the site.

Ralph Mackin, Architect for the applicant, stated that the house is pre-existing non-conforming. It was built in the late 1800's and added onto in the early 1900's. He said when the Karlssons bought the house it was in pretty bad shape and their intention was to do a modest renovation. As the renovation proceeded it became evident that this would be quite an undertaking because the house was in such disrepair. After coming before this board, we were able to do a modest increase of 650 square feet to the main living space.

His clients now feel they do need a garage so that their cars will not have to be outside. They would like to have a minimum two-car garage in a carriage house style with a hip roof and very low profile. It will sit on the existing asphalt so the impervious surface will not be increased but they will require a variance for the increase in the F.A.R. The house sits on a lot that is 2 ½ times the required square footage for a R20 zone; 51,000 feet exists where 20,000 is required, which is common with these old homes in zoning districts that were established/revised later on. He said it is just a garage with no room above.

Chairwoman Lawrence asked if anyone would like to speak.

Ms. Brown asked how the last variance for the 650 square foot addition increased the FAR to 7116 square feet. Mr. Makin said the house has always been non-conforming and that the FAR prior to that addition was 6,466 square feet.

Chairwoman Lawrence asked if there is any other place it can go. Mr. Mackin said they felt it is the best site because it is hidden down behind the property and the area is already paved so the impervious surface will not be increased.

Chairwoman Lawrence said there are two accesses to the house. Mr. Mackin said yes, one from Wilson Park Drive and one from Cobb Lane.

Mr. Mackin said the house next door was the original carriage house.

Chairwoman Lawrence said when they were before the board for the original variance did you not foresee the need for a garage. Mr. Mackin said when they first looked at the project there was so much work to be done that they did not think they would be able to accomplish all of it; but as it moved forward, some things changed which made it possible to do the garage.

Chairwoman Lawrence asked if there was ever a garage on the property. Mr. Mackin said no but the Nolan house was the original carriage house for the property. She asked how large a variance they are asking for now. Mr. Mackin said 384 because they only have to count half.

Ms. Weisel asked about the drainage. Mr. McGarvey said there is drainage for the home and they will be putting in some culvert infiltrator even though it is not required since there is no increase in the impervious surface because it is going to sit on a paved area. They are doing storm water retention on their own.

Mr. Maloney said he thought that property was in the R30 zone. Mr. Mackin said no it is R20 but across the street is R30.

Chairwoman Lawrence asked if anyone would like to speak.

Chairwoman Lawrence read the following environmental review by Michael Blau, Environmental Review Officer dated May 12, 2014:

I have reviewed this application for a variance for the maximum floor area for the construction of a new two-car garage and find the proposed variance appears to pose no significant adverse environmental impacts.

Chairwoman Lawrence said she is concerned about increasing coverage but it is such a big lot.

Mr. Jolly asked why they went before the Planning Board. Mr. Mackin said they went to the Planning Board because of the stone walls and steep slopes but they are re-doing and taking a look at the whole landscape plan. He said it had nothing to do with this project.

Mr. Maloney moved, seconded by Mr. Jolly, to close the public hearing. All in favor; motion carried.

Mr. Maloney moved, seconded by Ms. Weisel that the Board determines there will be no significant adverse environmental impact as a result of granting the requested variance for 120 Cobb Lane. All in favor; motion carried.

Ms. Brown moved, seconded by Mr. Jolly, subject to the approval of the Building Inspector and having arrived at the following Findings required by the ordinance:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance;
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. That the requested area variance is not substantial;
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Grants the requested variance as stated above for 120 Cobb Lane. All in favor; motion carried.

NEW PUBLIC HEARING – Rothman – 49 Roundabend Road

The secretary read the following public hearing notice:

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at 8:00 p.m. on Monday, May 12, 2014, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

*Bruce and Denise Rothman
49 Roundabend Road
Tarrytown, NY 10591*

for variances from the Zoning Code of the Village of Tarrytown for a tree house and a two-story rear deck as follows:

Tree House:

- 305-53B – Accessory Height : **Permitted: 12' / Proposed: 20'-2"**
- 305-47B - Accessory Structure Rear Yard Setback:

Permitted: 14' / Proposed: 1'

Rear 2-Story Deck:

- 305-47B – Side Yard Setback: **Permitted: 14' / Proposed: 11.6'**

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. The property is located at 49 Roundabend Road and is shown on the Tax Maps of the Village of Tarrytown as Sheet 1.230, Block 132, Lot 29 and is located in an R15 (Residential) zone.

All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

By Order of the Zoning Board of Appeals

*Dale Bellantoni, Secretary to the Zoning Boards
Dated: May 1, 2014*

The certified mailing receipts were submitted, the sign was posted and the board members visited the site.

Bruce Rothman, homeowner, explained that the deck was built at the time they did the addition but they never received a variance for its encroachment into the side yard setback. They are here to do that tonight. He said they discovered this when they had the property surveyed for the tree house.

Chairwoman Lawrence asked Mr. Rothman if he built the tree house or was it there when they bought the house.

Mr. Rothman said he built it in 2008 and into 2009. Chairwoman Lawrence asked Mr. Rothman if they took out a permit to build the tree house and then asked Mr. McGarvey if they need a permit to build a tree house. Mr. McGarvey said yes they do. Mr. Rothman said he was not aware that he needed a permit. He said Lou Tucci was aware that he was building it and he was never given a summons.

Chairwoman Lawrence asked about the deck. Mr. McGarvey explained that the permit for the two-story deck is still open because one-story decks at the main entrance level of the residence can encroach to within 6' of the side yard setback; but because it is a two-story deck, it needs a variance.

Ms. Brown asked what made him come before the board. Mr. Rothman said he received a violation. Ms. Brown asked what it was for. Mr. McGarvey explained that he was notified about the tree house and he has been in court. The tree house is at his property line and on the property of the Tarrytown House so he is going to cut it back to within 1' of his property line and the maximum height allowed is 12 feet and this structure is 20'-2" high. Mr. McGarvey said the original application was rejected because it went into the Tarrytown House property and you cannot get a variance for someone else's property. Mr. Jolly said Tarrytown House gave them a letter stating that they are fine with it. Mr. McGarvey said it probably can't even been seen from the Tarrytown House, but he has a problem with the application because someone cannot apply for a variance for someone else's property; they both

must apply.

Chairwoman Lawrence asked is this one application. Counsel Shumejda said there is one notice but two applications so it is considered two applications.

Ms. Brown asked if we grant a variance to this structure, would it apply to any other structures in the future. For example if the Rothmans or a future owner of the property wants to put a shed there, will this variance apply; is there a difference between a tree house and any other accessory structure. Counsel Shumejda said a tree house is an accessory structure and the variance goes with the land. Ms. Brown said so if we permit this we are permitting any kind of accessory structure on that spot in perpetuity. Counsel Shumejda said yes.

Mr. McGarvey said other things will have to be changed, i.e. rope ladder and slide; New York State Building Code does not recognize this.

Chairwoman Lawrence asked how the slide is attached to make it safe. Mr. Rothman said it is attached with timber and bolted to the tree house.

Mr. Rothman said if the board grants the requested variances for the tree house, it is his intent to hire an engineer and submit plans to Mr. McGarvey to bring it in compliance with New York State Building Code.

Chairwoman Lawrence said she is not comfortable approving a tree house that exists but will not be the one that remains. She said we are not approving the idea of a tree house, so we would have to see the new plans for the proposed tree house before we would consider the variances.

Ms. Brown said there must be regulations that govern those big wooden playhouses. Mr. McGarvey said yes there are.

Chairwoman Lawrence opened the meeting to the public.

Steve Tubin, 41 Roundabend Road, neighbors of the Rothmans said the construction of the tree house started several years ago and they did not have a problem with it until the construction kept going and going and going; they were still OK with it because it was for the kids. Then he attached the half pike to it which was very noisy. We asked him to stop the noise during the weekends but he just said to get off of his property. Mr. Tubin said the tree house itself is not such a problem but when it became annoying and noisy with him working on it every weekend, it was too much. He said it is big and ugly.

Counsel Shumejda asked if the tree house has lights. Mr. Tubin said it has a very large flood light which shines into their property and the neighbors' property. He said he is not sure if it is in the tree house or on top, but there are also lights inside the tree house. Mr. McGarvey said once we found out that it did have lights, we told him he had to have his electrician file for an electric permit, but it was not issued because there was no building permit.

Counsel Shumejda said the half pike is not shown in the picture. Mr. McGarvey said we sent them a letter and they took it down. They can have it as long as it meets the setbacks. They have submitted a plan showing it to be moved to the other side of the house within the required setbacks. Mr. McGarvey said the noise issue is a police issue.

Denise Rothman, 49 Roundabend Road, homeowner said Mr. Tubin was complaining about the noise at 2:00 in the afternoon on a Saturday.

Mr. Rothman said the half pike was never attached to the tree house.

Mr. Tubin said it was, but you took it down before Mr. McGarvey saw it.

Ms. Brown asked if a half pike requires a building permit. Mr. McGarvey said yes it does and it has to meet the setbacks for an accessory structure.

Chairwoman Lawrence asked how old their children are. Mr. Rothman said 11, 13, 16 and 19; she said so they do use it. Mrs. Rothman said the adults like it to. She asked if it could be put somewhere else on the property. Mr. Rothman said no because that is where the trees are.

Chairwoman Lawrence asked if there are other tree houses in the Village. Mr. McGarvey said there may possibly be

others but this one was brought to their attention because they received the complaint. She said she is concerned about approving this in perpetuity and also concerned about approving something they have not seen any plans for.

Mr. Rothman said he understands that if he gets the variances he still has to submit plans to Mr. McGarvey for the permit. He said he is changing the railing from the existing to netting which will address the code requirements for the opening in a railing.

Chairwoman Lawrence said since your neighbors are complaining, are you continuing to work on it. Mrs. Rothman said it was built several years ago and it has become somewhat of a hobby, something her husband and her son can do together.

Counsel Shumejda said this application is like the horse before the cart. The process is that first you need a set of plans which Mr. McGarvey says is acceptable and then it comes before this board.

Ms. Brown said she thinks this board would be hard pressed to grant a height and setback variance; we must look at it developmentally.

Chairwoman Lawrence read the following environmental review by Michael Blau, Environmental Review Officer dated May 12, 2014:

This application is for variances for an accessory structure and a variance to legalize an existing two-story deck.

The application has caused controversy among neighbors and the Board will have to determine whether there are any adverse environmental impacts associated with the proposals.

Chairwoman Lawrence said they cannot address the tree house because we do not have plans for it. She said it is very high and asked if they could bring it down. Mr. Rothman said the height is why he chose to go for a variance; it's easier to make modification than to take it down. Chairwoman Lawrence said she would like to do another site visit. Mr. Jolly asked if he can flatten the roof some. Mr. Rothman said yes he could do that.

Chairwoman Lawrence then addressed the deck variance. Counsel Shumejda said it is a separate structure so you can act on it.

Mr. Maloney asked if we have plans for the deck. Mr. McGarvey said it is an existing deck and we have an as-built for it which shows the deck encroaching.

Chairwoman Lawrence said we will adjourn the tree house until we see the plans but we will vote on the deck.

Ms. Brown asked what the Homeowner Association says about this. She feels they should weight in. Mr. Rothman said he has not heard any objects from them.

Mr. Maloney moved, seconded by Ms. Brown to adjourn the **tree house portion of this application to the June 2014 meeting**. All in favor; motion carried.

Mr. Maloney moved, seconded by Mr. Jolly, to close the public hearing for the **deck variances only**. All in favor; motion carried.

Mr. Maloney moved, seconded by Ms. Weisel that the Board determines there will be no significant adverse environmental impact as a result of granting the requested variance for **the deck only** at 49 Roundabend Road. All in favor; motion carried.

Mr. Jolly moved, seconded by Ms. Weisel, subject to the approval of the Building Inspector and having arrived at the following Findings required by the ordinance:

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance;
2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance;
3. That the requested area variance is not substantial;

4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

Grants the requested variance for **the deck only** as stated above for 49 Roundabend Road. All in favor; motion carried.

Mr. McGarvey said since the tree house is adjourned what happens with it now. He explained that at the last hearing in front of Judge McGovern it was determined that they would not use the tree house and they had to install some construction barrier around the bottom of it so that the children could not get in for safety reason because we are not sure of the structural stability of the tree house or what shape the tree is in.

Counsel Shumejda said that is what the court stipulated, so that stipulation remains. They are complying with Judge McGovern by putting the fence up.

Mr. McGarvey asked Mr. Rothman how long he thinks it will take for him to have plans drawn up. Mr. Rothman said about six to eight weeks. He said he would be drawing up the plans himself with Mr. Costa's guidance and with your guidance. Mr. McGarvey said I can tell you what you need but I cannot guide you.

Mr. Rothman said he is going to soften the roof.

Mr. Tubin asked if the tree house is allowed or not. Chairwoman Lawrence said as an accessory structure, it is allowed if they get the required variances; but we cannot decide until we see plans. Mr. McGarvey said there is no code specific to tree houses, so it falls under accessory structure.

Mr. Tubin said so if this gets approved, you will allow tree houses. Mr. McGarvey said each case is looked at individually. He said this is a court ruling and it's in a stay until this board makes a decision to either deny it, in which case it will have to come down; or approve it, in which case the plans will have to meet New York State Building Code.

Mr. Tubin said what about the half pike. Mr. McGarvey said if it meets the setbacks, it can be built with a permit.

Mrs. Rothman asked the times allowed for construction work. Mr. McGarvey said 8:00 a.m. to 6:00 p.m. Monday through Saturday and no work allowed on Sunday.

ADJOURNMENT

Mr. Jolly moved, seconded by Mr. Maloney and unanimously carried, that the meeting be adjourned – 9:15 p.m.

Dale Bellantoni
Secretary

