**Zoning Board of Appeals June 14, 2017 Meeting Minutes**

The meeting was held at the Aurora Firehouse meeting room at 7:00 pm

**Present:** Chairperson Karen Hindenlang, Alexis Boyce, Laura Holland, Ann Tobey, and Jeri Vargo

**Others Present:** Clerk Ann Balloni, Code Enforcement Officer Patrick Doyle, Trustee Grace Bates, Community Preservation Panel member Dan DiSanto, Planning Board member Pat Foser, and members of the public G. Alan Clugston and Mark Ferrari

**Call to Order:** Ms. Hindenlang called the meeting to order at 7:00 pm.

Ms. Hindenlang noted that a full board is present.

**Approval of Minutes:** On motion by Ms. Vargo, seconded by Ms. Tobey, the ZBA voted to approve the March 8, 2017 meeting minutes.

AYES: Hindenlang, Boyce, Holland, Tobey, and Vargo

NAYS: None

Motion carried unanimously.

**Announcements:** Ms. Hindenlang mentioned the possibility of a July 12th ZBA meeting and asked all members to consult their calendars for availability.

**Public Hearing**

**Application #17-23 from Grace Bates for two area variances at 78 Court St (Tax Map #182.09-1-16)**

Ms. Hindenlang asked Ms. Bates and Mr. Ferrari (Ms. Bates architect) to amend the Full Environmental Assessment Form (FEAF) to include the acreage amount of the project site. Ms. Hindenlang also instructed Ms. Bates and Mr. Ferrari to note the date that each signed the appeal form and to initial where dated. Ms. Bates and Mr. Ferrari complied with all requests.

Ms. Hindenlang noted that a site visit by the ZBA was held on June 8, 2017 and Officer Doyle also attended.

Ms. Hindenlang noted that under section 617.S.c.7 of the State Environmental Quality Review Act (SEQRA) that the project is a Type 2 Action requiring no further environmental review.

Ms. Hindenlang called the public hearing to order at 7:05 pm.

Ms. Hindenlang asked Officer Doyle to read his denial letter for Application #17-23 (attached).

Officer Doyle’s letter references section 405.P.3.A.d and e of the village zoning law (Local Law #4 0f 2016) noting that the height of an accessory structure may not exceed 16’ and the accessory structure shall not exceed 20% of the floor area of the principal structure. Ms. Bates application to build a studio reaches 26’ in height and equals 50% of the floor area of her house. The principal structure is 2,707 square feet, 20% of that is 541 sq ft; the application is for an accessory structure of 1,360 sq. st.

Officer Doyle noted that he discussed options to reduce the size of the structure with Mr. Ferrari to come into compliance with the village zoning law, but Ms. Bates and Mr. Ferrari opted to appeal to the ZBA for the area variances.

Ms. Hindenlang, Officer Doyle, and Mr. Ferrari discussed the calculations for figuring the total area of the proposed structure and the difference between “floor area” of a primary structure and “total area” of a proposed accessory structure in our code. Ms. Hindenlang noted that floor area, per the village zoning law definition #33, equals living space (“sum of the gross horizontal area of the several floors of building, excluding cellar, basement, and unfinished attic floor areas not devoted to residential use”). She consulted with the municipal attorney as to the meaning of “total area;” he suggested it meant gross horizontal area of the floors, with no carve-outs. Mr. Ferrari noted that the percentage would be 30% if the basement wasn’t counted. Ms. Hindenlang clarified that total area included basement areas, and also noted that the basement level of the proposed accessory structure had an entry at grade level and so would be considered useable space by either definition.

Mr. Ferrari commented that the proposed studio is appropriate in scale for the site as it is located on a double lot. Ms. Vargo corrected Mr. Ferrari that it is one tax parcel and there is no such thing as a “double lot” in our code.

Mr. Ferrari explained that they are trying to control the changing grade of the property by keeping the proposed studio close to the house. The height of the studio is 26’ at the north and west corner, but would actually be about 17 and a half feet to the basement and the 6’ to 12’ slope of the property. Mr. Ferrari also noted that the gabled roof makes the structure appear as if it were three stories, but the flooring is open to the peak.

Mr. Ferrari also noted that, despite the 26’ height, the studio will not impede on the neighbor’s views, again due to the changing grade.

Ms Boyce noted that the plans appear to show a 3rd story with a window under the gable. After further questioning from Ms. Hindenlang, Mr. Ferrari confirmed that the upper room was supposed to be open to the roof without an attic.

Mr. Ferarri suggested that the 840’ footprint of the proposed structure equaled about a third of the principal structure. Ms. Hindenlang pointed out that he was comparing the footprint of the studio to the two-story floor space of the house. Comparing apples to apples, she noted that the footprint of the house was about 1,400 sq ft, so the footprint of the proposed accessory structure equals 60% of house’s footprint.

Ms. Bates explained that the stone foundation of the studio will also act as a retaining wall along with providing much needed storage. A large barn on the property was torn down in 2010 and has since resulted in erosion problems. Ms. Bates and Mr. Ferrari discussed constructing two buildings, but believe that building one building to solve both problems is better aesthetically.

**Public Comment**

**Dan DiSanto:** Mr. DiSanto identified himself as Ms. Bates neighbor, a member of the Community Preservation Panel, and a Real Estate professional. Mr. DiSanto has no objections to Application #17-23 and believes that the 20% limit for accessory structures is outdated and wouldn’t allow for most two car garages. Mr. DiSanto mentioned that it is his experience that most municipalities allow 40% now for accessory structures.

Mr. DiSanto further supported Mr. Ferrari regarding the placement of the studio due to the changing grade of the property and noted that, if the height was limited to 16’, he would be looking down on the roof of the structure from his house.

**Pat Foser:** Ms. Foser questioned the use of the basement area for the structure. Ms. Hindenlang referred to Application #17-23 which notes a root cellar, art studio and possible bathroom.

Ms. Bates referred to other variances that were granted in the village (which she identified as Furness, Murphy, Dugan and Peters) and noted that, if the structure was moved further east, it would comply with the height requirements.

Ms. Hindenlang asked about the applicant’s earlier statement regarding a barn demolition on her property, and referenced a 2010 permit to demolish a two-story 32’ x 24’ addition to the house, as well as an 11’ x 21x attached shed. Ms. Bates acknowledged this was what she meant by barn demolition.

Mr. Ferrari commented that the proposed plan is the best solution that they could come up with for addressing the problems of the property.

Ms. Hindenlang asked the board to share information from the site visit with Ms. Holland, who was not present. Ms. Vargo and Ms. Boyce noted the proposal seemed very tall, particularly after Mr. Ferrari held up a ladder approximating the finished height. Ms. Bates noted that it would seem that high set back further on the property without the basement level.

On motion by Ms. Tobey, seconded by Ms. Vargo, the ZBA voted to close the public hearing at 7:45 pm.

AYES: Hindenlang, Boyce, Holland, Tobey, and Vargo

NAYS: None

Motion carried unanimously.

**New Business**

**Application #17-23 from Grace Bates for two area variances at 78 Court St (Tax Map #182.09-1-16)**

ZBA members discussed the following:

* The appeal is for a significant variance, 151% greater than allowed.
* Homes the approximate size of requested accessory of 1,360 sq ft exist in the vicinity.
* The current area variance request is 2.5 times greater than code allowance.
* Past appeals, denied and granted
* The ZBA is limited to granting the minimum allowed
* The constraint of the current village zoning law
* A possibility of two buildings/building an addition on the house
* No objections from neighbors/public

Ms. Hindenlang and the Board reviewed variances for the four properties Ms. Bates referenced. Two were granted by some current board members: the Dugan barn was denied a height variance of 3 feet but granted an area variance 40% larger than code for a 740 sq ft accessory for solar panels when 514 sq ft was allowed, and the Peter garage was granted an 8 foot height variance above the allowed 16 ft. in part because it would be back from the road where the land slopes downward and the 6,000+ sq ft primary structure stands much taller.

Ms. Hindenlang noted that the file for the Brian Murphy property referenced by Ms. Bates showed a large accessory structure built in c. 2008 followed by construction of a primary structure built in c. 2012, and that Mr. Doyle’s predecessor allowed this to pass through without coming to the ZBA for a variance.

Ms. Hindenlang reported having briefly examined the large file for the other property referenced by Ms. Bates, the one-time Furness house (now Hauptfleish) on Cherry Ave., which received a large area variance in 1994, the year after our code was established, to build a two-car garage with a studio above in significant excess of the 20% allowance The rationale seemed to be that the house was very small, and much more living / storage space was needed.

In answer to a question from Ms. Hindenlang, Ms. Balloni confirmed that there were 222 taxable properties in the village. Ms. Hindenlang felt that the two anomalies cited above (Furness and Murphy) represented perhaps 1% of village homes and could not be considered a pattern of development in the community.

Ms. Hindenlang commended the online tax maps to the board, which allowed her to compare primary and accessory structures built before our code. She found a trend moderately above the 20% allowance. Of these grand-fathered structures, several on Sherwood Road were larger by 13 to 31% and Mr. DiSanto’s was 36% larger than current allowance. The two corner lots of Court St. and Orchard Lane had accessories 15% and 42% larger than current allowance.

Nothing in her survey approached 100% excess of code allowance, and she expressed concern for the precedent that a variance of 151% above code might create. All board members agreed that the variance request was very, very large.

Ms. Vargo asked about feasible alternatives, such as scaling back the size of the project. Ms. Hollandasked about the feasible alternative of building an addition which would not require a variance. Ms. Hindenlang noted that feasible meant possible, not better or worse.

In addition to alternate solutions being feasible, Ms. Hindenlang noted that the sense of the meeting is that the variance is substantial and The problem is self-created which are three of the five criteria for the ZBA’s consideration. Ms. Hindenlang discussed conferring with village counsel for guidance and researching the case law for similar appeals.

On motion by Ms. Tobey, seconded by Ms. Vargo, the ZBA voted to postpone further discussion of Application #17-23 to July 12, 2017, with the understanding that no discussion will take place with the applicant, the public and the ZBA members in the interim, and agree to accept any additional written comment through June 28, 2017.

AYES: Hindenlang, Boyce, Holland, Tobey, and Vargo

NAYS: None

Motion carried unanimously.

**Adjournment:** On motion by Ms. Tobey, seconded by Ms. Vargo, the ZBA voted to adjourn the meeting at 8:35 pm.

AYES: Hindenlang, Boyce, Holland, Tobey, and Vargo

NAYS: None

Motion carried unanimously.

Respectfully submitted,

Ann Balloni

Village Clerk