Zoning Board of Appeals
Minutes
November 21, 2013

Present **Absent**

Chairman John Dole
Mark Unvericht
Michael Flavin
Dale Kellerson
Diana Powell Keery

Also Present

Village Attorney Eric Stowe
Building Inspector Patrick Smith
Deputy Clerk Pam Gilbert

Bettie Burtch
John Burtch
Teresa Flaherty
Larry Fenity
G. Wicks
Joan Quigley
Joyce Lobene

Chairman Dole led the Pledge of Allegiance.

Public Hearing

The application of Tony and Debbie Redden, 125 Village Hill Drive Spencerport NY 14559 for a temporary special permit and an area variance for an in-law apartment addition (960) square ft at property located at same. Whereas, this is permitted subject to the issuance of a temporary permit by the Zoning Board of Appeals and should not exceed 700 sq ft. pursuant to Chapter 340-9-J-(2) and 340-9-J(2) (e) in a PRD Zoning District.

Larry Fenity will be representing the applicants this evening.

Larry Fenity: The situation for the applicants is that her parents the Furnal's now live in the Carolina's and travel a fair bit but as they get older they are looking at coming back to the area to be closer to family. Also, to have the ability to live here longer and get assistance from family and that is the idea behind the temporary special permit to allow them to live longer on their own before needing more assistance other than from the family.

The Redden's have quite a bit larger lot than the typical village lot. The house is located near the garage as to allow them to have their own entrance without having to go through the main house and not disturb the rest of the family. That is why this addition is pushed to the left hand side where the garage and the driveway are. There is almost 230 ft of property on that side which make some sense to put the

addition over there. That is what brings us to the first of the issues with the variance and that is the concept as the code is written which asks for the maximum of 700 sq ft and 900 sq ft total. If you're over behind the garage you're going to be all new construction and that is going to be a difficult thing to build 700 sq ft because you won't be able to share space with the main house. Add to that the situation that in this case they are coming from a 3200 sq ft house in the Carolina's and downsizing is hard and difficult. Our thought here was to try and give them something that would give them the space they need and would fit all setback and lot size requirements and a place they could live for quite awhile.

If you look at the elevations the lot falls quite a bit as you come near the rear of the property. We are going to have a basement which is one of the things that Mr.Furnal is very happy about because he is an avid wood worker. He is also looking at in the future he might have trouble getting up and down and that is why we are putting an elevator in which is something we are starting to see more often in residential situations. The elevator and the stair to the basement add quite a few sq feet to what we would normally have. In the case of the elevator we add 35-40 sq feet in the case of the stair it is quite a bit more because of the landing. So it makes it very difficult for us to meet the minimum sq footage.

At this time Chairman Dole opened the meeting up for public comments.

Mr. Burtch: We are the neighbors on the garage side first of all how close to our property line is this going to be?

Mr. Fenity: Right now it is about 5.5 feet.

Mr. Burtch: What is the legal setback?

Mr. Fenity: 5 feet, as you know this is a pie shaped lot the closer you come it is 5.5 ft and the farther away you go it is 7 ft.

Mr. Burtch: What is the length?

Mr. Fenity: The total length is 43 feet.

Mr. Burtch: Right now we have no water problems on our property or in our basement with this addition going up we are concerned about the water runoff if there is a problem who would be responsible?

Mr. Fenity: It is the responsibility of anyone who builds on their property whether a new home or addition that they do not throw any additional water on to your property. We will have to make sure of that; it is a sloping property and it slopes quite a bit away and the water will be heading this way not necessarily towards you. I am sure we can work it out either through swales or better yet through taking our downspouts down and draining them downhill. You are quite a bit up from this.

Mrs. Burtch: Your downspouts will go underground for a ways out?

Mr. Fenity: That can be done without any real problem.

Mrs. Burtch: Right now we have a natural run off because we sit lower than the rest of the road and in a really bad downpour it runs between us and into the woods which is a perfect runoff. If they are changing the lay of that land there is nowhere for the water to go.

Mr. Fenity: We will need to keep that swale and maintain it this swale also drains their property.

Mr. Burtch: What about access for construction vehicles there is very little room between the two houses I don't know the footage but it can't be much?

Mr. Fenity: We may be able to get some materials through the garage we will have to coordinate that. Hopefully the Reddens have been decent neighbors but just the general responsibility that comes along with building next to your neighbor's property is if they damage your property in any way they need to fix it. A lot of projects like this they will use smaller equipment.

Mr. Burtch: How long is permit good for?

Patrick Smith: 1 Year to finish after building permit is issued an extension can be granted if asked.

Mr. Fenity: I don't believe they are looking to start building until the spring. I can't speak for them but in conversations I believe they still have a house to sell in the Carolina's.

Mr. Burtch: Basically when the building begins it has to be completed within a year?

Patrick Smith: The temporary special permit I believe is good for 5 years with a five year extension.

Chairman Dole: Five years and can be renewed by the Building Inspector but after 10 years they must reapply for another temporary special permit.

Chairman Dole also stated that this in-law apartment can never be rented out to anyone other than the immediate family.

Mr. Burtch: How many people can live in this structure?

Patrick Smith: In a typical house there are guidelines, I can't tell you off the top of my head. I think they are allowed up to 7 people max for every kitchen. We are talking technical but I don't perceive this being an issue.

Larry Fenity: I asked them if your parents move on to something else what are the plans for this large addition. They came up with a whole lot of good ideas, the long term thought is that this would make a

very nice master suite on the first floor for them and when the kids come to visit they could stay in the upstairs. Obviously there would have to be some work done to tie this into the rest of the house.

Mr. Wicks: Is the elevation the same as the garage or does it step down?

Mr. Fenity: The elevation to the house will be one step up from the garage that is preferable for keeping mud out and would allow for a ramp if the need arises.

Mr. Wicks: Is that a deck off the back?

Mr. Fenity: Yes

Joan Quigley: Is that house handicapped assessable?

Larry Fenity: Yes very much so.

Mrs. Burtch: Is the elevator sound proof in any way?

Mr. Fenity: You won't hear the elevator outside the house it is a small elevator with a small horsepower engine. It is a little bit louder than your sump pump.

Joyce Lobene: I would like to direct a question to Attorney Stowe, looking at the size of this it is almost the size of another house. I thought the Village had a law in place that says it has to be a relative who lives there.

Attorney Stowe: It has to be blood relation, a family member.

Larry Fenity: They are well acquainted with the fact that they can never rent it in the future or sell as a two family. There is a big market for people wanting to buy large houses with in-law apartments.

Mrs. Burtch stated that this would become a $300,000 dollar home in an area where homes are selling for less than $150,000

Mr. Fenity: This is not necessarily economically the smartest in the way of return. The other way to look at it is if you sell a 3200 sq ft home in the Carolina's and you come up here to live year round this house is going to cost you considerably less and you can stay there longer because you are with family and you are where you want to be. It is very difficult to economically justify any addition right now.

Mrs. Burtch: If they are granted this variance is it only for them at this time or does this open it up for any other residence on that street?

Chairman Dole: Any one can apply, but this is a temporary permit for five years with a renewal of five more years and then they would have to return for any other extensions. The variance goes with the property only the permit would need renewals.

Mrs. Flaherty: Back to the drainage problem I live next door to the Burtch's 2 doors away from Debbie and Tony of course we all back up to the woods; everything drains from west to east in that area and it all ends up in my backyard in a big swale. If drainage is underground and runs far back into the woods than it would miss the back part of our lots. If it is just runoff from gutters it is going to go right down that same area across the back of our lots as it has for years. There is an area where the land goes up at the end of those lots so the water isn't going to get up over that rise it is going to drain back down onto our properties.

Patrick Smith: Tom West and I went over and looked at the drainage and there will be a stipulation for drainage as to how the water will need to be directed towards the middle of his yard so that it makes it to the same place as before. We feel that this isn't going to manufacture water everything that is raining would have been going that way anyway. What this is going to do is keep it out of the next door neighbor's yard and put it towards the back yard just as if this building wasn't there. We don't feel we need to tell them to take it off the property line because all the rain water would have been there anyway we want them to aim it towards the middle of his yard so that it makes it to the same place as before.

Mrs. Flaherty: The rain water is coming off new roofing it is not going directly into the ground when the rain come down and the ground would absorb it so I think you would have more runoff.

Patrick Smith: We are projecting that it goes to the center of his yard.

Mrs. Flaherty: And down the back of our yards that is the only place it can go because the ground isn't graded that way.

Patrick Smith: On forty feet if there is so much rain I don't see how it would be any different it would be so slight.

Mrs. Flaherty: In the winter time I will invite you to come to my backyard and see the big ponds that I have.

Patrick Smith: Again, I don't think this is going to manufacture any more rain water or snow as it melts. I am confident that this will work.

Mrs. Flaherty: My point is if that building wasn't built there would be ground area to absorb the water before it got to the back. Now, you have gutters running the water off at a larger volume down there. Do you agree that water does not flow uphill?

Mr. Fenity: I think his point is that just as you are talking about having distance for the water soaking into the ground what he is trying to do is create more distance by having it come out into and across the yard.

Patrick Smith stated that they are asking the applicant to do this with the 2 existing gutters also the yard keeps sloping and he doesn't see any reason why this shouldn't work.

Patrick Smith: If this basement is 12 course we need to make sure that you are not getting into ground water. I don't think it will be an issue because this is a walkout basement.

At this time 7:37 pm the Public Hearing was closed.

Diana Powell Keery: I understand what the public is saying about the drainage and I think directing the run off to the center of the yard is a good idea.

Mike Flavin stated that the size of the pipe (6 ") that Tom West is requesting will slow the flow down considerably.

Dale Kellerson: I am a little confused with the clarification of the code are we asking for 260 sq ft variance or a 60 ft variance? A 60 sq ft variance doesn't sound like much but a 260 sq ft variance does sound like a lot.

Attorney Stowe: As I read the code the 900 sq ft means to me if you are taking pieces of an existing build plus new build as I read it would be 260 sq ft.

Dale Kellerson: I guess that is what I thought.

Mr. Fenity: That is why I was discussing the fact of where this addition takes place within the house. We are not using any of the existing house for this addition we are using the garage to allow them more independence. We have tried to stay within shouting distance of the 900 sq ft because that seems to be something that the town fathers when they put this together seemed to think this was the maximum that an apartment like this should be.

Dale Kellerson: This code is fairly new I know the concern about having a structure that close to the property line and I know it is within the code so a variance is not needed. Would it make sense for the neighbors to move it to the left and have the deck butt up with the 3 season-room?

Mr. Fenity: Again one of the things we try to do is leave some resemblance of what the 3 season room was before and allow this to become a shared space between them. And give them space for a front door.

Dale Kellerson: For the construction of it I don't know how you would get a backhoe without using some of their property. Is there room on the other side to get equipment in?

(Unknown): There is a little bit of room but it is pretty tight too.

Chairman Dole read aloud a letter from Electric Superintendent McIntee which states that he sees no issues with this construction as far as the electric is concerned.

Dale Kellerson stated that the code says there must be only one meter.

(Unknown): I know that everyone has a right to do what they want on their property but where do you draw the line of putting an addition on your property and you are reducing the value of your neighbor's property. The Burtch's value of their house will be reduced because there will be a huge addition only five feet from their property. Don't you take into account the houses around them?

Chairman Dole: We take into consideration the entire neighborhood.

Mr. Fenity: The purpose of a meeting like this is to make sure that if there are things the neighbors are concerned with that they can right them.

Chairman Dole: Again what we are going to rule on is the sq footage of the in law apt and the temporary permit to allow the in law apartment.

Patrick Smith: I don't have the advertisement in front of me, did I mess that up do we have to do it again?

Diana Powell Keery: I think you did it the right way because you did the total and you said not to exceed 700 sq feet you never specifically said whether the difference was 60 sq f t or 260 sq ft if you do the math you are saying 260 sq ft which is fine.

Attorney Stowe: But you are also increasing the gross area to 960 sq ft.

Diana Powell Keery: But it is written that way.

Attorney Stowe: But there are two requirements one being the gross area and one being the new construction area. There are two independent requirements. I would say it has to be re-noticed the only question I had is did we look to see if there are any easements running through the property?

Pam Gilbert stated that Tom West reviewed the property records and there are no recorded easements on this property.

Discussion ensued regarding the legal notice.

Attorney Stowe instructed the board to table the application and have another legal put in the paper citing the entire code.

At this time the following resolution was offered:

Resolution No 234 **Introduced by Chairman Dole**
November 21, 2013 **Seconded by Michael Flavin**

Resolved, that the Zoning Board of Appeals has determined that the application of Tony and Debbie Redden, 125 Village Hill Drive, Spencerport NY 14559 for a temporary special permit and an area variance for a 960 sq ft in law apartment addition to be located at same has been tabled until December 19, 2013.

Ayes: Dole, Flavin, Kellerson, Powell- Keery, Unvericht
Nays: none

Approval of Minutes

Motion made by Chairman Dole seconded by Diana Powell-Keery and carried unanimously to approve the September 19, 2013 minutes amended.

Adjournment

Motion made by Chairman Dole seconded by Michael Flavin and carried unanimously to adjourn the meeting at 8:00 pm.