



## ZONING BOARD OF APPEALS

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ROBERT W. LEVY  
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DEREK B. REDGATE

Thursday, March 2, 2017, 7:30 pm

Juliani Meeting Room  
Town Hall

Zoning Board of Appeals Members Present: Richard L. Seegel, Chairman  
David G. Sheffield  
Robert W. Levy  
Derek B. Redgate

PUBLIC MEETINGZBA 2016-29, JUANN KHOORY, 18 KENDALL ROAD

Mr. Sheffield said that the construction was given a cease and desist order by the Building Inspector because he felt that, based on complaints from neighbors, the construction had exceeded what had been approved by the Zoning Board of Appeals.

Mr. Seegel said that this came before the Board procedurally due to a neighbor's complaint. He said that the Building Inspector felt that the Board had to make a determination whether the work has exceeded what was approved in the variance. He said that subsequently, the Building Inspector received several more complaints from neighbors and he issued a stop work order. He said that stop work order is not under appeal. He said that the Board has not received a letter from anyone appealing the decision.

Mr. Seegel said that this was scheduled for a Business Meeting to make a determination as to whether the work exceeds or is still within the scope of the original variance. He said that if the Board decides that it exceeded what was approved in the original variance, the Board will have to schedule a public hearing.

Mr. Seegel said that, with the stop work order issued, the correct way to proceed is for the Petitioner to file a formal appeal of the Building Inspector's decision. Mr. Levy said that, alternatively, the Petitioner could seek to modify the original permit. He said an appeal or request for modification would have to be publicly noticed.

Mr. Seegel said that the Petitioner is present tonight in a Business Meeting capacity. Mr. Sheffield said that the Petitioner is present to understand how to proceed. Mr. Seegel asked if the Business Meeting was scheduled after the Building Inspector issued the stop work order.

Tim Bobuly, Builder, said that the Building Inspector informed them that they could go ahead with some of the work to install the windows and roof and then stop work. He said that they were told that they would have to go before the Zoning Board to see if they exceeded the Zoning Board's original approval. Mr. Seegel confirmed that the Building Inspector allowed the Petitioner to make the structure weather tight.

Juann Khoory, property owner, said that the Building Inspector issued a verbal stop work order because some of the neighbors complained that the work may have gone beyond what was approved by the Board on March 21, 2016. She said that the Building Inspector told her that he would like to have her go before the Board at a Business Meeting to show them an as-built and what was approved by ZBA to confirm that the scope was not exceeded. She said that nothing changed in terms of square footage, height, or massing. She said that the variance that was approved by the Board allowed a bump at the front to create an entrance. She said that they built a smaller bump than what was approved. She said that she brought evidence of what was there and what the Building Inspector permitted them to build.

Mr. Seegel said that the problem may have been created by Ms. Khoory's failure to come back to the Zoning Board and the Building Inspector when she discovered conditions that she was not expecting. He said that she should have stopped the work at that point. He said that the Board did not approve taking studs down on the first floor. He said that the Building Inspector is limited in his authority by what the Zoning Board approves. Mr. Buboly said that he was under the assumption that was not part of the Zoning Board approval. He said that he thought that the Zoning Board approval was to do the bump out and the height. Mr. Seegel said that whatever the Board approves in the way of plans is what you must build. He said that the plans cannot be modified unless the Building Inspector deems that it is a minor modification or a Building Code requirement. Mr. Khoory displayed plans showing the work that was approved by ZBA. She said that they noticed damaged walls after demolition. She said that they did not touch the foundation. She said that they did not change the basement area.

Mr. Buboly said that they replaced the first floor walls with new studded walls because, when they discovered what the condition was, they were completely rotted. He said that it was old wood and there was animal feces in there. He said that there were holes and nests. He said that it was not the right way to finish the job. He said that he thought that he was doing the right thing by bringing it up to code. He said that he was not under the impression that he was doing something wrong. He said that they typically speak with the Building Inspector at the Rough Frame Inspection. He said that Mr. Grant agreed that they had done the right thing but they had not followed the right procedure. He said that he was unaware that such a minor change would affect the Board's decision.

Mr. Seegel said that when a petitioner files an application, postcards go out to all of the neighbors. He said that people did come in to look at the plans. He said that they knew that it was a modification of a variance, which has a higher standard than a special permit. He said that when the neighbors saw the part of the end wall was taken down to the deck, they saw that was not authorized in the plans.

Mr. Sheffield said that the house is partially built with a change to the dimensions of the studs because the previous exposed construction was found to be unsupporting of the second story. He said that there is a stop work order by the Building Inspector.

Mr. Levy questioned whether it should be the Building Inspector's call whether the modifications are serious enough to require modification of the permit. Mr. Sheffield said that Mr. Grant has kicked the issue into ZBA's court.

Mr. Seegel said that he drove by the property but did not get out to look at every single stud that was replaced.

Ms. Khoory said that the Board approved half of the first floor to come out. Mr. Buboly said that by the time they put the headers in there was really nothing left. He said that what was left was completely rotted. He said that he would never in good conscience leave those walls. He said that it was the right thing to do for the house.

Mr. Seegel said that, as a matter of law from a Zoning standpoint, once you take the walls down to the first deck, it is a different situation from what had been presented to the Board previously. He said that it is almost like a total demolition.

Mr. Levy said that this is either a request to modify a previously issued permit, which has to be properly noticed or there should be an appeal from the Building Inspector's stop work order. He said that the determination of whether the structure complies with the previous permit is initially the Building Inspector's. Mr. Seegel said that he agreed. Mr. Levy said that in the past, Petitioners have come before the Board to request to make a small change at a Business Meeting. Mr. Seegel said that this meeting was called in response to neighbors' complaints. Mr. Buboly said that they did not change the structure. He said that they only changed the integrity of the walls. He said that they typically do that as a field change with the Building Inspector. Mr. Seegel said that it fine if it is a house that is not being built under a variance or special permit.

Mr. Levy confirmed that this was published as a public hearing. He said that if abutters have concerns, they should have an opportunity discuss them. Mr. Seegel said that since it was not published, the Board cannot make a ruling. He said that the Petitioner will have to go back to see the Building Inspector and ask him to issue a formal stop work order so that it can be appealed to the Zoning Board of Appeals at a public hearing. Ms. Khoory said that the Building Inspector told them to follow this procedure. She said that the job has been stopped for two months. She said that the Building Inspector recognizes that there have not been changes since ZBA approval. Mr. Seegel said that the Board did not receive anything from the Building Inspector. He said that the Board is present at the public meeting because of neighbors' complaints. Mr. Khoory asked about the nature of the complaints. Mr. Seegel said that when the original application was filed, neighbors came to look at the plans. He said that when they saw walls coming down on the first floor level, they realized that was not in the original plans. He said that neighbors called the Building Inspector and the Zoning Office to complain. He said that the Board was asked to put this on a business meeting schedule to determine whether the work has exceeded what was granted in the original decision. He said that the Building Inspector allowed the Petitioner to close the house in to make it weather tight and then they had to stop. He said that the Board does not have anything from the Building Inspector. He said that if the Building Inspector has told them to stop, they need to get something in writing. He said that Ms. Khoory will have to make a formal appeal of the stop work order. He said that gets appealed to the Zoning Board as a separate matter. He said that the appeal should say that she is appealing the stop work order and, in the alternative, for approval of the modification to take out more of the original building was intended because rot and other things were found.

Mr. Sheffield asked Ms. Khoory if the Building Inspector had given her anything in writing. Ms. Khoory said that everything was verbal. He said that he would not send a note because he had already told the contractor. She said that the Building Inspector told her that she needed to go to ZBA to make sure that they had not exceeded the parameters of the original decision. He told her that if the ZBA was okay with what had been done, she would be allowed to proceed with the work.

Mr. Seegel asked if there was anyone present who wished to speak about the matter.

Michael D'Ortenzio, 40 Russell Road, said that he is one of the abutters who expressed concern. He said that he had a few questions. He asked about Total Living Area plus Garage (TLAG). He said that the Planning Board had recommended a deferral for the variance that was granted in 2016 until further information could be sought about TLAG. He said that may not be relevant because the variance was granted. The Board said that it is not relevant to this issue. Mr. D'Ortenzio said that he had questions about process. He asked if there would be a different legal standard if the house was torn and rebuilt versus the renovation of a one-story addition. He asked if there would be a higher standard with respect to impact to the neighborhood. Mr. Seegel that it would not because variances had been issued for the property years ago. He said that when they come before the Board now, they come before the Board to modify a variance. He said that has a higher standard than seeking a special permit. He said that they complied with all of the Board's requirements. He said that they ran into a problem with rot. He said that

the contractor stated that the best way to deal with that under the Building Code is to remove the rotten studs and replace them.

Mr. Levy asked if Mr. D'Ortenzio was concerned that any of the changes would impact him or the neighborhood. Mr. D'Ortenzio said that he had not had a chance to familiarize himself with the specifics of the changes. Mr. Seegel said that they have not changed anything. He said that they were supposed to only go down to the second floor level, replace the windows on the first floor and then build up the floor above. He said that when they started taking out the old windows, they discovered rot in the wood. He said that contractor determined that it was not structurally safe, so he took it upon himself to replace some first floor walls as well. He said that was not in the original plans that came before the Board. He said that a question is whether the Board's decision would have been any different. He said that he sat at the previous hearing and did not think that the Board's decision would have been different.

Mr. Levy said that if the Building Inspector is looking for some type of advisory opinion, this does seem to be di minimis. He said that it will have no impact on the neighborhood.

Mr. Redgate said that he sat for the original decision. He said that he visited the site. He said that it is a brand new home. He questioned whether the Board would have looked at it differently with the understanding that it was going to be a teardown and was seeking a variance. He said that he would have liked to ask the Building Inspector what he would have done if there was no special permit or variance from ZBA on a property that was conforming and somebody did not comply with what they had given the Building Inspector for a demolition permit. He said that there was a plan in the application packet to the Board that showed a piecemeal demolition plan. He said that he would have liked to have asked Mr. Grant what he would have done if the entire house was razed and rebuilt.

Mr. Levy said that the Board is not going to make the Petitioner tear down the house.

Mr. Seegel discussed having the Board make a determination, based on what it had seen, that the changes are di minimis. Mr. Levy said that the Board could issue an advisory opinion to the Building Inspector and he can make a decision about what he wants to do.

Mr. Redgate asked if there is language in the decision about maintaining the walls. Mr. Sheffield said that the plans show about 50 percent of the walls being removed. Mr. Buboly said that they did not replace the whole first floor. He said that the garage level is existing walls with the exception of the approved bump out at the front. He said that they had approval to take out sections at the deck level for some exterior and all of the interior walls. He said that when they went to build the window headers, there was really nothing left. He said that they did not touch the foundation area on the first floor at the garage level. He said that on the deck level, instead of leaving the old walls, they replaced them. Mr. Sheffield confirmed that no square footage was added.

Linda Natansohn, 44 Russell Road, said that she lives next door. She said that it is a quiet neighborhood with modest sized houses. She questioned whether the Board would have looked at this differently if all the walls were to come down. Mr. Seegel said that the Board authorized the renovation. He said that the fact that they discovered some structural problems in the walls as they were doing the work is something, in his opinion, that the Building Inspector should have authorized as a change. He said that it appeared to him that this should not be back before the Zoning Board. He said that the house will be the same square footage as what the Board approved and will look like the plans that were authorized. He said that the only thing that is different is that there are some new walls in place of structurally unsound walls. Ms. Natansohn said that she does not know what gets measured in terms of height of the walls. Mr. Seegel said that the Board has to be fair to everyone. He said that the Petitioner has been held up for some time. He said that the neighbors are concerned about what is happening. He said that, from what the Board can determine, there has been no change in the size of the house. He said that the second floor walls had to come down because they were not structurally sound. He said that it is a strange lot. He said that the house was usually built with 2 by 4 walls. He said that today it is more environmentally proper to build

with 2 by 6 walls for more insulation. He said that when the contractor took the 2 by 4 walls down, he replaced them with 2 by 6 lumber. He said that it is environmentally better but not what was in the plans. He said that if the Board was to make the finding that it is a di minimis change and everything else is the same as what the Board approved, everyone should be able to go away happy. He said that the neighbors were notified in 2016 for the original petition. He said that the Board is not going to revisit that. He said that the time for the neighbors to speak was at the 2016 hearing. He said that the Board is here for a very limited issue. He said that the issue is whether what the Board approved was changed. He said that it appears that did not happen. Ms. Natansohn said that the neighbors wanted to be sure that there was no expansion and that the setbacks are as they should be.

Mr. Sheffield said that his understanding is that everything is the same except for the dimension of the studs.

Mr. Levy proposed that the Board advise the Building Inspector that, provided that there is no change in the footprint or any increase in the square footage or height of the house, or any dimensional change, that the Board determine that the change is di minimis. The Board agreed that the change is di minimis and the Building Inspector shall be notified of its opinion.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary

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