

**TOWN OF SKANEATELES
ZONING BOARD OF APPEALS
MEETING MINUTES OF**

December 5, 2017

Present:

Denise Rhoads, Chair
Jim Condon, Vice Chair
David Palen, Member
Mark Tucker, Member
Michelle Jackson, Secretary
Scott Molnar, Attorney
Karen Barkdull, P&Z Clerk

Absent:

Sherill Ketchum, Member

Chair Rhoads opened the meeting at 7:00 p.m. at Town Hall. The next regular Zoning Board of Appeals meeting will be held on January 2, 2017.

Chair Rhoads asked for a motion regarding the approval of minutes for November 14, 2017, Member Tucker made a correction on Page 2 changing the numeral reflect 148.

WHEREFORE a motion was made by Vice Chair Condon and seconded by Member Palen to approve the minutes of November 14, 2017 as corrected. The board having been polled resulted in the unanimous affirmation of said motion.

Applicant: Jane Richards
2310 Thornton Grove
Skaneateles, NY 13152
Regarding:
2308 Thornton Grove
Skaneateles, NY 13152
Tax Map ID# 056.-03-04.0

The applicant is Jane Richards, Debbie Williams and Attorney Thomas Fucillo, Esq from Menter Law firm is legal representative for Jane Richards. Attorney Fucillo explained that Jane is asking for an interpretation as well as appealing the Building permit that was issued for the project. Attorney Fucillo hand delivered a letter regarding the issues that Ms. Richards has with the project and it is part of the record. Attorney Fucillo also spoke with Jane Richards and she is not opposed to the actual project and believes that it will be a beautiful addition to the neighborhood. She is not trying to get the project denied however; she is concerned with the correct process being followed. Her opinion is that the project would have required a variance as well as a special permit.

Attorney Fucillo proceeds to explain that this building permit application was put through and should have been sent for site plan approval as well as requiring a special permit and/ or variance.

Deb Williams had taken several photos that are also part of the record. The photos show the property in the building process and for several minutes the photos were reviewed and Attorney Fucillo explains that this project is not a standard project.

Deb Williams and Attorney Fucillo proceed to explain the photos:

The first photo was the beginning of the work and the project proceeded approximately a month after the building permit was issued. The project started by taking the initial building apart section by section, the initial crawl space was narrow and not very deep. The back of the structure away from the lake has had modifications, specific attention to the fact that the crawl space has been modified.

The project was taken apart bits at a time and Attorney Fucillo questions why the project was completed in this manner.

Deb Williams explained that the building was lifted and the concrete piers were exposed which were reused in conjunction with the new crawl space. At the beginning of the project the piers were substandard, according to Ms. Williams, and they were three blocks high. The project had been excavated down approximately 6ft high, and now footings and a concrete crawl space is being formed. The flooring on the first floor is new, the lake front side of the structure is now new and in the corners the concrete piers have been incorporated to create an enclosed basement. Attorney Fucillo proceeds to explain that it is now a useable basement creating a change in the use.

The wall was completed and now on the North elevation a hole to access the crawl space had been created.

Member Palen asked if the old piers had been increased and Attorney Fucillo said that the piers do look higher. Vice Chair Condon said that according to the photos they appear to be the same height as they were prior to the modifications. Ms. Williams said she is not arguing about the height she is questioning the extreme renovation that is occurring without going before the Planning Board or the Zoning Board for any type of review.

Attorney Fucillo said clearly this is not a renovation and is a complete demolition and the construction of a new structure. done at this time with only a building permit and no other oversight. The building permit provides for a "remodel of an existing cottage, increase height, and decrease to three bedrooms," according to Attorney Fucillo. He explained that clearly the scope of the project exceeds that of a mere remodel.

Ms. Williams would like to discuss the meeting notes from September 1, 2017 which talks about the lot size and the lake frontage. She reads from the application and according to her interpretation the application did not go into the depth of the actual project that is occurring. Attorney Fucillo explained that his opinion is that they have extended the use by adding the basement and this should be considered reconstruction vs a remodel. Ms. Williams also brought

Z.B.A.12.05.2017

up the attic space that will be useable on the second floor according to the blueprint. The blueprint said there was an existing crawl space that was 5ft 1.5 inches. The code 148-12(c) (5) is applicable without a special permit or variances. Because of the current impermeable surface exceeds the code already they would need variances or a special permit.

Ms. Williams brought up her opinion that there is all new floor structure and that the old floor joists had not been utilized.

Attorney Fucillo would like the homeowner to apply for a variance or a special permit. Jane Richards would like the applicants to have to have a review by the boards and or apply for any permits that would be required to complete their project. Ms. Williams would like the neighbors to have a comment period. Attorney Fucillo is concerned with the precedent that could be set by non-action on this complaint.

Chair Rhoads asked if the board had any questions at this time.

Attorney Scott Molnar recommends that the board consider this a Type II action under SEQR. In so far that it is a single family dwelling under renovation.

WHEREFORE, a motion was made by Member Tucker and seconded by Member Palen to declare this application a Type II action not subject to SEQR review. On the basis that any and all requests for Area Variance are automatically a Type II action. The Board having been polled resulted in the unanimous affirmance of said motion.

Public Hearing, Chair Rhoads opened the Public Hearing for this application and asked if there was anyone in the audience that would like to speak in favor or in opposition of this application.

Alex Davidson, neighbor; he considers the application of Jane Richards to be of a personal nature. He has seen several projects that were completed by Bob Eggleston and is of the opinion that Mr. Eggleston follows the rules as they apply to any projects that Mr. Eggleston is involved in.

Mr. Davidson proceeded to explain that he has seen Ms. Richards project back in 1986 modified and altered from the original plans that they had when that project was underway. He is aware that Ms. Richards has a basement that isn't in the plans along with a full bedroom that is altered from her original plans as well. He is of the opinion that if Ms. Richards isn't willing to follow her own blue prints and he feels that Ms. Richards has had one dispute after another with the Salzhauers and that this is personal in nature vs. that of an actual problem with the process of the building permit issued. Mr. Davidson is questioning the ultimate objective of this request.

Deanna Coyne, southern neighbor to the Salzhauer property relayed her experience of going in front of the board when she was modifying her home. She stated that this isn't about Ms. Richards; it is unfair to assume so. She has no issue with the modifications of the Salzhauers and their modifications to their home. She only asks that it is done in the proper manner and that all necessary variances as well as special permits are applied for and issued. She commends the work of Deb Williams and would like to know who is responsible for accepting this Building Permit.

Molly Elliot, friend and realtor, speaks out and says her perspective is that the Salzhauers went through the process that they were told to do and that they did all that they were told to do by the professionals and that the zoning law is somewhat confusing to the general population. The people investing in their property should be able to get their project completed because the Salzhauers proceeded because they thought they had done everything as they were supposed to do and that the modifications that were done to the piers was for safety.

Sharon Lyke, comments that she accompanied Deb Williams while she took the photos and feels that Jane Richards is only hoping to have people follow the codes.

Brody Smith, Town Attorney, representing Curt Coville the current Codes Enforcement Officer is present to speak on behalf of the Codes Office in this matter.

Chair Rhoads clarified that the board had requested that the Codes Officer be present to discuss this matter.

Attorney Scott Molnar clarified that should the board have additional questions to ask the Code Office the board would like to have additional dates to have a conversation with the Codes Enforcement Officer.

Attorney Smith reviews the background, as well as the reasons that this application proceeded as it did. The building permit was issued on Sept. 29, 2017. Although there have been implications that the application was presented and the sequence of the work done was to deceive the CEO, this is incorrect. The CEO had already made his decision prior to the work being done. The CEO has been involved in the process with the Salzhauers. All of the changes have been to accommodate the NYS building code. The footprint on the lot is nonconforming as it was prior to the permit being issued. It was the decision of the CEO to issue the building permit without the requirement of a special permit or variance. Attorney Smith reviews that it is a non-conforming structure on a non-conforming lot. He presents a photo of the piers as well as the foundation wall and explains that the structure was non-conforming and that the square footage is not changing and no non-conformity has changed. The number of bedrooms is decreasing and the modest height change is within the codes. Those opposed to the application deem that C5 vs C3 should have been applied and the question is: Do you apply C3 or do you apply C5 and the CEO determined that the common usage of the word demolished was interpreted by the CEO because it is not defined in the Code -- the CEO used the dictionary definition of this word. The building was not razed; the code has a more nuanced approach regarding the proper application of the code. The CEO determined that C3 was applicable in this case. The CEO is of the opinion that this was a renovation because of the past practices and the common usage of the term renovation vs demolition. The footprint did not change, the floor piers will be utilized as well as the floor joists and decking will be used. In closing the final observation is that the codes being structured as they are do not reflect other town codes because we have a non-conforming use law. The purpose is to not require the homeowners to keep a house that is dilapidated but also to not develop a more non-conformity in the home renovations.

Chair Rhoads asked if during the process of building, if the materials were determined to be unusable, would the applicant have to appear in front of the Codes Officer. If the materials were rotten and had to be replaced with new, would the construction then be determined to be a

demolition vs a remodel as defined. She questioned if there is a point during the renovation process that the CEO would have to then re-evaluate his decision.

Member Palen asked if the construction that is happening now is a reflection of the plans that were presented at the beginning of the project and given to the CEO during the application process. Attorney Smith answers that the CEO is aware of any modifications that had been determined.

Elan Salzhauer, property owner, responded that there have been no changes to the plans.

Jeff Davis, Attorney representing the Salzhauers, speaks regarding the accusation of the change in use. The crawl space was a crawlspace and is still a crawl space and is a reflection of the plans. The applicant came in and sat with the Codes office and proceeded with their approved application, and plans. Why did the Codes office determine that this was a minor renovation. The plans are clear that this is not a minor renovation, and that the roof and floors would be removed, the existing crawl space would be brought up to NYS residential code, and that the entire project would be on the existing footprint with the original piers and floor remaining. There is one new floor joist and all others are the original. This does not meet the standard definition of demolition. This project was done in a manner to retain the older pieces of the home that will reuse existing materials as much as possible during their project.

A question was asked as to the definition of pier and Attorney Molnar explained that the public hearing is not a question answer session but that this is for informational purposes for the board to collect information. The word Pier is not defined in the codes.

Elan Salzhauer, property owner explains that he had utilized the crawl space for multiple reasons including changing his water filters etc. He and his wife have saved for this project and proceeded with all of the things they were asked to go through in regards to the application process. He has been in the crawlspace on several occasions.

Anne Salzhauer, property owner, explains that they have saved for 19 years for a remodel of their cottage and that since October 23, she has not had a peaceful night and is working in conjunction with their builders to comply with all the regulations and codes. Because they have had other altercations in the past with Ms. Richards they had forgone the deck project that they had approval for and in lieu of proceeding and causing discourse with her neighbors she determined that they would forgo the deck project to keep the peace. Presently she is hopeful that this will end and they will be able to move forward with their project and that this process is costing them a substantial amount of money. She is passionately pleading with the board saying that they would like to proceed, they have followed all the steps that they had been required to do.

Molly Elliot expressed that the Salzhauers have followed the process and that they are being black balled and harassed, because the person that is appealing the building permit has determined that the process was not correctly followed. How is it that one individual can cause such distress to a young family.

Chair Rhoads clarifies that a stop work order has not been issued and would like this to be on the record.

Bob Eggleston, Architect for the Salzhauers, expressed that he appreciates the public hearing process and that when he is talking about the codes and building he is factual about the process. He expressed that there is a process involved with obtaining a building permit and like all projects there was a meeting with Karen Barkdull for a pre-application meeting. After an extensive review, it was determined that the project fit within 148 12(C) (3). There was a construction sequence submitted, the septic was presented, and the City of Syracuse had no objections, all other proper channels were followed and the final building permit was issued. In an effort to work within the zoning law there was a lot of work to comply with the zoning section that was deemed appropriate.

Mr. Eggleston reviews several other projects that were of similar in manner to this project. He expresses that he has been involved in multiple projects that have gone before the board. He works to comply with the regulations and requests of the board and the codes of the Town of Skaneateles. Past precedent presented by Mr. Eggleston follows:

1390 Thornton Heights (2013) Tax Map 057-01-15.1 Nolan.

This lot is less than 20,000 SF and the structure was non-conforming as to side yard, rear yard and ISC. The proposed deck increased the footprint of the structure and was considered redevelopment. This application required additional area variances for side yard setback and watercourse setback. ISC reduction was exempt from redevelopment due to a prior variance that made it conforming. The footprint increase was 194 SF. No Site Plan Review or Special Permit was required. This application was distinctly different from the Salzhauer's in that the footprint of the structure was increased and additional non-conformities were created including watercourse setbacks. (This was not a non-conforming use as stated by Mr. Fucillo)

3241 East Lake Road (2014) Tax Map 040-01-08.0 McCarthy

This was a non-conforming cottage on a lot with less than 75 Ft of shoreline. This was a total demolition that allowed the new structure to be conforming. This application was made before the zoning definition of 'redevelopment' was amended. The footprint of the cottage and driveway was modified making it re-development. The ISC was made conforming so a Special Permit was not required. The structure was more than 200 ft from the lake so no site plan review was required. This project has little in common with the Salzhauer project.

2763 East Lake Road (2016) Tax Map 038-01-25.0 Teixeira

This is a lot with less than 20,000 SF and 75 Ft of shoreline. While the addition did not alter the building footprint the alterations to the driveway did trigger redevelopment so a variance, site plan review and special permit was required. Note that a lake yard setback variance was not required because it was a vertical expansion that in itself did not trigger redevelopment even though the addition was within 100 ft of the lake. This project has little in common with the Salzhauer project.

2330 Thornton Grove South (2016) Tax Map 056-03-12.0 Fischer

This lot is less than 20,000 SF and less than 75 Ft of shoreline. The structure was non-conforming as to side yard, lake yard, building footprint, ISC and open space. There was no change in footprint so redevelopment did not apply and no special permit or site plan review was required. Because the structure was within 50 Ft of the lake and the height was being increased, an area variance was required. Had the existing cottage been more than 50 ft from the

lake, no variance would have been required. This was a remodel of the existing cottage and once the existing structure was exposed, the piers needed to be repaired and minimal portions of the floor structure were maintained. This project is similar to the Salzhauer project in the extent of the remodel of the existing structure.

Because this application required an area variance for increasing the height of a building within 50 ft of the lake, the fact that this was on a lot less than 20,000 SF and less than 75 Ft of shoreline was included in the denial. Had the first variance not been required, the second variance for Lot area and shoreline length would not have been required.

1411 Thornton Heights Road (2015) Tax Map 057-01-32.0 Leiss/Sennett

This lot is less than 20,000 SF. The structure was non-conforming as to side yard and building footprint. The addition increased the building footprint and required a side yard and lake yard setback. Because the footprint was increased, redevelopment was triggered and a variance for developing on a lot less than 20,000 SF was also required. This project has little in common with the Salzhauer project.

1255 Longview Shores (2012) Tax Map 054-01-06.0 Bruni/McCarthy (Ms Williams was the CEO and Zoning Officer)

This lot is less than 20,000 SF and less than 75 Ft of shoreline. The initial building permit was for the repair and remodel of the existing non-conforming 4 bedroom cottage. Because the work involved more than 50 % replacement value and was located within a flood plain the existing cottage was required to be raised several feet in height and new piers and first floor structure were built in place of the existing components. There was no ZBA or Planning Board review required for this building permit. It was not until the owner decided to add a deck and other improvements that variances, special permit and site plan review were required.

2332 Thornton Grove South (2012) Tax Map 056-03-13.0 Meeske

This lot is less than 20,000 SF and less than 75 Ft of shoreline. This application was for the remodel and second floor addition to an existing cottage and required area variances, special permit and site plan review. This was prior to the current definition of redevelopment and the cottage was within 50 ft of the lake. During construction the condition of the existing cottage was determined to be in such poor condition that only the existing concrete slab of the back half of the cottage was retained. This continued as the remodel of the existing building and was not re-classified as a demolition.

1025 The Lane (2017) Tax Map 050-01-17.0 Poole

While this lot is greater than 20,000 SF and shoreline greater than 75 Ft, the existing residence is non-conforming as to side yard setback, ISC, open space and floor space for a lot less than 40,000 SF. The project is the remodel of the existing dwelling that will increase the volume by up to 5,000 CF. In that there is no change in footprint, no variance was required. The remodel of the existing structure will maintain only the foundation wall and basement slab. The ISC will not be reduced although recent zoning amendments would allow this without triggering redevelopment. This is similar to the Salzhauer project in to the extent of the remodel of the existing dwelling.

2591 East Lake Road (2017) Tax Map 037-01-24.0 Conley

While this lot is greater than 20,000 SF and shoreline greater than 75 Ft, an existing non-conforming accessory apartment, located within 26 ft of the lake was being renovated. During a pre-application meeting, it was determined that no variance, site plan review or special permit was required. The existing 600 SF structure was jacked up so entirely new piers and beams could be placed under the structure to make it structurally stable. This was reviewed by the City of Syracuse.

Many building permit applications are reviewed by the Town of Skaneateles Zoning and Codes Office and are determined not to require any area variances, site plan review or special permits. Each application is reviewed on its own merits and determined accordingly what steps are required to receive a building permit. All building permit applications for projects that are located within the LWOD are reviewed by the City of Syracuse.

There was never any representation to the Town that the Salzhauer project was a “minor renovation”. It was made clear that the roof, walls and upper floors would be removed entirely and that the structure would be enlarged by less than 5,000 CF as entitled to by Section 148-12C(3). It was also understood that the existing crawl space would be enclosed by block walls and made to conform to the current NYS Residential Code and Energy Code in that more than 50% of the components would be replaced.

Foundation was measured on Dec 2, 2017 and is 22’-1” x 56’-4 ½” which is slightly smaller than shown on the original survey Joseph Phillip, Oct 25, 2012.

Chair Rhoads asked for clarification regarding the utilities that will now be located in the crawl space. Mr. Eggleston explains that modifications are in an attempt to comply with the NYS code.

Attorney Fucillo notes that he is of the understanding that the process in which the building project was done was in an attempt to hide the fact that they were totally demolishing the home and then rebuilding even if the tear down of the home was done piece by piece. 148-12(C) (5) explains that the ISC does not comply on this property and that is the reason that a special permit and variance should have been required. The current crawl space was expanded to be under the entire home, creating an extended use. This is not a renovation or an ordinary repair.

Vice Chair Condon clarified that when the application is presented to the CEO that there was also a copy of the plans. On the plans there are notes that express that the materials will be replaced as needed if during the process there is a determination that the materials are not salvageable.

Attorney Fucillo reiterates that his position is that the application should have been filled out clearly expressing the same notes that are on the site plans. Not enforcing the application to be clearly completed and compiled will set a bad precedent.

Deb Williams, would like to clarify that she never said change of use she used the term extent of use and would like to point out that the blue print would indicate that there was already a crawlspace.

Attorney Scott Molnar recommends that the board poll all parties to determine if there are any additional comments. If there are none then he recommends that the Public Hearing be closed.

Z.B.A.12.05.2017

Chair Rhoads asked the audience if there were any additional comments.

Barbara Delmonico expressed her respect of Deb Williams and Bob Eggleston and their diligence in the preservation of the community. She would like to suggest that because the permit has been issued based on the plans and that the Salzhaurs be allowed to move forward but to take this issue into consideration moving forward.

Holly Gregg resident, Executive director of the citizens to preserve the character of Skaneateles, he is of the opinion that there is a misunderstanding of the language of the codes and that this should be used as a prime example why our zoning codes need to be clarified and updated and to make it easier for the citizens to be able to clearly understand the definitions of the words utilized. He is of the opinion that this should be utilized as a teaching moment and that we try to clarify our zoning codes.

Attorney Jeff Davis asked to close the Public Hearing. He would like to complete this by the end of the year so the Salzhaurs would be permitted to move forward.

WHEREFORE, a motion was made by Member Palen and seconded by Vice Chair Condon to close the public hearing. The Board having been polled resulted in the unanimous affirmation of said motion.

Attorney Scott Molnar expressed that his observation to the board and to those in attendance that there were sound arguments to both sides and it is now up to the board to determine how this should be administered moving forward. He asked that the parties involved entertain a possible solution and that his observation is that we move forward if we consider the likely outcomes had the Salzhaurs ~~had~~ been required to go through the process of obtaining the special permits, and or variances, that it is highly likely that the Slazhaurs would have obtained the required permits and or variances. He asked that the Salzhaurs voluntarily proceed following the Standard Conditions as required by all approved variances and special permits. Additional conditions that would be routine in the standard course of the process had the Salzhaurs been required to go through the variance procedure and or special permit application.

He asked the applicant Jane Richards to withdrawal the application should the Salzhaurs agree to move forward.

Attorney Molnar asked the board to determine if this would be a reasonable solution, and that this application would proceed; the board being polled agreed that this is a reasonable solution. Member Tucker expressed that the crawl space is not livable space and that the volume calculation is not including this space.

Joe Southern, Planning Board chair expressed that this could possibly fall into a courtesy review. Attorney Molnar clarifies that should both parties agree then the Salzhaurs would proceed following the standard conditions.

Deb Williams clarifies that the boards would then have no comment regarding the conditions that are to be followed.

Attorney Molnar expresses that the conditions are standard for all applicants that are in front of both boards.

Attorney Fucillo expresses that the conditions would not modify the ISC.

Attorney Molnar clarifies that he did not know that there were questions regarding the ISC and in response Attorney Fucillo explains that if the applicants would agree to a voluntary reduction of ISC to move forward.

A disagreement between the parties presents itself; Chair Rhoads, expresses that the board is currently not ready to make a decision tonight. She recommends that settlement and negotiations will proceed off the record in an attempt to come to an acceptable conclusion of this process.

Deb Williams expresses that in speaking for Jane Richards she does not want to stop the project but that she would want the process to be followed as it would have been mandatory for the Salzhaurs to go through.

Chair Rhoads expressed that the board has a lot of material to review and is not in a position to make a decision tonight.

Attorney Davis expressed that the parties involved would like to discuss the presented conditions and then review them and move forward.

Attorney Molnar will then proceed with drawing up the conditions and presenting them to both parties in an attempt to move this project forward.

Member Tucker expressed that he is of the opinion that this is a good way to move forward.

Chair Rhoads said that a special meeting should be scheduled to proceed.

Vice Chair Condon would like to schedule a site visit for the board.

WHEREFORE a motion was made by Vice Chair Condon and seconded by Member Palen to have a site visit on December 9, 2017 at 9:00 am and to hold a Special Meeting on December 12, 2017 at 7:00 p.m. The board having been polled resulted in the unanimous affirmation of said motion.

Attorney Davis comments that the property owners are not comfortable with the applicant Jane Richards attending the site visit and would prefer that they do not come on the property in question, it is an open construction site and he and his client are not comfortable.

There being no further business, a motion was made by Vice Chair Condon and seconded by Member Palen to adjourn the meeting. The Zoning Board of Appeals meeting adjourned at 9:25 p.m.

Respectfully Submitted,
Michelle Jackson