

Village of Skaneateles
Zoning Board of Appeals
October 25, 2011

In the matter of a Modification to add a 5 ft. by 9ft. x high cupola submitted by Marty Hubbard at 52 Jordan Street – and a condition imposed by this Board

Present: Lisa Banuski, Chairman
Craig Phinney, Member
Steven Hartnett, Member
Lee Buttolph, Member
Larry Pardee, Member

Jorge Batlle, Clerk to the Zoning Board of Appeals
Riccardo Galbato, Attorney for the Zoning Board of Appeals

Martin & Debbie Hubbard, Applicants
Robert Eggleston, Architect for the applicant

Dennis Dundon, 173 East Genesee Street
Eric Sell, Code Enforcement
Andrew Ramsgard, East Genesee Street
School Student monitor

Chairman Banuski opened the meeting at 8:12pm announcing the matter of the Hubbard property on the corner of Jordan and Academy Streets. “If you recall, we were asked to see a modification to the plans that we approved last Spring, to put a cupola on the top of that building, and we approved that subject to getting a letter of approval from the neighbors to the east. The cupola went up. The neighbor called saying that they didn’t know anything about it. They don’t want to sign a letter. The last I heard, they could have changed – I know it’s been kind of in flux. So, we have to decide what we want to do, or what needs to be done. We have Bob Eggleston here representing the Hubbards. If Marty and Debbie want to speak.”

Bob Eggleston, Architect for the Hubbards said, “I was here to present this modification to the variance, and as with many modifications, little changes are added on during a project. So, we bring it in and say, hey, what do you think? Is it really substantial? It really didn’t create any additional non-conformances or anything like that. Totally allowed by right, other than if we were to come in for an application – if this was a stand-alone application, the only thing that would be the expansion of a non-conforming structure.” The Chairman said, “so, it would have needed a variance even on its own. But we treated it as a modification.”

Eggleston said, “correct. We already had a variance for the expansion of a non-conforming structure. I know because of the past history on this where the Teidemanns on Academy Street had been fairly vocal on not only –on applications by previous owners. There

was the Smiths and there was the Bonniviers, and through all of that, any projects were approved, they have kind of worked through some compromises and things like that. On the Hubbard's original plans, they signed off on the plans relative to the carport and certain things like that. Then the simplest thing for everyone was you as a Board saw no problem with the cupola. It was an ornamental type thing. It enhanced the historic character of the house, and your only concern was gee, what do the neighbors think because that have been vocal in the past. So, that information was relayed to the Hubbards. Ended my part of the project. Then Marty has sent an e-mail out today, and he is here and can explain himself, they did have a couple of distractions in their personal lives at that point. By the time they got back on track with the cupola, he had forgotten about the requirement for the letter. They cupola went up. The Tiedemanns said, oh, what's happening? We didn't know about that. That created the correspondence. (To Marty) There is an October 17th letter that the Tiedemanns signed and that was given to the Zoning Board of Appeals?"

The Chairman asked, "did you all get that e-mail?" The Board acknowledged getting the e-mail." Eggleston said, "I believe in this, my understanding was that they were basically saying OK, fine, you've talked to the Hubbards. They have agreed to do some other things and so here's the letter. So you basically have now a letter from the Tiedemanns, correct?" Battle said, "it was an e-mail." The Chairman read "*signing the papers as currently presented seems meaningless – that does not sound like they have signed the papers, or signed a letter to this.*" Eggleston said, "you've got to read the whole letter. It says that they have come up with some compromises and all that kind of stuff, sure." The Chairman read, "*we remain uncomfortable with the lack of privacy and failure of compliance... involves much more construction than anticipated.* Is this the letter that you have?" Eggleston said, "that's the letter that I have, correct." The Chairman asked, "did you Board members receive that also." Member Pardee said, "I got the e-mail." The Chairman said, "that's how I got it as well. This is the hard copy. This is what I got, was an e-mail like you got."

Member Phinney asked, "is there anything up in there Marty? Is there anything up in the cupola or is it decorative with light coming down into a room below? Or just closed off so all it is is standing on its own on top with nothing – no access from below? Like a Widow's Walk type of thing, there is no access from below to get up in there?" Eggleston said, "this is a cupola. It's an unfinished space. It's purely decorative. No living space. up there." Member Pardee asked, "no access from the second floor?" Eggleston said, "there's access, of course. There has to be access by law, just like your attic has to have access. At best, it might be used for storage, putting Christmas ornaments up there or something. But, it's not a living space. It's not a finished space. It's a decorative element... no one is hanging out up there. In fact, if one goes up there, you've got to get on a stool or step ladder to look out the windows, because the windows are above the floor level of the attic. It's purely decorative. There were a number of things when Debbie talked to Margaret Teidemann that she wanted as demands. First, the first floor, close off 2 windows directly in line with the Tiedemann house. They wanted that done. Second, second floor, only one small existing window in the peak. No added windows facing Tiedemanns. That's the original window that's always been there. in the original little attic space. The 3rd, the cupola added for historic renovation a sub frame and footing were found on the roof, removal, can not see out of the cupola with a 3 or 4 step step ladder. We are installing privacy glass." The Chairman asked, "what is privacy glass?" Eggleston said, "it's a translucent glass. So, if

someone gets on a step stool, you can't see them and they can't see you. Facing the Tiedemann's house, they wanted the translucent glass on the side of the Tiedemann's house so they can not... Four, all workmen have been notified of the concerns of the noise and the workmen. The Tiedemanns were upset with the noise and the activities of the construction project. All of these, really other than the obscure glass, none of them have to do with the question of the cupola. It is just a frustrated next door neighbor that is tired of construction noise."

Chairman Banuski said, "those issues are irrelevant to this Board, and really the problem with neighbor issues is they become fraught with emotion and it's difficult for everyone. I would just like to keep this on track of that we are dealing with the cupola. I said at that July meeting that I felt that we all should be held to a higher standard in our positions that we do this job. I believe that whole heartedly. I think that maybe the mistake was mine to begin with that I didn't say no, you need to come back for another variance. If this was standing on it's own, you'd have had to come in for a variance. Maybe it's my fault then, that we treated it as a modification when maybe the Tiedemanns would have come in and objected to it. It is an expansion of an existing non-conforming and it's very close to the neighbors. So, I take full responsibility for making the decision to treat it as a modification. That being said, it was a pretty specific condition to add that cupola that we had. To me, without satisfying the condition, it means that it wasn't approved. That's pretty open and shut to me. I think we need to satisfy the Tiedemanns here. I hate to make them turn into the complainant when it was our Board who made the condition."

Eggleston said, "we also have to remember that the Tiedemanns don't get a vote. This is America. We have public hearings, and people can say whatever they want to say. Some of it is irrelevant." The Chairman said, "absolutely, I agree. The noise issues, the construction and that." Eggleston said, "it's temporary. The Tiedemanns come and complain with unclean hands. The Tiedemanns had a project for a number of years. They had project after project. They built a garage. They came to this Board and they got relief to build a garage one foot off the property line. Tell me that they did that without making noise, without being an inconvenience to the neighbors." The Chairman said, "I agree. Just like the other kind, that's neighbor issues that are irrelevant to this issue. Believe me, I know as well as anyone does, the history of the 2 properties."

Eggleston said, "it's not the Tiedemanns who decide what can happen, it's this Board can decide what can happen. Again, had there been a public hearing, had the Tiedemanns brought these issues to this Board, it would have been relatively easy for the applicant to establish that these are irrelevant to what we are doing. The privacy issues and all of that, again, it's an unoccupied architectural decoration. Once the construction is done, OK, we have the issue of construction noise and it's temporary in nature, and once it's all done, it's done. The issues of, oh, block off windows on the first floor and on the second floor because we don't want you looking toward us." The Chairman said, "I agree. We would never listen to that." Eggleston said, "it's irrelevant. I'm not sure that there's a lot of basis to what they have kind of discussed with Debbie, when this thing, started talking after they started raising the complaints."

Chairman Banuski said, "I think if we had had a public hearing and the Tiedemanns had come in to complain, you are right, they don't get a vote. We have 5 votes up here. But, I probably would have looked for a modification of the cupola plans. It's a pretty tall cupola. It

doesn't need to be that tall. It could have had – I'm just saying that it sits up pretty high on that roof, and I don't know what we would have done. I don't know what they would have said at the meeting. That didn't happen. What did happen is we made an approval with a condition. So, I don't know where we go from here."

Member Buttolph said, "potentially a way to go forward with this is that they obviously didn't satisfy the resolution that you put in. Larry and I weren't here for this. It would stand that it obviously wasn't approve since no letter was signed. Is there anything saying that they couldn't come back in for a full open hearing. Either take in down to satisfy that the resolution wasn't done. If you want to keep it up, come in and we'll do an open hearing and let the Tiedemanns come, express their views with any other neighbors and go about it that way." The Chairman said, "I don't know where we go from here. I'm feeling at fault for not having – and I guess in the future I'm going to rethink these modifications, when we have a project. I hate to put someone through the expense of going through the application again. Going through the Planning Board again. But I think that was an error on my part." Member Buttolph said, "this essentially fixes that error." The Chairman said, "we can't go back unfortunately." Member Buttolph said, "we wouldn't be going back. We'd be saying that per the resolution that it wasn't met. So, either it's got to come down or come back in front of us again, with an open meeting with the Tiedemanns." The Chairman said, "part of the problem with the privacy glass and there's no access to it. That's now, you put the privacy glass in but nothing says the next neighbor can't put regular glass in. They don't have to come for a variance, and they don't have to do anything. Nothing's going to say that the next owners don't decorate it at Christmas time with lights. We can't legislate that. We can't enforce that." Member Buttolph said, "at the public hearing let the neighbors say all those things and us make the decision at that point in time." The Chairman said, "I don't have a option in my head because, the sad thing is, who wants to be saying tear that cupola down? I am not happy in the position that I'm in. I put myself in it and maybe – what do you guys think?"

Member Hartnett said, "I don't want to see this taken down for the sake of taking it down either. I think that's what we are saying here. Yes, I understand what your point is about letting everybody have their day to say what they want to say. I think where the ball got dropped was in all the changeover of Code Enforcement, and things going with Jorge and Elaine going back and forth. That should have been stopped before it got built. That's something we need to work on from this day forward, is make sure that we don't give a condition that we are going to put our back to the wall." Member Buttolph said, "I think it was a bad condition." Member Hartnett said, "the spirit was very good to try to get this completed in time." Member Buttolph said, "it is an unfortunate learning opportunity that probably was a hard to enforce condition. If you were to look back on it, you would have held a public hearing, why don't we do that now?" Member Pardee and Phinney asked, "to what end?" Member Buttolph said, "if we deny it at that point, it's got to come down."

Member Phinney said, "I also say, the Tiedemanns didn't attend any of the public hearings that we had." The Chairman said, "it wasn't a public hearing for that." Member Phinney said, "but even the initial one." Eggleston said, "they did not attend the first public hearing." The Chairman said, "they did sign a letter. They did see the drawings and did participate in that way." Eggleston said, "and at that time there didn't seem to be a necessity to remove windows on the

first floor.” The Chairman said, “the windows on the first floor, all that stuff, I agree – irrelevant. We would never approve anything with caveats like that.” Eggleston said, “to kind of expedite the process, in essence, the Tiedemanns have now spoken. They have given you a letter. It wasn’t the letter you were looking for that said, oh gee, this is great, what a beautiful addition.” The Chairman said, “they actually only had to say that they had no objections.” Eggleston said, “Ok, so they had objection. They had voiced the objections here in the letter. Now, the question is, with that knowledge, would you find validity in their objections? Or do you think that – their objection is that they don’t like the fact that there’s lights or the potential of peering in at them. I think the Hubbards have mitigated the Tiedemann’s concerns at the expense of losing natural light on the east side of their house. They have tried to mitigate it the best they can.”

The Chairman asked, “what light have we lost?” Eggleston said, “there were 2 or 3 windows on the first floor on the east side that they have taken out of their family room. So now the only light that they have is from the north side.” The Chairman asked, “when were the windows taken out?” Member Hartnett asked, “was that in an effort to appease the Tiedemanns to try to get them to do a no objection?” Chairman Banuski asked, “when was that? I need to know on the timeline when that was.” Debbie Hubbard said, “last week, or the week before.” Eggleston said, “they have basically taken out all these windows – (pointing on a drawing) those 2 windows have come out.” Member Hartnett asked, “you have taken those out and resided already?” Eggleston said, “correct, because that’s what the Tiedemanns wanted.” The Chairman asked, “whose driveway is this?” Eggleston replied, “that’s Tiedemann’s – the east side of the Hubbard house is about 3 feet off the property line... I forget if we originally had windows in the second floor because we filled in this corner.” The Chairman asked, “but that wasn’t this project right?” Eggleston said, “that was the original approved project 6 months ago... it was approved with those windows not being removed... they took them out as a means of appeasing the Tiedemanns.” Member Phinney said, “yikes.” Marty Hubbard said that this window removal was offered by Debbie to the Tiedemanns.

Debbie Hubbard said, “when all of this kind of happened, when the cupola went up and Marty came home and told me in some e-mail that she came to the Village Office and spoke with Jorge and everything. I guess that happened on Thursday and on Friday I called them. I probably talked to her for at least an hour. Unfortunately were having a bad situation with family matters. I told Margaret that the cupola is up so high and we are going to have access to it because we have a furnace up in that area – not in the cupola but in the attic. We do have access to it. When the workmen had a 3 or 4 foot step ladder up there and I was on the top step so I could look out. But no one is looking over toward your house. All summer long this project was supposed to be going on. With everything that happened, we shut down everything. No one was working there all summer long. They didn’t start up again until September. I thought to my self that this is nice for the Tiedemanns because they could enjoy the summer. It’s Fall and the work is started again. She said that we would never have you take it down on the phone. She said that she would think about it some more and called back Saturday. She said that she was taking off for 4 or 5 days and Doug is out of the country. But if you need something signed or anything she said, just let me know, and she gave me both of their e-mails addresses. I told Marty that she said that she would sign something. Marty said that he thought that they did not need to have it signed that the Board does not care as long as they are not upset. So we didn’t do any more. Then all of a sudden she sent out the other letter. It’s like we are being punished because that house sold 2 or 3 times and

Bonniviers bought it for Paige, who never lived there. She would go there for 2 or 3 weeks vacation. It is not a home for a couple or a family to be able to come. We now have 4 grandchildren. Things just needed to change a little bit. We are trying to make our home so we can stay there. We lived there for 2 years – and there's things that were just wrong. One closet upstairs and the kitchen was so tiny I had to be on ladders all the time to get things down. We are in our 60s and ten years from now, I'm not going to be able to be doing this. We are just trying to make some changes. The crew put the roof on in 3 days. They got a large crew there and did it quickly. Mike Sweet's guys are the nicest guys. They don't have music blaring. We had the windows boarded up and the new shakes on, and a painter in. You can't even tell. We are doing everything that we possibly can."

The Chairman asked for thoughts. Member Hartnett said, "my 2 cents. It is one thing not to get a letter I intentionally. This was some family crisis. This was obviously something that was not trying to sneak something past. I know that we are all trying to stay above all of this but, this is something I think wasn't an intentional dismissal of a restriction. That it was an honest mistake, if you could put it that way. As much as we have to be, all of us, above reproach on all this, we also shouldn't be penalized because of the position either. Just as a suggestion, maybe another public hearing and make our vote at that point and move on. If that's the only way to make everybody happy."

Member Buttolph said, "my thought is, this isn't an addition on the back of a house that was put there or some large thing. You guys obviously voted on it in favor of it once. I don't know possible to vote on it again. I'm more than willing to vote on it tonight. If it fails then let them come back and either tear it off or come back and do a full Site Plan public hearing. I'd be more than willing to vote on it tonight."

The Chairman asked, "what would we vote on it Rick?" Attorney Galbato said, "the Board has 2 choices. First of all, I think this Board, in its jurisdiction shall look at the application, a revised application, regardless if it's up or not, or partially done or completed or not. Treat this regardless of if the improvement has been made by the property owner or not. Your analysis should be the same." Member Hartnett asked, "you are saying, remove the previous restriction?" Galbato said, "no. I'm talking about your analysis on a revised ..."
"...treat it as if it hasn't been built. There's no hardship because we would have to tear it down if you would vote no," said Eggleston. Galbato said, "your analysis is the same regardless whether it's up or not. As to your choices, I think, as this Board has done in the past, when an applicant comes in with a modified plan, when they have received wither Site Plan Approval or in this case variance, if the Board does not think it's a significant change, or a significant enlargement, or really an enlargement, then the Board historically has approved the modified plan with out the necessity of a full-fledged public hearing and vote. If you feel it's a significant change that necessitates a public hearing, then you would order the Clerk to have a public hearing at your next meeting. it would go to the Planning Board for the issue of the variance for the improvement and then it would come back to this Board next month. I would ask for it to be put on the Planning Board's agenda for November 3. Then it goes to the public hearing at your November meeting. Those are the 2 choices. It was a conditional approval in July. The condition really wasn't met to the satisfaction of the Board for the reasons already stated.. So, at this point you have to deem it not a significant change and not really an enlargement of the approved

project in 2011. Then you approve it without the need for a public hearing. We've done that in the past with changes, when as-built are done and Bob and Andy, as the primary architect in the Village, have seen departures in what was actually approved, they come back for modifications. Whether it's the Planning Board for Site Plan or this Board for changes when the application required a variance. If you deem it to be a significant departure or concerns over neighborhood, then schedule a public hearing for the next meeting."

Member Buttolph asked, "do we need to have a vote on whether it's a modification or not?" Galbato said, "it's a modification...it's a motion you make to approve it. Part of that explanation or discussion would be that you don't deem it to be significant and you would vote it up or down tonight. If you deem it to be significant, that would be part of the discussion on a motion to require a public hearing."

Member Phinney said, "they have already made modifications that weren't even asked for as far as taking away their own lights and privacy to put in something that less intrusive and less what-ever else all the way across the board. I don't see where Tiedemanns are going to approve anything that goes it." Galbato said, "the neighbor doesn't have to approve anything." Member Phinney said, "bad word choice on my part, but it appears that no matter what they suggest it's going to be shot down. it would be like trying to get something through Congress. We are saying no, just because we can, not because we think it's a good idea."

Eggleston said, "the advantage that the Board has today, over July is you now have a pretty good idea of what the Tiedemanns think about the project, or the modification." Member Phinney said, "I would just as soon do this tonight. I don't see where it's a significant thing. For all the time, inclination and effort to have to postpone this another month." The Chairman said, "make a motion."

Member Phinney said, **"I move that we accept the modifications presented this evening by Robert Eggleston regarding the cupola that's on top, in spite of the fact that it has been constructed, and despite the fact that initially had not met our initial criteria as stated in the July meeting. This is per drawings dated July 11, 2011, and Site Plans of July 13, 2011."**

Seconded by Member Buttolph. The vote was Yes: Members Phinney, Pardee, Buttolph and Hartnett. No: Chairman Banuski. The vote was declared passed. The meeting was closed at 8:46pm.