

Village of Skaneateles
Zoning Board of Appeals Meeting
November 29, 2023
Village Hall

Acknowledgement of Appeal by Chris & Monica Lynch, 9 East Elizabeth Street, of the Code Enforcement Officer's determination that the construction activity at 16 East Austin Street conforms to the plans approved by the Zoning Board of Appeals on 09.27.2023.

and

Discussion and possible motion for rehearing of ZBA decision on September 27, 2023 to grant variances at 16 East Austin Street in the Village of Skaneateles which was an Area Variance application made by **Laura Rodormer** to demolish the existing residence and construct a new single family dwelling of 2,332 SF at the property addressed as **16 East Austin Street** in the Village of Skaneateles.

Present: Gerald Carroll, Chairman
 Joshua Kemp, Member
 Jean Miles, Member
 Walter Nyzio, Member
 Michael Stanczyk, Member

Riccardo Galbato, Special Counsel
John Crompton, Code Enforcement Officer
Ian Carroll, Municipal Planning and Development Coordinator
Dennis Dundon, Clerk to the Boards

Bill Murphy, Architect, on behalf of the applicant
Matt Kerwin, Esq., on behalf of the applicant
Laura Rodormer, applicant
Kurt Honis, on behalf of the applicant
Kurt Honis, on behalf of the applicant

Tyde Richards, Village Trustee
Kathleen Zapata, Village Trustee
Catie Blackler, 24 E Austin St
Walt Blackler, 10 Whitegate Dr
Derek Raymond, 24 E Austin St
Laurie Haefele, 40 State St
Patricia Carroll, 7 E Elizabeth St

Andrew Ramsgard, 61 E Genesee St
Polly Davis, 14 Hannum St
Bob Eggleston, 1391 E Genesee St
Jeanne St. Claire, 38 Leitch Ave

At 7:00 pm Chairman Carroll opened the discussion for 16 East Austin Street which involves the Lynch appeal that construction is not consistent with the approved plans and possible rehearing of the actions approved for 16 East Austin Street.

Chairman Carroll, “I move that the Board acknowledges receipt of a written appeal from Chris and Monica Lynch of 9 East Elizabeth Street, dated 11.28.2023 that was received the same day by the Village Codes Office. The Board finds that the Lynches are close enough to suffer some harm other than that experienced by the public generally and the harm asserted by the Lynches falls within the Zone of Interest protected by the Code, that the Lynches received notice of the public hearing thereby raising the presumption of standing and that the Lynch’s property stands at the southwest of the property at issue and in fact abuts the property and therefore standing is satisfied. The Board also finds that pursuant to Section 225-76A(2) an appeal must be taken within 60 days after the decision of the Code Enforcement Officer. Here, as noted, the appeal was received on 11.28.2023 and the building permit was issued 10.24.2023, and any and all determinations by the CEO of compliance with the approved plans arose within 60 days of the filing of the appeal and so timeliness is satisfied.” Member Nyzio seconded the motion.

Member Stanczyk asserted that he does not believe the neighbor can appeal it in this manner. He asserted that Section 225-75A is a closed universe and discusses decisions that may be appealed to the Zoning Board include: refusal of a Zoning permit or certificate of occupancy by the person designated to issue such certificate; he does not see how the ZBA has standing and authority in this matter. Attorney Galbato offered that the paragraph needs to be read in its entirety and read the section aloud:

Appeals. Appeals to the Zoning Board of Appeals may be taken by any person aggrieved by any decision of any officer charged with the enforcement of this chapter. The decisions which may be appealed to the Zoning Board of Appeals include refusal of a zoning permit or certificate of occupancy by the person designated to issue such permit or certificate. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such chapter and to that end shall have all the powers of the administrative official whose order, requirement, decision or determination is appealed..

Member Stanczyk said that the documents filed don’t meet the requirements, and even if this matter could be appealed, it should apply only to the building permit and not the variances. This action is not what the ZBA is for. The ZBA cannot give itself more authority than we have. Attorney Galbato said that the courts have given those with standing rights to challenge

determinations or lack of determinations. Member Stanczyk stated that the Board legally approved variances to demolish and construct. Since that, there have been actions by the parties that lie outside the boundary of what ZBA members should do. Member Stanczyk requested that these words be included in the record.

Member Nyzio queried if, during construction, people observe that the work is not correct, may they not bring it up and the Board not investigate? After some further debate, Member Stanczyk asserted that the Village Board has authority over that, and that the ZBA should not usurp Mr. Cromp's role as CEO – the ZBA is not here for neighbor issues or disputes. Chairman Carroll disagreed and said that the code provides that any person aggrieved may undertake an appeal, and that case law has permitted such. Member Stanczyk said that in those cases the specific zoning code of the municipality must be considered.

Member Kemp stated that he believes that the Board is infringing on the Code Enforcement Officer who is certified to deal with such issues. The Board is overstepping to second-guess the CEO who actually went to the site. He asserted that grading should not be an issue at this point in the project. He repeated that it is overstepping for the Board to second-guess. Fees are the purview of the CEO as the agent of the Village. The ZBA does not have the authority to override his decision. Member Kemp opined that the appeal was vague and raised nothing of merit to the variances. Various Codes provide for windows and the NYS Department of State allows for it. Member Kemp said he does not believe the appeal has merit, and the fee structure is not the Board's to determine.

Member Nyzio queried if the point is that the appeal has no merit or is there no right to appeal? Member Kemp said that it is some of both. Adding a window is a discretionary authority and ability that the CEO needs. Member Nyzio said that so, even when the Board votes on a plan, the applicant can do whatever? Member Kemp said that needs to be discussed with the CEO, the ZBA votes on variances. Member Nyzio said that it is based on facts presented in a set of plans. Member Kemp replied that the Board's job is to process appeals made to the Village, but not to find merit to bring back projects after they are decided. Member Miles asked what is the standard? Member Kemp replied that he believes it is at the discretion of the Code Enforcement Officer; it is not a neighbor decision. Member Stanczyk said that the CEO has the ability to make minor decisions – such as to move a window. It is not a neighbor decision. Member Kemp says the national building code gives the CEO discretion to make decisions in the field.

Chairman Carroll called for the Board to vote. Upon the vote of Chairman Carroll and Members Miles and Nyzio voting in favor of the motion, and with Members Kemp and Stanczyk voting in opposition, the motion was carried 3 – 2.

Attorney Kerwin and Ms. Rodormer indicated a desire to speak. Chairman Carroll indicated that it is a public meeting, not a public hearing. This portion of the meeting is intended for Board discussion only. Chairman Carroll then stated that he thinks there are three areas that the Board should discuss: (1) the materiality of adding a window; (2) the revised profile of the south side and the height of the foundation, and: (3) the presentation of the south side to the neighbors. Given the close vote, he believes the Board should investigate. Chairman Carroll said that he

does not know if anything is actionable, but the elevation, topography and presentation to the neighborhood should be looked at. He continued that the rain garden may have created a problem, in that it changed the grading. The Zoning Code defines a basement as a story if 2 walls are ½ above grade. He asserted that the foundation presents as an additional story from the south. The additional large vertical windows in a blank lower level wall, presents as an additional story. The Chairman said could not agree more with Member Kemp more about moving a window in the main structure; he believes that the Board should be the deciders of what is material.

Member Stanczyk said he would like to hear from Ms. Rodormer and her attorney on this matter. A rereview of a decision that the Board made is inappropriate unless pursuant to an adopted motion for rehearing. Member Kemp said he does not believe it is even the ZBA's role to discuss it. Member Stanczyk indicated opposition to expanding ZBA power to review something already approved by the ZBA that some of the Board members don't like. Member Kemp said that in his opinion the matter is not before the Board unless a rehearing motion is adopted before the discussion. Member Nyzio asked, on the topic of an additional story, can CEO Crompt share the determination process and result? Mr. Carroll said that the Codes office has provided its opinion and it hasn't changed. CEO Crompt said that he had been advised not to comment in open session. Member Nyzio said he had difficulty understanding the numbers. Chairman Carroll said it is the percentage of the basement wall exposed. Member Nyzio said it looks like the west wall is 50% and the south wall is 55-60% exposed. Mr. Carroll said the conclusion from the drawings is that it is not a story. Chairman Carroll said the Codes office only considers 4 walls, doesn't count jogs. Member Nyzio said that measuring in 3 spots is not sufficient. Mr. Carroll responded that it was way more than 3 spots. Member Kemp suggested that further discussion without a rehearing is not in order. He said he would also like to hear from the applicant and her attorney.

With Chairman Carroll's permission, Attorney Kerwin introduced himself and asked why are we here? He asserted that this matter is not properly before this Board. If there is a complaint relative to the construction it should have been filed with the CEO. He asserted that the construction underway is compliant with the Code, variances and with the building permit. The approach being taken by the Board opens the entire Village up to chaos. The Board should not be supportive of reopening matters and infringing on the CEO. Ms. Rodormer has incurred substantial expense in furtherance of her construction project and that project is substantially complete. To even propose rehearing this project would be completely improper. He argued it is improper to reopen granted variances. Chairman Carroll responded that there is case law that a CEO determination that the construction is in conformance with plans approved by the ZBA, may be appealed. The Chair and Atty. Kerwin debated the meaning of the code language. Attorney Kerwin said the Board is inserting itself into the CEO seat.

Ms. Rodormer said she is also not sure what she is here for. Information sent to her is limited and is often a surprise. She has incurred additional time and money going back and forth based on issues brought to the Codes office, questioning her licensed professional team, criticizing herself, her team and your staff because you don't believe it. If we can't rely on your decision because of this nonsense, I find it appalling. Chairman Carroll replied it is not nonsense. Ms.

Rodomer said she is spending time and money, and that at least she has respect for the community.

This matter was concluded at 7:44 pm.

Respectfully submitted,
Dennis Dundon, Clerk to the Boards