

**Village of Tivoli
Zoning Board of Appeals
Draft Minutes
March 1, 2021**

Present

Jonathan Trombly – Chair
Karen Cleaveland
Mark Bennett
Bob Zises
Ethan Palmer

Also Present

Alexandr Neratoff

The meeting was held as a remote meeting due to the pandemic; it opened at 7:03.

Mayor Joel Griffith explained the procedure for an online meeting and public comment and started the live stream for the meeting.

80 Montgomery St. - Area Variance for Side Set Back for a front porch and Area Variance for Minimum Total Side Yards

The board began by reopening a continued public hearing for 80 Montgomery. On a motion made by Ethan Palmer, seconded by Mark Bennett, and a vote of all in favor, the public hearing was re-opened.

Jonathan Trombly began the with an update on the application. The village attorney issued a memo addressing the board's questions regarding the status of the property and the status of the 2005 variance. The attorney stated the proposed dwelling should be considered new construction because more than 12 months had passed since the demolition. The 2005 variance would still be valid if the original structure still existed, but it does not. Therefore the application should be amended to be for the entire section of the proposed dwelling that encroaches into the side set back. The memo was reviewed by the deputy BIZEO and a new denial letter was issued on February 27, 2021. The application can be amended and the notice for the public hearing was broad enough such that a new public hearing does not need to be noticed. The application is the applicant's so it is up to him how it is amended.

Jonathan Trombly asked if there were any questions regarding the memo.

Alexandr Neratoff commented that it was noted on the demolition permit application for the house that only the wooden upper portions of the building would be demolished. It was clear that the foundation was to be left in place. He doesn't see how anyone can deny that the foundation remains. The property was considered vacant for tax purposes only. It is an issue of semantics. If it is an issue of amending the application, he can go along with that.

Jonathan Trombly said that the board needed clarification of the application and the status of the property. Now there is some clarity, so the application can move forward.

Ethan Palmer asked if it would be helpful to summarize the memo and denial letter. The denial letter requires two variances one for a variance of 8'-6" from the minimum side yards required and one for 3'-8" from the minimum required for narrowest side yard set back.

Mark Bennett stated that he was of the opinion that the historical house was located there so the board should accept that the historical house exists and just grant variances to it. He stated that the parcel is non-conforming.

Karen Cleaveland asked why he thinks the parcel is non-conforming. It is not less than 15,000 sq. ft. Jonathan Trombly said that it is not true that the parcel is non-conforming. All that is being requested is that the house encroach on the side yard set backs.

Jonathan Trombly stated that the location of the historical house can be considered and is a strong argument for the variances.

Bob Zises questioned a portion of the memo addressing section 231-51B. It states that a non-conforming structure can be rebuilt. Jonathan Trombly stated that the lawyer was covering all applicable code and rejects that that section is relevant because section 231-48 states that there is a 12 month limit of disuse after which the non-conformities may not be reconstructed.

Bob Zises clarified that all the attorney is saying is that the application needs to be revised. Yes.

Karen Cleaveland asked if they can revised the application. Jonathan Trombly said that what they want to do is amend it now. The drawings need to be changed and perhaps edited down to a simplified drawing.

Mark Bennett stated that he was having problems with accepting that the original house is not considered as existing. He questioned whether they were starting from scratch. Discussion ensued regarding whether to accept the attorney's interpretation.

Alexandr Neratoff reviewed the site plan clarifying each of the three portions that are color coded, yellow for the portion of the front porch that will be in the side set back, red for the portion of the dwelling that would be in the area granted a variance in 2005 and the space between which was occupied by the original house. The foundation that still exists is in the portion covered by the 2005 variance. He explained the right to rebuild as the concept of vesting.

Jonathan Trombly lost connection to the meeting. Ethan Plamer stated that there is a clear question before the board that can be addressed. Rather than get into the nitty gritty of the status of the historical house, the board should resolve the issue before them. Bob Zises said that he thought the public hearing should be closed and they should go through the 5 criteria. Karen Cleaveland agree that it was pretty cut and dry, that there are two variances required.

Jonathan Trombly rejoined the meeting and proposed to amend the application. The drawings need amending. He proceeded to go through the sections of the application to remove the references to the front porch. The last section, stating the code that the variance is providing relief from, is the same. The section describing the project was simplified to being a new dwelling for which the proposed width reduces the minimum total side yards and which requires a variance to the minimum for the narrowest side yard. There was some confusion in the discussion because the five criteria test were covered in the applicant's answers on the application. Discussion shifted between the application and points the board made for their own balancing test.

Karen Cleaveland stated that the size of the house is in keeping with the pattern book. Montgomery Street has quite a bit of variety in the other houses, and it is in keeping with the original house located on the parcel. She also commented that the house was not overly wide, and with its width, no matter where it was located, it would require a variance due to the narrowness of the parcel.

Karen Cleaveland made a motion to close the public hearing, Mark Bennett seconded it. All in favor. The public hearing was closed at 8:03.

Some discussion continued about whether the former house was to be considered as in existence between Mark Bennett and Jonathan Trombly. Mark Bennett concluded that the variances required were just bigger than the variance just for the front porch.

The board discussed the five criteria balancing test and worked on drafting a resolution. A draft of the resolution was screen shared and edited. There was a discussion about how to amend the drawings. In the resolution the site plan is referenced as indicating the proposed footprint and location of the dwelling associated with the variances.

Jonathan Trombly asked if there were any other questions or additions to the resolution. No.

Bob Zises made a motion to accept the resolution, Mark Bennett seconded it. All in favor. The resolution was accepted.

Minutes

The board reviewed the minutes from the February 1, 2021.

Mark Bennett made a motion to approve the minutes from February 1, 2021. Bob Zises seconded. All in favor. The minutes were approved.

Karen Cleaveland made a motion to close the meeting. Ethan Palmer seconded. All in favor. The meeting was closed at 8:47.

Respectfully submitted,

Laura Gail Tyler
Deputy Village Clerk