

ZBA MEETING – NOVEMBER 26, 2013

(Time Noted – 8:06 PM)

EUGENIA FERRARI-FALIN

35 ODELL CIRCLE, NBGH
(51-2-25) R-1 ZONE

DEC 13 2013

TOWN OF WEAVER
TOWN CLERK'S OFFICE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard(s) setback to add dormers and shed roof to a non-conforming dwelling (has two front yards Odell Circle and Old South Plank Road).

Chairperson Cardone: Our next applicant Eugenia Ferrari-Falin.

DEC 13 2013

Ms. Gennarelli: This applicant sent out fifty-six letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Ms. Ferrari-Falin: I'm Gina Ferrari-Falin, Eugenia. Hi, I purchased a home in Orange Lake this past summer and one of the things that I wanted to do was be able to put additional room, bedrooms upstairs. The first floor bedroom is going to be used for my Dad a...who is eight-nine years old and he really can't get up the steps anymore. We are not looking to change the footprint of the house per say. We're just going to add headroom in the back of the house so we could put bedrooms up there basically. From looking at the neighborhood other people have fixed up their houses. We understood that most of the houses originally were cottages and obviously, you know, there were different a...a...Codes back then and I...I realize now that I require this variance. I'm really, I was kind of very surprised that this happened but it's okay. I hope we can go ahead and put our bedrooms upstairs. Right now it's just a long space a...the people owned it from 1958, they built a house on it and over the years they made upstairs actually a...a rental. And so we have to pretty much...we knew right away we were going to have to gut it because we're not...we're not keeping it a rental. It's our family home and so upstairs generally is going to have to be a...renovated anyway. We are hoping to make the house a...it will be...keep in character with the neighborhood. We love the neighborhood and a...I...I want to make it look nicer, hopefully. It's nice already but we want to make it look nicer, so...that's it.

Chairperson Cardone: So, you're not going any closer to the street than it is currently? Currently you are twenty-five point two feet from South Plank and also being a corner lot twenty point three from Odell Circle and that will remain the same.

Ms. Ferrari-Falin: Yes, yes we're putting a shed dormer; there is already a dormer on the back where the bathroom is...

Chairperson Cardone: Right, I saw that.

Ms. Ferrari-Falin: ...but we're just blowing the back out and I'm putting a dormer in the front where they had put an addition to actually balance the house out.

Chairperson Cardone: So you're making the windows large enough for escape, that's a very good safety feature.

Ms. Ferrari-Falin: Yes.

Ms. Smith: More headroom.

Ms. Ferrari-Falin: Right.

Ms. Smith: From the slanted interior...

Ms. Ferrari-Falin: The whole thing that's slanted...

Ms. Smith: ...second floor.

Ms. Ferrari-Falin: ...except for the...there's one bathroom upstairs now and that's where they put a dormer. I found the original house plans and evidently that was in there from the very beginning but you really can't put anymore bedrooms up there. It's just like the one side, that's it. It needs a lot of work but it's...it's great.

Ms. Smith: Nice view.

Ms. Ferrari-Falin: We wish we could have bumped out the front but it would have ruined, to me, it would have ruined the appearance of the house so...I'm just putting my dormer in the front.

Chairperson Cardone: Do we have any questions from the Board? Do we have any questions or comments from the public? If so, step to the microphone and identify yourself.

Mr. Somogyi: My name is Steve Somogyi, I live few doors down and I just a...thought I might see some blueprints as far as the project. I get a little concerned because the fellow next to me years ago was going to replace his little stone bungalow and he wound up with like a three-thousand foot castle on a fifty foot lot. So, you know, it would be nice to see a blueprint of the a proposed addition or a...dormer.

Chairperson Cardone: This is the front elevation.

Mr. Somogyi: The front. Okay.

Chairperson Cardone: Okay, thank you.

Mr. Somogyi: Thank you.

Chairperson Cardone: Any other comments from the public?

No response

Chairperson Cardone: Any other comments from the Board?

Mr. Maher: I'll make a motion to close the Public Hearing.

Mr. Masten: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:13 PM)

ZBA MEETING – NOVEMBER 26, 2013 (Resumption for decision: 8:28 PM)

EUGENIA FERRARI-FALIN

35 ODELL CIRCLE, NBGH
(51-2-25) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard(s) setback to add dormers and shed roof to a non-conforming dwelling (has two front yards Odell Circle and Old South Plank Road).

Chairperson Cardone: On the application of Eugenia Ferrari-Falin at 35 Odell Circle seeking an area variance for increasing the degree of non-conformity of the front yard(s) setback to add dormers and shed roof to a non-conforming dwelling which has two front yards. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Smith: Well they're existing lots that have been there for such a long time and from what they propose to do to the house it's going to look beautiful and mold in very well with the other improvements within the area. I would make a motion to approve.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

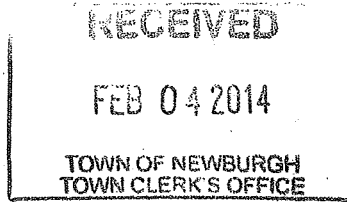
GRACE CARDONE
JOHN MC KELVEY
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:29 PM)

BJ 12/13/13



Section 51, Block 2, Lot 25

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

EUGENIA FERRARI-FALIN

DECISION

For area variances as follows:

- *Grant of a variance allowing an increase in the degree of non-conformity of the existing front yard setbacks as the result of the construction of an addition.*

-----X

Introduction

Eugenia Ferrari-Falin seeks an area variance as follows: (1) An area variance allowing an increase in the degree of non-conformity of the front yard setbacks (the existing non-conforming setbacks of 25.2 feet and 20.3 feet will be maintained after the proposed addition is completed, however allowing the applicant to construct the addition increases the degree of the existing nonconformity).

The property is located at 35 O'Dell Circle, is in the R-1 Zoning District and is identified on the Town of Newburgh tax map as Section 51, Block 2, Lot 25.

A public hearing was held on November 26, 2013, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code.

Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

These schedules also require, for this single family dwelling in the R-1 Zoning District, a front yard setback of 50 feet. The lands of the applicants are presently improved by a single family residential dwelling. The applicant's property also has two front yards pursuant to the definition of the Code. Both the front yards of the applicant are presently nonconforming having setbacks of 25.2 feet and 20.3 feet respectively.

This board has determined in the past that renovations and enlargements of existing non-complying buildings that increase the mass or volume of the existing building are events that cause the protection of Section 185-19 to be lost unless the renovation or enlargement decreases the degree of nonconformity.

The renovation proposed by the applicant will not decrease the degree of the front yard nonconformity. Therefore, the trigger of Section 185-19 (B)(1) is met and, as a result, the protection granted under Section 185-19 is lost, thereby requiring the applicant to apply for an area variances for the existing front yard nonconformities.

Background

After receiving all the materials presented by the applicant and the testimony of the applicant, at the public hearing held before the Zoning Board of Appeals on November 26, 2013, the Board makes the following findings of fact:

1. The applicant is the owner of a 13,250+/- square foot lot (tax parcel 51-2-25) located at 35 O'Dell Circle.
2. The lot is improved by an existing single family dwelling and has 2 front yards pursuant to the definition of the Code as it has frontage on both O'Dell Circle and Old South Plank Road. The applicant now proposes certain renovations to the home to wit, adding upstairs bedrooms.
3. Presently, the existing front yard setbacks are noncompliant. The minimum front yard setback is 50 feet and the home is setback 25.2 feet from Old South Plank Road and 20.3 feet from O'Dell Circle. The front yard setbacks of the house will remain the same after construction of the renovations thus increasing the degree of the existing non-conformity.
4. The applicant's proposal is set forth on series of photographs and a survey prepared by Howard W. Weeden, P.L.S., P.C. dated September 16, 2013. Those photographs and survey are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

5. One member spoke in the hearing and asked to see a "blueprint" of the proposed addition. After viewing the plans, this individual voiced no objections to the requested variances.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an area variance(s) for a single-family, two-family or three-family residence [6 NYCRR §617.5(c)(13)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

GML 239 Referral

This application is not required to be referred to the Orange County Planning Department for review and report.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the hearing that the home is in harmony with this existing, mature, neighborhood and the proposed renovations would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties. No contrary evidence or testimony was submitted at public hearing.

Absent any testimony or evidence indicating such, the Board cannot conclude that any undesirable change in the character of the neighborhood or detriment to the neighbors in that neighborhood will result from allowing the applicant to construct the renovations.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the request of the variance will not result in any serious, undesirable, detriment to surrounding property owners.

(2) Need for Variance

Because of the existing front yard nonconformities, if the applicant is to be permitted to make changes to the existing single family dwelling at all, variances will be required.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot be achieved by any other method other than the issuance of the requested variances.

(3) Substantial Nature of Variances Requested

The front yard variances requested are substantial, bearing in mind, of course, that noncompliance with the minimum front yard setbacks exists already. Moreover, the request for this variance must be viewed in the context of (a) the

existing non-conformity of the residence on the lot and (b) the extent of the *variation* from that existing condition. Because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the extent and nature of the front yard variance requested does not prohibit us from granting the application.

(4) Adverse Physical & Environmental Effects

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variance would result in any adverse physical and/or environmental effects. The applicant testified that no such effect would occur.

Absent any testimony or evidence indicating such, the Board cannot conclude that any adverse physical or environmental effects will result from the construction of the renovations.

(5) Self-Created Difficulty

The need for this variance is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the existing non-conformity and while aware of the need to obtain a variance in order to enlarge or alter the existing building in any dimension.

However, because of the existing nonconformity and because it is not feasible to make any additions or alterations to front of the home without variances of some kind, the board believes, under the circumstances presented, that the self-created nature of the need for the variances requested does not preclude granting the application. Moreover, as noted earlier, no undesirable change in the character of the neighborhood will occur as the result of the granting of the

variances.

Decision

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the variances as requested upon the following conditions:

1. The variance hereby granted is granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.
2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

Dated: November 26, 2013



Grace Cardone, Chairperson
Town of Newburgh ZBA

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
Member John Masten
Member John McKelvey
Member Michael Maher
Member James Manley
Member Roseanne Smith

NAYS: None

ABSENT: None

STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision rendered by the Zoning Board at a meeting of said Board held on November 26, 2013



BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on FEB 04 2014



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH