

ZBA MEETING – JULY 24, 2014

(Time Noted – 7:58 PM)

JOHN & CAROL HUDELSON

200 OAK STREET, NBGH
(9-3-50.11) R-3 ZONE

RECEIVED

AUG - 6 2014

TOWN OF NEWBURGH
TOWN CLERKS OFFICE

Applicant is seeking area variances for the maximum allowed height of accessory structures and the maximum allowed square footage of accessory structures to build a two-story garage (40 X 30 X 23' 8.5")

Chairperson Cardone: Our next applicant John & Carol Hudelson.

Ms. Hudelson: Okay, my name is Carol Pauli Hudelson and I live with my husband John Hudelson at 200 Oak Street in Newburgh. We have three acres of land there, some of it in garden, some grapes. We have a stone house and with a stone and cedar house with a steep pitched roof a...it's red. We have been there, we have built that house from a burned out foundation thirty years ago. So we've been here almost thirty years ago, we've been there almost thirty years. Up in the back of the house a...on a higher level than the road and not visible from the road there is another stone foundation that we had wanted for some time now to turn into a building and now that the mortgage is paid we can think about having this...the building back there. We contacted a friend of ours who is an architect and said what would you do with this. You know, we want storage space; we have many things that need to be stored. There's a boat that is sitting in the backyard with tarps over it that rot through every winter when we try to protect it. There are...there's mowers and gardening equipment and you know I have some pictures of the tarp covered objects that are out in the yard because we have no out buildings there. A...so the a...our friend drew up some pictures, some drawings of what he would propose and he uses some of the foundation wall that's already there but one of the walls is not stable enough so he brought that wall out farther to...to create a more stable wall and he has drawn something that covers about a hundred, maybe two hundred square feet more than the area allowed under the Code. It depends if you count the area that's under a roof that is not foundation because he's got kind of an L-shaped building there. A...it also goes up higher than we expected but if we want the roof to match and to...kind of have the same pitch as the house then it should go up that high and it gives us lots of room then for storing things and that's the primary use of this building is just to store stuff. We'll have plenty of room then above the rafters like netting for the gardens and poles and...and just all the things associated with...with that land. A...the...the ground there is uneven so at one end of the lot, at one end of the building the ground or the foundation is actually three feet below grade so that it's not quite as tall as it appears in the drawings. I think his...his drawing is over twenty-three feet at the peak so let's see, I'm trying to think what else...I think that...that's the reason we're requesting the variances for that...that height and for that area...

Chairperson Cardone: Are you planning to put cars there?

Ms. Hudelson: Cars and...

Chairperson Cardone: There...there's no...

Ms. Hudelson: ...and storage above it.

Chairperson Cardone: ...and how will...are you planning to build a driveway leading to it...?

Ms. Hudelson: There is a driveway that goes out to it.

Chairperson Cardone: ...because there is a...it seemed like it's kind of inaccessible but a...

Ms. Hudelson: It's a better place to put it. We also think that it will be a very pretty building and not...not visible to other people but I think we will like it when we look out the back window so a...that's...that's the idea now.

Chairperson Cardone: On the second story there, are...are they balconies that you have?
Balconies on the...

Ms. Hudelson: There are...there are...you'll know this drawing better than I do...there are rafters up there and eventually we could put flooring but we don't intend to do that right away it's just really...it's just places to store stuff.

Mr. McKelvey: Are you going to have electrical in there?

Ms. Hudelson: Yes.

Mr. Hudelson: Yes, there will be electrical.

Ms. Gennarelli: Can you get closer to the microphone?

Mr. Hudelson: There will be electrical; there will be 220 for necessity. Basically we have a no place to store our cars, no place to store any of this a...

Chairperson Cardone: And what about plumbing?

Mr. Hudelson: Pardon?

Chairperson Cardone: Plumbing?

Mr. Hudelson: A...no, no we have no plans for plumbing.

Ms. Hudelson: There will be a drain.

Mr. Hudelson: We will take up a hose during the...during part of the year when we need it. There's a possibility of plumbing later but at this point no.

Chairperson Cardone: And it will be used strictly for storage, not for any kind of living quarters?

Mr. Hudelson: No, strictly for storage.

Ms. Hudelson: Right.

Mr. Hudelson: These windows on the end are the only windows and they're for light but a...I am not planning on putting both those windows in quite yet. We're trying to save money.

Ms. Hudelson: It will cost less if we don't do windows right away so...

Mr. Hudelson: Well basically you have the garage front and a...the two doors because there's one section a little higher than the other and actually at the left hand end of this it's five feet in underground so and three feet for the back so the actual height to the top from the back is twenty feet, from the a...a...from the eastern side it's actually more like eighteen feet.

Mr. Manley: The Chair had asked a question before whether or not...is this area open? On the second floor here, is this area open?

Ms. Hudelson: Oh that.

Mr. Hudelson: The architect built a...yeah...

Ms. Gennarelli: Can you just go to the microphone?

Mr. Hudelson: Okay, the architect built a...a...basically only half of the eastern side, the left hand side a...will have a second floor and we're not actually putting in the floor at that time. The builder is not putting in a floor. A...this is for future use of storage if we need it. Okay? Below that floor is actually only about seven feet, six to seven feet high so it's not very good for storage. A...the a...there is no balcony, he put a balcony, I don't know why he put the...the railings on there.

Ms. Hudelson: John I think that what they're seeing here is this business, the vertical lines, I think that's the exterior cedar like board and batons...

Mr. Hudelson: Oh, there's an (inaudible) wall that goes up three feet, maybe that...? Which...which part are you looking at again?

Ms. Hudelson: I think it's that's what he's trying to indicate and that's what our house has as well. So where it isn't stone there's like a...

Mr. Manley: It almost looks like a railing.

Mr. Hudelson: No, no, no, no that's not a railing, that's the...that's the baton.

Ms. Hudelson: This...the baton, just vertical boards. So it isn't...

Chairperson Cardone: And the question a...

Mr. Hudelson: This thing, I think he had something on there about a...

Mr. Manley: It just said installed wood rail.

Chairperson Cardone: Oh, right.

Mr. Hudelson: Rail, yeah, we weren't going to put a railing across there or anything like that.

Chairperson Cardone: And I think Mr. Manley asked you, is that area open? And I don't think you...

Mr. Hudelson: Yes, it's open, the whole place is open. So any place in there you can see everything.

Mr. Scalzo: Open to the interior not to the exterior? Correct?

Mr. Hudelson: Not to the exterior, there's nothing on the exterior.

Ms. Hudelson: I'm glad you're understanding each other because I lost that apparently.

Mr. McKelvey: When you put a floor in you're not thinking of...of a living space up there? Do you?

Mr. Hudelson: No, no, although a...

Chairperson Cardone: You currently have an accessory apartment in the main house?

Ms. Hudelson: We do.

Mr. Hudelson: We do at this time and it's being a...a...looked at a...no, we have no reason to have...

Chairperson Cardone: I don't think that would be permissible anyway.

Ms. Hudelson: (Inaudible)

Mr. Hudelson: There wouldn't be.

Ms. Hudelson: There would be a different set of permissions I imagine. Right now we're talking about...

Chairperson Cardone: And maybe Mr. Canfield can clarify that if you already have an accessory apartment at the location?

Mr. Canfield: Yes, that's correct. There's only one accessory apartment permitted which is applicable. But while I do have the mic, I do have a couple of questions perhaps for the applicant. Grace, if I'm allowed?

Chairperson Cardone: Sure.

Mr. Canfield: Just on the short environmental impact form, there's just a couple of questions that sparked my interest was one that there's a...does the site proposed contain any species of animals associated habitat listed by the State and Federal Government are threatened or endangered and you have yes. And my question is, is that the eagle?

Ms. Hudelson: Yeah. That's what I was thinking of and I went to that site on...the State has a website where you can put in your address and it will answer all those questions for you but then when I tried to research a little further on some of those questions I...I couldn't see supporting information. On that one I just assumed that there are some kinds of species that go through our area that are probably endangered. I have no reason to think that there weren't and I thought I know that from time to time in our region generally we see eagles so...

Mr. Canfield: Okay.

Ms. Hudelson: ...that's why I went ahead and wrote that.

Mr. Canfield: Okay, thank you. The other question was with respect to wetlands and floodways a...

Ms. Hudelson: I was wrong about that and again that came up on the State website and then when I checked with neighbors they said no, we...we don't have wetlands here, so...

Mr. Canfield: That should be a no then?

Ms. Hudelson: That's right. And I'm sorry I should have come back and corrected that.

Mr. Canfield: Thank you.

Ms. Hudelson: And I didn't.

Mr. Canfield: Thank you.

Chairperson Cardone: And also number nine, you have a yes under exceeding the State Energy Code requirements.

Ms. Hudelson: I think that's a good thing.

Mr. Canfield: Well the form asks for a yes or no. In this case it would probably not be applicable because there is no heat and the Energy Code deals with heat loss so the answer would be not applicable.

Chairperson Cardone: Do we have any questions from the Board?

No response.

Chairperson Cardone: Any questions or comments from the public? Yes, please come to the microphone and state your name for the record. You can come to the center mic.

Ms. Reed: Hi my name is Clare Reed, my husband Tom and I live next door to the Hudelstons. Our property is kind of a weird shape so we kind of are on two side of the proposed building. First of all I want to say we don't have any problem with the Hudelson's building a storage building. Carol told me a while ago that they wanted to build something to house some of their wine making equipment. And the building itself is a...I...there only appear to be two exterior elevations at least to what I could see on-line and both of them are really lovely and they do match the very, very well but a...I do have some big concerns and some of this goes beyond if there is somebody that moves into the house after you. A...so...a...and they both are based on the size a...you know when you first mentioned it to me, well okay a building and I got the Notice in the mail and then I lost it and so today I had to go on-line and look up everything. And it seemed kind of big because my pool is 20 x 40 and I go that's kind of a big building, it's bigger than that then I went out and measured my garage. I have a free-standing two-car garage and it's 22 x 24 I think and (13 1/2') thirteen and a half feet high and my garage would kind of be almost in line, not quite with this building and I thought, oh my God it's going to be ten feet higher than that, it's huge. And it's somewhat true that I won't always see the...the building from...from my house when the trees are fully leafed out, I will not see it. But more than half the year I will see it. The other thing is when I come up my driveway because of the way it's situated I head actually toward the building and then, the proposed building, and then turn right to go up my driveway. I can, even when the trees are leafed out, see like I can see the stone wall that was being, the foundation or whatever that was being built so I...I can see that currently and the trees are fully leafed out. And my concern is with the size of this building that first of all that I will feel like when I am pulling in my driveway that it looks like there is another house because certainly the one little and I realize it says that this is one inch is fifty feet, something is not right here with that scale but the...if you look at the two buildings the foot print of one is pretty close to the footprint of the other and there's a twenty-four hundred square foot house and somewhere between eleven and twelve hundred square foot building it seemed like there's another house on the property and I guess, so that...that's a big concern is just looking and it and the other concern is and this is where it's not you guys, future a...I'm concerned with the building in terms of because in the past the only access for cars was through my property for that second height so a...I was under the impression it was not for cars because I didn't think at this point you could get cars up from the way your property is graded now and to seem like so much room for winemaking and other, the boat whatever with the second. Because my garage has storage overhead I have...I don't pull down stairs like your plans but I do have a access door but it's just storage, you can't stand up there. I guess my concern with so much space you can stand there, it looks like...it's a lovely building to look at, it would be a lovely place to live, it would I think, rather easily be converted to living space and I know you do have the accessory apartment which I wasn't going to bring up because I didn't know if I should.

Ms. Hudelson: Inaudible)

Ms. Reed: But since it was brought up, that's fine a...in the future maybe somebody gets rid of that then you don't have an accessory apartment and maybe they might investigate trying to make this an accessory apartment so I don't know what guarantees as someone...as you know, somebody next door I have it this can either officially or be used as an apartment because it's certainly big enough to be a...it's 1200 square feet and that's the ground floor. Right? That's not any space up top and there's certainly a space to stand up, that's a...that's a big chunk in the middle that will have flooring and I...that...that's a real...that would be a real problem for me...a...for my husband and I. Did I remember everything? I'm sorry I don't like doing this a...I...I think that it. I think that's basically it. Thank you.

Chairperson Cardone: Thank you. Do we have any other questions or comments from the public? Any other questions from the Board?

Mr. Manley: Could you work with a height of fifteen feet having storage space upstairs a...maybe you won't be able to stand up in there but you know providing you with enough storage space to at least get your Christmas decorations, things that you, you know, maybe even would want to put upstairs?

Ms. Hudelson: I'll show you all the pictures of things to go in there. We were...we were actually hoping for much more storage than that. A...we talked to the architect about bring that roof down some just because I wondered if it would save us some money and he said it really wouldn't save that much a...if we ever wanted to change the use of that building that would require a whole different set of permissions, I understand and so I don't...that's not our plans, storage is the plan a...if planting evergreens would make the neighbors happier so that it would be screened all year I happy to do it. We have done a number of you know, conifers between the two lots just so as we, just increased his privacy a...but...

Mr. Manley: Are you...is your plans to use this facility for the wine making?

Ms. Hudelson: For storage related to the wine making but not wine making.

Mr. Hudelson: We have a...we'll have a small tractor, we've had tractors in the past and this is for grape growing. Okay? So we have machinery for grape growing, a sprayer, small sprayer, other a...equipment but there's no a...no...

Chairperson Cardone: There would be no business conducted...

Mr. Hudelson: No wine making is done...will be done in this a...

Chairperson Cardone: ...no business would be conducted there?

Mr. Hudelson: No, no, no...its use is for storage. Storage of our...our things, things we own.

Chairperson Cardone: You know it's considerably higher than what is permitted. You know fifteen feet; we're looking at twenty-three feet.

Mr. Hudelson: I understand but if you...

Ms. Hudelson: Some of it is below grade of that.

Mr. Hudelson: It is partly below grade. It's also...you can see the grades right there...it's also a...fits with the structure. Our...our house is forty by thirty that's a...a...basically it a...on twelve hundred square feet footprint, you know, three stories high. A...so...this is nowhere near as tall as the peak of our house at this point so a...even though it's up on...

Ms. Hudelson: It's on a higher level.

Mr. Hudelson: ...on a higher level behind.

Ms. Hudelson: But it's also shorter than the trees that are...

Mr. Hudelson: It's shorter than all the trees around it, the larger trees, and it a...basically, you know a...this is an area that a...unfortunately has been growing real rapidly in terms of housing unfortunately and the...the Zoning Board changed it to one third acre from two acres to one third acre about fifteen years ago.

Chairperson Cardone: Just a correction, it wasn't the Zoning Board that did that. It was the Town Board.

Mr. Hudelson: Yeah, I know it was the planning board.

Chairperson Cardone: It was the Town Board.

Mr. McKelvey: Town Board.

Mr. Hudelson: Town Board. It's unfortunate a...we don't want to contribute to that. What we want to do is basically we have something that sets a...and the architect feels this is true and I think it is too...it sets a...well within the...the structure that was started that...that's there already. As she said, extends the wall a little bit so it's more secure and that's basically it.

Chairperson Cardone: Any other questions from the Board?

Mr. Manley: I think that just the one thing that...that I can see is the height is a lot higher than what the Board has normally approved in the past a...and you know one of the big reasons that you know the Town set the height limitation was specifically because a...unfortunately with you know large heights they generally morph into other things. A...as the neighbor testified here before that may not be the case with you but two owners, three owners from now the next thing you know the Building Department, Mr. Canfield's department is getting a phone call that you

know, in the middle of the night it was converted to a...a...you know a...you know, rental and that's where those things become a, you know, an issue down the road.

Ms. Hudelson: Yeah. Do you mind my asking? When you have granted height variances what kind of range are you comfortable with, I'm not to suggest I want you to not vote for this but I was just wondering what it was?

Mr. Manley: It all...it all varies on...

Ms. Hudelson: I have no sense of that.

Mr. Manley: ...it all varies on a number of...of factors. There's no hard and fast rule but I...I can tell you twenty...twenty-three feet, twenty-three and a half feet is you know, considerable. Meaning you're looking at that's more than two, that's two and a half stories almost.

Ms. Hudelson: Yeah, I...I can only say that some of its below grade but I...I understand your point.

Chairperson Cardone: Well would you be open to looking at this again and coming up with some kind of modification, working with your contractor, architect?

Mr. Hudelson: Actually, can I step in? At the...at the eaves of this, if you understand a...we're actually down, I mean, this is not...you're not, this is a three foot wall on your second story so it's not a two and a half story building. At the peak it's very high, yes. But...but when you're at the edge of that interior on the second floor...right here, it's about three and a half feet. Okay? So it's...it's not really a large second story.

Ms. Hudelson: So this is...this is the part that's twenty-three feet, here it's...how far is this off...?

Mr. Hudelson: I think that's a nine and a half feet or nine something. In the back it's actually only about a six so the...the roof, now if you think the roof would look nice coming down and squatted that's fine. I don't think it would. I mean it...this is actually less of an incline than we have on our house. Our house is ten and ten, I think this is like a...a...ten and six so it's...I don't know exactly what it is. So it's just a question of yes, you know, we spent more than we wanted to for the architect to come up with these drawings and...and...

Ms. Hudelson: A friend though he is.

Mr. Hudelson: ...and a...we really would like to just go ahead with it as it is so it's...

Ms. Hudelson: And that...that would...I mean we asked a number of questions of the architect as well and he said well let's...the first thing you'll need to do is, I mean the first thing to do is see about a variance, you know, because this was the best design that he could do with what was there and a...and making it look like it would go with the house so...sorry.

Mr. Hudelson: One last thing, we do have a road that comes around and we take our cars up there quite often to deliver groceries, unload groceries a...we've taken every type of vehicle up there and at one time there was a cement mixer that went up there so a...it's not impossible.

Chairperson Cardone: Do we have anything else from the Board? Do we have a motion to close the Public Hearing?

Audience member speaking

Chairperson Cardone: Sure, if you would go to the microphone and identify yourself, please.

Mr. Lease: My name is Jeff Lease and I'm a distant neighbor of the Hudelsons. I've known Oak Street for over thirty years. A...if you know their property, they've done a beautiful job there. They've improved what was really a...a very plain looking house with a foundation and they...they're really been an addition to Oak Street. The one thing that I'd like to say as a registered architect is that you cannot legislate necessarily a...the height limitations when you're doing an older structure and asking to a...use the footings and foundations because the width of the foundations to some extent will determine the size and height of the building. And if you start using general parameters to start to make rules for every single building in the Town you are going to get just a mess. They came here to do a building which is more expensive than what a normal would likely do and it's in keeping what they...what they've already done. And I think two hundred feet and something in height is going to cost them more money but I think it's going to add to the area. I...I only live less than a half mile away and I vote for somebody doing a better than average job. And if you just say well it's over the height limitation then you can just expect everything to look the same within the Town. And you've got extra...I mean they went to an architect for a building, I mean for an accessory building that's extraordinary. That I...I think I would reward them. Three foot on a second floor, if...if somebody decides to put a...another building up there or enclose it well that will be...that will be another issue but the issue is area and height and I don't see how the height of the roof peak whether it's fifteen feet or whether it's twenty-three is going to make that much difference. It's architecturally fitting what they already have there which is pretty spectacular. That's all I need (inaudible)

Chairperson Cardone: I should comment that the Board Members do visit all the sites that are on the agenda so we've all been there.

Mr. Lease: Okay, it's a great piece of property and they need to do something above and beyond what the average person would normally do.

Chairperson Cardone: Thank you. Yes?

Audience member speaking

Chairperson Cardone: Yes, go to the microphone and identify yourself.

Mr. Reed: My name is Tom Reed, husband of Clare Reed. And I have no problem with in terms of the absolutes of where this is fitting. I can tell you where we live is absolutely beautiful.

It is...it's a sanctuary. And I don't mean my property; I mean the Hudelson's property, the property to my right. There's wildlife, I have seen eagles not every year once in a while a...but it's an absolutely beautiful place. And part of the beauty of this place is the quiet and the sanctuary of it. It is not the design of the building; I am certainly not an architect. It's not the beauty of the building, I'm sure it would turn out beautiful. My concern as Mr. Manley stated is that future owners okay, may turn this into something that it was not intended to be. And then I'm back here again. That's my big concern. It's not the design or whatever the rules are, it's my concern is the future of a...where we live now.

Chairperson Cardone: Right. Thank you.

Mr. Reed: Thank you.

Chairperson Cardone: That is our concern also, thank you. Do we have a motion to close the Public Hearing?

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

Mr. Manley: Second.

Ms. Gennarelli: Before I do roll call I just wanted to say, this applicant sent out twenty letters, all mailings, publications and postings are in order. Okay, roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

(Time Noted - 8:25 PM)

ZBA MEETING – JULY 24, 2014 (Resumption for decision: 9:29 PM)

JOHN & CAROL HUDELSON

200 OAK STREET, NBGH
(9-3-50.11) R-3 ZONE

Applicant is seeking area variances for the maximum allowed height of accessory structures and the maximum allowed square footage of accessory structures to build a two-story garage (40 X 30 X 23' 8.5").

Chairperson Cardone: The Board is resuming its regular meeting. On the application of John and Carol Hudelson, 200 Oak Street, seeking an area variance for the maximum allowed height of accessory structures and the maximum allowed square footage of accessory structures to build a two-story garage (40 X 30 X 23' 8.5"). This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I kind of think the height though is...is a little high.

Ms. Gennarelli: John, is you mic on? Can you pull it in a little closer?

Mr. McKelvey: I think that the height of it is high.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Would a...the Public Hearing is closed however if you want to make a brief statement.

Mr. Hudelson: There are in that neighborhood attached a...garages to houses that are over a...twenty-three feet high so it's actually as a garage it's not that high. A...and that would be my major point. Once again it's a question of what looks right for that dimensions. That's all.

Mr. Manley: There were some concerns by one of the neighbors with respect to the concern about the future potential if the neighbor were to sell...the applicant were to sell whether or not there'd be an issue with a potential business. The square footage itself seems to be fine, the twelve hundred square feet.

Chairperson Cardone: That...right, that's not excessive. If the Board would like we could handle that as two separate motions for the variances?

Ms. Hudelson: (Inaudible)

Chairperson Cardone: Do I have a motion pertaining to the square footage?

Mr. Manley: I would make a motion for approval of the twelve hundred square feet.

Mr. McKelvey/Mr. Masten: I'll second that.

Ms. Gennarelli: I'm sorry who was the second?

Chairperson Cardone: It was John (McKelvey)

Ms. Gennarelli: Okay, thank you. Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: And now on the building height. Do I have a motion concerning the building height?

No response.

Chairperson Cardone: Do I have a motion to disapproval?

Mr. McKelvey: I'll make a motion for disapproval.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is denied.

Ms. Hudelson: Inaudible

Chairperson Cardone: The Public Hearing has actually been closed.

Ms. Hudelson: Inaudible

Chairperson Cardone: Right, I know, I understand. I think we all understand that.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
JAMES MANLEY
JOHN MASTEN
DARRIN SCALZO

ABSENT:

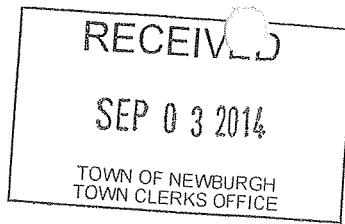
MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:33 PM)

SS 8/6/14



Section 9, Block 3, Lot 50.11

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X

In the Matter of the Application of

JOHN HUDELSON

DECISION

For area variances as follows:

- *Grant of a variance allowing an accessory structure to have a total area of 1,200 square feet where 1,000 square feet is the maximum allowable area;*
- *Grant of a variance allowing an accessory structure to have a height of 23 feet, 8.5 inches, where 15 feet is the maximum height allowed.*

-----X

Introduction

John Hudelson seeks area variances as follows: (1) Grant of a variance allowing an accessory structure on the premises to have a total area of 1,200 square feet where 1,000 square feet is the maximum allowable area; and (2) grant of a variance allowing an accessory structure to have a height of 23 feet, 8.5 inches where 15 feet is the maximum height allowed.

The property is located at 200 Oak Street in the R-3 Zoning District and is identified on the Town of Newburgh tax maps as Section 9, Block 3, Lot 50.11.

A public hearing was held on July 24, 2014, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property

owners as required by Code.

Law

Accessory Building

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 limit the height of accessory structures to 15 feet.

Additionally, section 185-15(A)(4) of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Accessory buildings," provides that an accessory use to a principal residential use, as listed in Article IV, Schedules of District Regulations, Use Table, Column A, that is housed within an accessory building shall be limited to a maximum of 1,000 square feet or to a lower number as may be determined pursuant to the formula set forth in the code.

Background

After receiving all the materials presented by the applicant hearing the testimony of John L. Hudelson, at the public hearing held before the Zoning Board of Appeals on July 24, 2014, the Board makes the following findings of fact:

1. The applicant is the owner of a 2.15± acre lot (tax parcel 9-3-50.11) located at 200 Oak Street.
2. The lot is improved by a single family dwelling. The applicant now proposes to construct a two-story accessory structure that would be larger than the maximum allowed size pursuant to the Town Code.

Additionally, the proposed structure would have a height of 23 feet, 8.5 inches which is greater than the 15-foot which is the maximum height allowed by Code.

3. The applicant's proposal is set forth on a series of photographs and plans that have been submitted together with the application. Those photos and plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
4. Members of the public spoke during the public hearing. Two members who spoke raised concerns regarding the size and height of the structure while one member of the public spoke in favor of the proposal.
5. The Building Inspector denied a building permit application by letter dated May 13, 2014.
6. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
Accessory Building Area	1,000 S.F.	n/a	1,200 S.F.	200 S.F.	20%
Building Height	15'	n/a	23' 8.5"	8' 8.5"	57.7%

The applicant has appealed the Building Inspector's determination.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board de-

cides 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

In connection with request for the variance allowing an accessory structure on the premises to have a total area of 1,200 square feet where 1,000 square feet is the maximum allowed, the Board finds that the bulk area proposed for the accessory structure would be in harmony with this existing, mature, neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to nearby properties. Adjoining neighbors testi-

fied at the hearing that they also had an accessory garage and while it is considerably smaller than the garage proposed by the applicants, the Board determines that the construction of a proposed garage that is moderately in excess of the maximum area permitted in the Code, in and of itself, would not present an undesirable change in the character of the neighborhood.

In connection with the request of the height variance, the Board finds that the substantial height of the proposed accessory garage would result in an undesirable change in the character of the neighborhood. The adjoining neighbor who testified at the hearing indicated that their accessory garage was approximately 13.5 feet in height. The accessory garage proposed by the applicants is nearly double the height of the garage on the neighboring property. Further, given the scale of the height relative to the adjoining properties, the Board finds that an accessory structure of such a height would cause an undesirable change to the character of the neighborhood. The Board further notes that the applicants presented no evidence of any kind or nature indicating the existence of accessory garages or structures in the surrounding neighborhood having a similar height to the one being proposed.

In view of the foregoing, this Board determines that while the construction of an accessory structure having a total building area of 200 feet more than is permitted by the Code would not result in an undesirable change to the character of the neighborhood, the construction of an accessory structure having a proposed height of 23 feet, 8.5 inches would result in an undesirable change to the character of the neighborhood.

(2) Need for Variance

During the course of the hearing, the applicants testified as to the need to have an accessory structure to store various items such as motor vehicles, mowers, gardening equipment as well as storage of equipment that is used in connection with wine making.

However, the applicants offered no reason, except for some nebulous reference "future use of storage if we need it"¹ to justify the variance. The Board finds that this is simply a subjective statement and offers no real objective data as to why the height variance is needed.

Thus, on balance, and based upon the particular facts of this application and further based upon the testimony and evidence submitted at the hearing, the Board finds that while the applicant has shown a sufficient need for the building area variance, they have not demonstrated that the relief they seek relative to the height requirement may only be achieved by the issuance of the requested height variance.

(3) Substantial Nature of Variances Requested

The building area variance, some 20% more than permitted by the Code, is moderately substantial. However, the Board has determined that the applicant has demonstrated the need for an accessory garage providing storage on the premises and while this variance request may be moderately, substantial, it is consistent with prior variances issued by this Board and is not so substantial as to result in any adverse change in the character of the neighborhood.

However, the height variance is substantial both in terms of its mathemati-

¹ See testimony of John Hudelson, Town of Newburgh Zoning Board of Appeals meeting of July 24, 2014 taken from the verbatim transcript at Page 3.

cal percentage in excess of what is permitted by the Code and in terms of its potential overall effect on the neighborhood.

The height variance is some 58% over what is permitted by the Code and is a substantial variance. The overall effect of granting this variance would be to allow for the construction of a massive structure that in appearance, if not in functionality, would look like an additional primary structure on the premises and not simply an accessory garage. Moreover, the applicants offered no objective reason why the height variance as substantial as is being requested was required.

(4) Adverse Physical & Environmental Effects

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

Absent any testimony or evidence indicating such, the Board cannot conclude that any adverse physical or environmental effects will result from allowing the applicant to construct the accessory structure.

(5) Self-Created Difficulty

The need for the variances requested herein are clearly self-created in the sense that the applicants purchased this property charged with the knowledge of the need to obtain variances in order to construct an accessory structure of this size and location.

Decision

In light of the foregoing, and employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that with regard to

the requested building area variance, the applicant has satisfied the requisites of Section 267-b and grants that variance as requested. The issuance of this variance is specifically conditioned upon the following:

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.

In connection with the requested height variance, and in employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has not satisfied the requisites of Section 267-b and finds that after engaging in the required balance test as required by law the Board determines to deny the height variance.

Dated: 7/24/2014



Grace Cardone, Chair
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 James McKelvey
Member James Manley
Member Darrin Scalzo

NAYS: None

ABSENT: Member Michael Maher

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 maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on July 24, 2014.



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 SEP - 3 2014.



ANDREW J. ZARUTSKIE, CLERK
TOWN OF NEWBURGH