

ZBA MEETING – APRIL 25, 2013

(Time Noted – 7:34 PM)

CAROL SERRAO

13 WINDWOOD DRIVE, NBGH  
(90-6-14) R-1 ZONE

Applicant is seeking area variances for the front yard setback, one side yard setback, the combined side yards setback and the maximum allowed building coverage to build an addition on the residence.

Chairperson Cardone: Our next applicant Carol Serrao.

Ms. Gennarelli: This applicant sent out twenty registered letters, fourteen were returned. All the mailings and publications are in order.

Mr. Lumbkert: Good evening, my name is Larry Lubkert. I'm representing Carol Serrao this evening. She is my mother-in-law. I live at 13 Windwood Drive, located in Colden Park, in the Town of Newburgh. We're here tonight to get your approval on a variance for building an addition onto our home. If I could I'd like to give a little background on our living situation. My wife and I had lived in another home that she had owned. We were not married at the time. We decided to move to Colden Park due to the location. Her family grew up in Colden Park for the last thirty-five years. It was a great location for us, for our little nine year old daughter and we bought the house...well her mother assisted her in getting the house but she used the equity from the old house to purchase this house with the a...the idea that one day we'd be getting married and then buying the house back from her which is what we're in the middle of now. And we did this and so knowing that we would be able to expand on this home knowing that there are many other homes in Colden Park that have expanded on their homes off the left, the right, the back...we bought this home. It's a smaller home, much smaller than what we had before but that was our purpose was to kind of create what we were envisioning for ourselves. And we didn't really think that was going to be a problem until of course, we went and got blueprints drawn up a...we were under the assumption that it was to be (15) fifteen feet off the property line and we realize that I guess a couple of years ago the Board had changed that Zoning to (30) thirty feet.

Mr. McKelvey: We didn't change it the Town did.

Mr. Lumbkert: The Town did, which I understand was to avoid a particular project from going up.

Mr. Donovan: Well I don't know that that's accurate...

Mr. Lumbkert: Okay, I'm sorry.

Mr. Donovan: ...for the record.

Mr. Lumbkert: This is all hearsay. Sorry. I know now this is official record and stuff but in any case so where we thought our (16) sixteen foot wide addition would be within the variance obviously now it is not a...so we're asking your approval on that.

Chairperson Cardone: Any questions from the Board?

Ms. Drake: For the front yard setback where it's (32'5") thirty-two feet, five inches is that from the actual bay window that comes out or is that from the...

Mr. Lubkert: That would be from the...the, not the window but the side itself so I guess that window would bump out another foot or so. I don't know the exact dimensions on that because we haven't decided on an actual window...a...

Ms. Drake: How does that work Jerry? Is it like from the footings, elevation...?

Mr. Canfield: Yes, it's measured from the prebuilding line. Overhangs such as roof overhangs, stairwells, windows, bay windows there are exceptions in the Zoning board (Code) for yard requirements for those. So to answer your question it's from the actual building line.

Ms. Drake: Okay, thank you.

Mr. Lumbkert: Just to add to that too, the reason why we wanted to kind of bump off the front by six feet was just purely for architectural aesthetics. We didn't want to have the look of just a long double wide if you will. We thought aesthetically from the road it would look a lot better, architecturally it would look very pleasing so that was our reasoning for going off the front a little bit.

Mr. McKelvey: But most houses out there are not (40) forty feet from the front.

Mr. Lumbkert: No actually none of them are, as our house stands now and I believe it's (50) fifty feet that you have to be with the new zoning, yeah...ours is about (38) thirty-eight and change, (38 ½) thirty-eight and a half. Most houses are within that, a couple of houses down they did bump off the front about (3) three or (4) four feet but we're all pretty much in that line.

Mr. McKelvey: I'll just make it known that I live...I live in Colden Park.

Mr. Lumbkert: You do.

Mr. McKelvey: I was on your mailing list.

Mr. Lumbkert: Very nice to meet you. I haven't met you yet.

Mr. Donovan: Don't speak too soon.

Mr. Lumbkert: Sorry.

Mr. McKelvey: No, no, I know the house, I know the property. I knew the people that lived there before.

Chairperson Cardone: I should mention that the Board Members have visited all of the sites that we'll be discussing this evening.

Mr. Lumbkert: Good.

Chairperson Cardone: Anything else from the Board? Any questions or comments from the public? Yes, would you please step up to the microphone and identify yourself?

Mr. Welt: Good evening, my name is Carroll Welt (W-E-L-T), I live at 14 Windwood Drive across the street and I just a...like to know what purpose the addition will be used. Will it be to make it a two-family or it would be just like a rec room or bedrooms or whatever?

Chairperson Cardone: Okay. Could you please answer his question?

Mr. Lumbkert: This will be actually a master bedroom, bathroom and walk in closet as it stands now, like I said we have a daughter, we plan on expanding our family and to be quite frank with everybody my wife and my clothes are in every closet of the house. We have them in bins in the attic so we really could use the space. As far as the bathroom is concerned it is a decent size bathroom but we are moving our washer and dryer upstairs into the bathroom. I also had back surgery done about a year and a half ago a...I'm also going to be including a Jacuzzi tub for my own, of course, personal relief for my back for that. And then the closet space is...is what's really needed for us as well.

Chairperson Cardone: And this is the floor plan that you're proposing?

Mr. Lumbkert: Yes, that is.

Chairperson Cardone: Maybe you would like to take a look at that?

Mr. Welt: Sure.

Mr. Welt approached the Board.

Mr. Lumbkert: And I didn't include that but I have a picture of what it would look like from the outside of the elevation levels if anybody wanted to look at that as well.

Ms. Drake: I would like to look at that with the...

Chairperson Cardone: Yes.

Ms. Drake: ...front sticking out because that was going to be one of my requests or suggestions to move the...it even with the house so that you're not increasing the front any more than it is.

Mr. Lumbkert approached the Board.

Mr. Donovan: If a...if I could just interrupt for a second? I don't mean to be rude. Just it's not going to be picked up on the record so if you want it on the record just talk into the microphone.

Mr. Welt shook his head no and went back to his seat.

Ms. Drake: Here is your plan back.

Mr. Lumbkert went back to his seat.

Chairperson Cardone: Do we have anything else from the public? Anything else from the Board?

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

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Lumbkert: Thank you very much.

(Time Noted - 7:42 PM)

ZBA MEETING – APRIL 25, 2013 (Resumption for decision: 8:05 PM)

CAROL SERRAO

13 WINDWOOD DRIVE, NBGH  
(90-6-14) R-1 ZONE

Applicant is seeking area variances for the front yard setback, one side yard setback, the combined side yards setback and the maximum allowed building coverage to build an addition on the residence.

Chairperson Cardone: On the application of Carol Serrao at 13 Windwood Drive, seeking area variances for the front yard setback, one side yard setback, the combined side yards setback and the maximum allowed building coverage to build an addition. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Masten: I'll second.

Mr. Manley: I first that.

Ms. Gennarelli: Alright so Jim you're the first for approval.

Mr. Manley: Yes. There were really no complaints from the neighbors and the home really is going to conform with the other homes in the neighborhood at this point I don't see an issue with it.

Mr. McKelvey: There is homes that jut out a little bit in the front like that like they want to do.

Ms. Smith: It will look very nice.

Ms. Gennarelli: Okay, roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

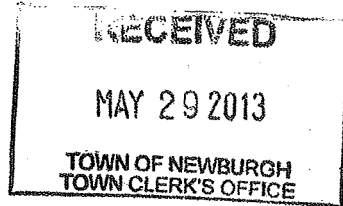
PRESENT ARE:

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

ALSO PRESENT:

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

(Time Noted – 8:06 PM)



Section 90, Block 6, Lot 14

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X

*In the Matter of the Application of*

CAROL SERRAO

**DECISION**

*For area variances as follows:*

- *Grant of a variance allowing a front yard setback of 32.5 feet where 50 feet is required;*
- *Grant of a variance allowing a side yard setback of 16.1 feet where 30 feet is required;*
- *Grant of a variance allowing a combined side yard setback of 48.5 feet where 80 feet is required;*
- *Grant of a variance allowing a building coverage of 1,776 square feet where 1,312.5 square feet is the maximum allowed.*

-----X

**Introduction**

Carol Serrao seeks approval to improve her existing single family residential dwelling by constructing an addition to the side of her home.

In order to accomplish this objective, the applicant will require area variances as follows: (1) An area variance allowing a front yard setback of 32.5 feet where 50 feet is required; (2) An area variance allowing a side yard setback of

16.1 feet where a minimum of 30 feet is required; (3) An area variance allowing a combined side yard setback of 48.5 feet where a minimum of 50 feet is required; and (4) An area variance allowing a building coverage of 1,776 square feet where 1,312.5 square feet is the maximum allowed.

The property is located at 13 Windwood Drive in the R-1 Zoning District and is identified on the Town of Newburgh tax maps as Section 90, Block 6, Lot 14.

A public hearing was held on April 25, 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, a side yard setback of 30 feet, a combined side yard setback of 80 feet and a maximum building coverage of 1,312.5 square feet.

#### Background

After receiving all the materials presented by the applicant and hearing the testimony of Larry Lubkert, son-in-law of the applicant, at the public hearing held before the Zoning Board of Appeals on April 25, 2013, the Board makes the following findings of fact:



1. The applicant is the owner of a 13,125+/- square foot lot (tax parcel 90-6-14) located at 13 Windwood Drive.
2. The lot is improved by an existing single family home. Carol Serrao seeks approval to improve her existing single family residential dwelling by constructing a side addition onto her home.
3. The proposed construction will result in deficiencies in the front, side and combined yard setbacks as well as surpass the maximum building coverage allowed for the lot.
4. The applicant's proposal is set forth on a series of photographs and floor plans. Those photographs and plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
5. 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
Front Yard	50'		32.5'	17.5'	35%
Side Yard	30'		16.1'	13.9'	46.3%
Combine Side Yard	80'		48.5'	31.5'	39.3%
Building Coverage	1,312.5 S.F.		1,776 S.F.	463.5 S.F.	35.3%

6. The Building Inspector denied a building permit application by letter dated April 4, 2013.

The applicant has appealed the Building Inspector's determination seeking variances to construct the addition.

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.

### 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 proposed addition 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 any nearby properties.

Absent any testimony or evidence indicating such, the Board can not 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 addition.

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

***(2) Need for Variance***

Based upon the testimony and evidence submitted at the Hearing the Board finds that it is not feasible for the applicant to construct the addition in a way that would have any meaningful use and benefit to the applicant without the requested area variances.

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

***(3) Substantial Nature of Variances Requested***

The variances requested are substantial. However 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 substantial nature of the variances 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 variances 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 proposed addition.

#### ***(5) Self-Created Difficulty***

The need for these variances is clearly self-created in the sense that the applicant purchased this property charged with the knowledge of the need to obtain variances in order to construct an addition of the location and size proposed.

However, 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 these 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 variances hereby granted are granted for the purpose of au-

thorizing construction of what is shown on the plans, as herein modified, 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 variances 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: April 25, 2013



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 Brenda Drake  
Member John McKelvey  
Member James Manley  
Member Michael Maher  
Member John Masten  
Member Roseanne Smith

**NAYS:** None

**ABSENT:** None

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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 April 25, 2013.

  
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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 MAY 29 2013.

  
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ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH