

ZBA MEETING – JANUARY 23, 2014

(Time Noted – 8:43 PM)

STANLEY THOMAS III

212 SUNSET COVE ROAD, NBGH  
(51-5-48) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to raise the roof on an existing one-story dwelling.

Chairperson Cardone: Our next applicant Stanley Thomas III.

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

Mr. Thomas: Good evening Members of the Board...

Ms. Gennarelli: Could you just tilt that up a little bit more? You are a little bit taller. Thank you.

Mr. Thomas: Good evening Members of the Board, thank you for hearing us. My name is Stanley Thomas III and I'm here with my wife Cynthia. And I'm here in consideration for variance as listed. I believe it's a side variance, a rear yard variance and a combination side rear yard as it pertains to the height of the house. This is a 1920 dwelling originally laid at Orange Lake. It's been modified many times over the years. I purchased it in 1986 and I have made several repairs myself over the years but now it seems like a larger renovation was in order. And the side of the house that is facing the street which you call the front yard away from the lake cause us people that are on the lake consider the sort of the front yard but it's different for how you consider it. The side that's facing the street, away from the lake, is currently a six foot shed roof and in looking at that renovation that really didn't comport with what more modern standards for a room would be. It's currently a shed roof as was common for the age of the home and I'm not considering changing the footprint rather I'm just looking update the living space to more modern standards, specifically an eight foot interior ceiling with a gable roof instead of the shed roof that is there. This gable will seek to match the roof pitch of the lake side of the house that exists as well. Obviously most Orange Lake properties do not meet modern Codes for setbacks however, I do not believe this will change or impair my neighbors and it is more than in keeping with the character of the neighborhood. The footprint of my house is approximately seven hundred and fifty (750) square feet and a ratio of that to the property that I have is, I believe, smaller than most of the properties around me. That being said, my request is to try and get the variances to allow me to raise the roof from a second gable.

Chairperson Cardone: Do we have questions from the Board?

Mr. Maher: So you're...you're keeping the same square footage of the house, correct?

Mr. Thomas: Exactly.

Mr. Maher: Just raising the roof to be more consistent.

Mr. Thomas: On the rear of the house. Or what you would consider the front of the house.

Ms. Smith: The front (rear) of the house.

Mr. Thomas: And that gable would kind of match the pitch of the portion on the lake side of the house.

Mr. Maher: The existing, right.

Mr. Thomas: But since it's only sixteen foot wide there, it's twenty-two foot wide, it will be about a foot higher.

Chairperson Cardone: Do we have any comments from the public?

Mr. Langer: Hello, Greg Langer I have a property at 279-281 Lakeside just down from Stan. And I'm representing here the a...Board of the Directors of the Orange Lake Civic Association and the Board is in favor of somebody improving the old cottages and it's not interfering with anybody's rights by expanding the a...a footprint we're a building so we're a...we have...

Mr. Thomas: I'm not expanding the footprint.

Mr. Langer: ...problems. Yeah, right. It's not expanding the footprint so we're fine with it.

Chairperson Cardone: Thank you. Anything else from the Board? Do we have a motion to close the Public Hearing?

Mr. Donovan: Mr. Canfield has a...

Chairperson Cardone: Mr. Canfield?

Mr. Canfield: Just one question, if I may, for the applicant? The peak roof that you intend to put on this will not interfere with any viewshed a...?

Mr. Thomas: Of...of other residents?

Mr. Canfield: ...of the lake or...?

Mr. Thomas: No.

Mr. Canfield: It will not. And the Orange Lake Homeowner's Association is aware of that?

Mr. Langer: Yes.

Mr. Canfield: Okay, the reason why I ask this is that that is a sensitive area and the viewshed of the lake is always a consideration and as soon as someone starts to bang a hammer out there I phone starts ringing so...

Mr. Thomas: I completely understand and that's why it matches the pitch and the gable of the...

Mr. Canfield: ...of the existing room.

Mr. Thomas: That's already over the lake.

Mr. Canfield: Okay, thank you.

Chairperson Cardone: Usually when the people are noticed they come here so...I said usually when the people are noticed they are here to find that out.

Mr. Thomas: I found several other things out there that... (Inaudible)

Mr. Maher: Don't say that.

Mr. Thomas: (Inaudible) those have all been...

Mr. Canfield: You should stop talking.

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

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 8:49 PM)

ZBA MEETING – JANUARY 23, 2014 (Resumption for decision: 9:37 PM)

STANLEY THOMAS III

212 SUNSET COVE ROAD, NBGH  
(51-5-48) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to raise the roof on an existing one-story dwelling.

Chairperson Cardone: On the next application Stanley Thomas III at 212 Sunset Cove Road, seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to raise the roof on an existing one-story dwelling. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: They are not really increasing the size of the structure and the applicant testified that they're not going to at all obstruct the viewshed of the lake, no residential concerns. I...I would go ahead and move for approval.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

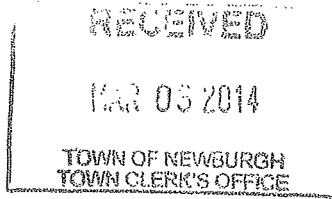
GRACE CARDONE  
MICHAEL MAHER  
JAMES MANLEY  
JOHN MASTEN  
ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

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

(Time Noted – 9:38 PM)



Section 51, Block 5, Lot 48

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X

*In the Matter of the Application of*

STANLEY THOMAS, III

**DECISION**

*For area variances as follows:*

- *Grant of a variance allowing an increase in the degree of non-conformity of the existing rear yard setback as the result of raising the roof on an existing dwelling;*
- *Grant of a variance allowing an increase in the degree of non-conformity of the existing side yard setback as the result of raising the roof on an existing dwelling;*
- *Grant of a variance allowing an increase in the degree of non-conformity of the existing combined side yard setback as the result of raising the roof on an existing dwelling.*

-----X

**Introduction**

Stanley Thomas, III seeks permission to remove an old shed style roof and replace it with a standard gable roof.

Presently, the home does not comply with certain bulk area requirements. The renovation that essentially calls for the "raising of the roof" will increase the degree of these existing nonconformities. In order to perform the work proposed, therefore, Mr. Thomas will require area variances as follows: (1) An area vari-

ance allowing an increase the degree of non-conformity of the rear yard setback of (the existing setback of 6.8 feet will be maintained after the construction, however the construction will increase the degree of the existing non-conformity); (2) An area variance allowing an increase in the degree of non-conformity of the side yard setback (the existing setback of 5 feet will be maintained after the construction, however the construction of the will increase the degree of the existing non-conformity); and (3) An area variance allowing an increase in the degree of non-conformity of the combined side yard setback (the existing combined side yard setback of 20.2 feet will be maintained after the construction, however the construction will increase the degree of the existing nonconformity).

The property is located at 212 Sunset Cove Road, is in the R-1 Zoning District and is identified on the Town of Newburgh tax map as Section 51, Block 5, Lot 48.

A public hearing was held on January 23, 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

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 residence in the R-1 Zoning District, a rear yard setback of 40 feet, a side yard setback of 30 feet and a combined side yard setback of 80 feet. The lands of the applicant are presently improved by a single family dwelling with an attached shed. It has a rear yard setback of 6.8 feet, a side yard setback of 5 feet and a combined side yard setback of 20.2

feet.

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 constructed by the applicant did not decrease the degree of the rear and side yard nonconformities (they will remain the same). 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 variance for the existing rear, side yard and combined side 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 January 23, 2014, the Board makes the following findings of fact:

1. The applicant is the owner of a 0.16 +/- acre lot (tax parcel 51-5-48) located at 212 Sunset Cove Road.
2. The lot is improved by a single-family dwelling. The applicant now seeks permission to remove an old shed style roof and replace it with a standard gable roof.
3. Presently, the existing rear, side yard and combined side yard setbacks are noncompliant. The minimum rear yard setback requirement is 40 feet, the minimum side yard setback requirement is 30 feet and the minimum combined side yard is 80 feet. No changes to the yard setbacks of the dwelling will result from the construction. However,



the dwelling will become *larger* after construction of the proposed improvements thus increasing the degree of the existing nonconformity.

4. The applicant's proposal is set forth on series of photographs and architectural plans prepared by Economy Blue Prints which are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
5. Members of the public spoke at the public hearing. Specifically, Greg Langer represented the Orange Lake Civic Association at the hearing and testified in favor of the requested variances. There was no other public comment.

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 individual setback/lot line area variance [6 NYCRR §617.5(c)(12)]. 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 his 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 raising the roof will 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.

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 raise the roof.

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

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

Because of the existing rear, side and combined side yard nonconformities, if the work proposed is to be done 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 variances requested are substantial, bearing in mind, of course, that noncompliance with the minimum rear and side yard setbacks exists already. Further, the request for this variance must be viewed in the context of (a) the existing non-conformity of the residence on the lot; (b) the extent of the *variation* from that existing condition and (c) the unique nature of the neighborhood wherein the property is located. 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 yard 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 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 raise the roof.

***(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 existing nonconformities and while aware of the need to obtain variances in order to enlarge the existing dwelling in any dimension.

However, because of the existing nonconformities and because it is not feasible for the applicant to make the alterations 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 variances hereby granted are 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 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: January 23, 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 Manley  
Member Michael Maher  
Member Roseanne Smith

**NAYS:** None

**ABSENT:** Member James McKelvey

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

January 23, 2014

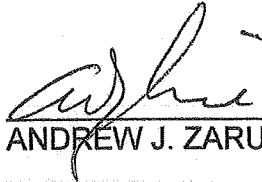


BETTY GENNARELLI, SECRETARY

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

MAR 3 2014



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH