

**TOWN OF SHANDAKEN ZONING BOARD OF APPEALS**  
**MINUTES FOR PUBLIC HEARING & REGULAR MONTHLY MEETING 10/17/12**

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The public hearing was opened by Chairman Reiss at 7:35 PM with the Pledge of Allegiance to the Flag. The Secretary called the roll, advised that a quorum was present and that the meeting could commence.

ROLL CALL:

<i>Gary Guglielmetti</i>	<i>Present</i>
<i>Tom Hickey-Chair</i>	<i>Absent</i>
<i>Keith Johnson</i>	<i>Present</i>
<i>Joe Michaels</i>	<i>Present</i>
<i>Rolf Reiss</i>	<i>Present</i>
<i>Roll Call Summary:</i>	<i>4 present, 1 Absent</i>

*Also Present: Art Christie, Kurt Boyer, Eric Hoffmeister, Rod Futerfas, Sue Bernstein, Mary Savage, Liz Potter, Babette Kiesel, Shea Settini, Michelle Spark, Bethia Waterman, Ken Jacobs, Judith Singer, Julie Greenwood, Wyatt Roberts, John Wasylyk, Bernard Handzel, Maxanne Resnick, Jack Warren, Robert Warren, Holly Warren, Suzanne Gilman, Mark Gilman, Mark Lerner, A. Casale, Donald LaSalle, Nancy Howell, Susan Robertson, Paula Dutcher, Lynn Parker, Maureen & Gene Gormly, Jack Zand, Bob & Joanne Kalb, Carol Seitz.*

Case 2012-11 Carole & Andy Malenda 92 Halsey Manor Rd. Manorville, NY requesting a side yard variance on property located on Woodland Valley Rd. Phoenicia, NY. SBL# 24.16-1-25 Zoned R3. The Malendas would like to demolish the current residence and rebuild in the same footprint but with an attached garage

Mr. Art Christie is here representing the Malenda's. He explained that the Malenda's would like to tear down the existing house and rebuild in the same footprint with an attached garage therefore requiring a side yard variance. Mr. Christie explained they will not be moving the septic and will be drilling a deeper well. Discussion ensued on the setbacks for an attached garage: is this considered an accessory structure. Chair Reiss feels it should not be considered an accessory structure. Mr. Christie quoted the definition of a garage as indicated in section 116-4 in the Town of Shandaken Code and the definition of an accessory structure located in the same section. Chairman Reiss read section 116-59 of the code and feels that the proposed application is fine. He feels that according to section 116-28 of the Town of Shandaken Code he would require a special use permit due to the development near a stream. Mr. Christie will contact the Planning Board in regards to this. Chairman Reiss had a question regarding something to do with the proposed garage on the original application. Mr. Christie indicated these are the original drawings which is why it indicated proposed. There was a question as to the square footage on the original house as opposed to the proposed residence. There were no further questions.

Chair Reiss made a motion to close public hearing. Seconded by member Joe Michaels, all members present in favor.

Action on Public Hearing for Case 2012-11:

Motion made by Acting Chairman Reiss to approve 2 side yard variances and declared this a Type II under SEQRA requiring no further review, seconded by member Gary Guglielmetti. Roll Call Vote:

Keith Johnson- Yes  
Rolf Reiss- Yes  
Tom Hickey- Absent  
Gary Guglielmetti- Yes  
Joe Michaels- Yes

4 Yes 1 Absent

Motion made by Acting Chair/Member Rolf Reiss to open the public hearing on the Phoenicia Library. Seconded by Member Keith Johnson, all members present in favor.

Case 2012-12 Phoenicia Library PO Box 555 Phoenicia, NY SBL# 14.13-3-4 Zoned HC. Requesting five (5) variances to renovate and add additional space to existing library located at 48 Main St. Phoenicia, NY  
Acting Chair Reiss advised the public that wished to speak they would be allowed four (4) minutes to speak either in favor or against the libraries application. The secretary would monitor the time.

The members of the board read correspondence received, all in support of granting the variances to the library.

Kurt Boyer is here representing the Library. They are requesting a front yard, 2 side yard, an area & bulk density, and a parking variance. Mr. Boyer introduced several members of the Library Board as well as the architect, John Wasylyk. Their builder Wyatt Roberts and their attorney, Mr. Rod Futerfas are also present.

Library Board member Sue Bernstein spoke in regards to the size of the library prior to the fire and what they feel is needed to continue to serve the community.

Liz Potter spoke in regards to supporting the variances requested and the amount of people served in the community by the library, the amount of growth in circulation and computer use.

John Wasylyk, the architect then spoke regarding the nature of the building itself and the conditions they are facing on the side of the building and the expansion needed. He explained the issues regarding the handicap accessibility and the additional space needed. He explained the need for the additional twenty four (24) feet in the back. He indicates there is enough space on the property for the expansion and to come into compliance with the ADA and come into code compliance for the stairs. The DEP has also approved the plans for the septic to handle the new square footage being proposed. He explained under current town code, the maximum square footage is twenty percent (20) and the library prior was at twenty-three (23) percent, therefore, already exceeding the current town code. The maximum square footage under the proposed plans would be thirty-six point nine (36.9) percent. He explained that the current site does not meet current standards according to the current town code. He indicated that they will come into compliance with the flood plain codes with flood proofing and flood gates.

Mr. Eric Hoffmeister spoke indicating the sequence of events that the Library Board had the designs drawn up prior to speaking with any of the neighbors. They felt the new addition was too close to their buildings. They met with Liz to discuss their issues. They had no issues with the making the library handicap accessible or adding the elevator and staircase on the side. He explained they feel the hardships created are self-created. The town of Phoenicia already has parking issues as many business owners will attest to. He feels they are going to increase the impervious surface and the water will be going down the alleyway. He feels that this case should not even be considered as they are self-created. There have been issues in the past as when they repainted the library and had to scrape the building and never cleaned up the lead based paint left in the alley-way.

The following people all spoke in favor of the library and the granting of the variances: Mary Savage, Babette Kiesel, Don Buden, Shea Settini, Michelle Spark, Bethia Waterman, Ken Jacobs, Judith Singer, Julie Greenwood, John (cannot discern last name).

Mr. Boyer then responded to Mr. Hoffmeister's comments. He indicated that he did meet with the neighbors and did try to speak with Mr. Hoffmeister, but his negativity and his feeling that they should just stay where they are. He has not heard anything prior to this meeting about the paint issue. Member Keith Johnson asked about the issue brought up previously about the ramp and concern about drainage. John Wasylyk indicated the septic field is far enough away to install a dry well and gutters to direct the water away from the building. Member Joe Michaels asked about the surface issue and the ramp would narrow the side alley. Mr. Wasylyk indicated that all the alleyways (six of them) on Main St. going down toward the Esopus Creek are all fed by the water coming down Main St. and past these alleyways. In theory, if they block the entrance they would not be affecting the height of the water running down Main St. which feeds these alleyways. They would be narrowing the alleyway from approximately ten feet wide to three feet wide. Member Rolf Reiss asked if this would cause the water to scour their neighbor's foundations. Member Joe Michaels asked if you narrow the width of the channel would the depth increase? Mr. Wasylyk indicated

that would be true if this was the only alleyway. Member Joe Michaels asked what the grade of the alleyway and is it pitching towards the back of the building. Mr. Wasylyk indicated it is pitching towards the back of the building. Mr. Wasylyk indicated that the situation created by limiting the water somewhat in their alley is about as easy to predict as if you had two (2) stalled cars on Main St. blocking water. They are only limiting the water that flows in their alley. Member Rolf Reiss brought up the concern regarding possible damage to the driveway during construction. Mr. Roberts indicated there would be ground protection used and there is no damage expected, but should damage occur they would re-surface the driveway. He indicated there would be no new foundation, the addition would be on piers and would not affect or undermine the driveway. Member Rolf Reiss asked when they go to put siding on the building would they be able to accomplish this without permission of the neighboring property owners. Mr. Futerfas, the attorney for the library, indicated there is a provision of the Real Property Action and Proceedings Law, Section 881 that states: "When an owner seeks to make repairs or improvements to property so situated that such improvements or repairs cannot be made by the owner without entering the premises of an adjoining owner, and permission to enter has been refused, the owner may seek permission from the courts and the courts will grant it under reasonable conditions." This is not the first situation where properties existed so close to one another that routine maintenance cannot be done without entering the neighbor's property. The law provides the means so that permission can be granted.

Mr. Jack Zand, the attorney representing Marietta Hoffmeister, indicates nobody is questioning the good faith or hard work of the library, but the issue is the Town of Shandaken Zoning law, prohibits certain work from being done unless the ZBA gives permission under a variance. He feels that there have been no comments about why specific variances are needed. There are five (5) variances being requested, and the board has to make findings in regards to each of these items. The current zoning law requires one (1) parking space for each four hundred (400) square feet, the representation has been made that there is four thousand seven hundred (4700) square feet that would require twelve (12) parking spaces. Obviously there is not twelve (12) parking spaces on the property, there is not even one (1). He feels the applicant needs to show the board where those twelve (12) parking spaces would come from. With regards to his clients, who have stores on either side, that if all the patrons who spoke tonight in support of the library were there, then the people who want to patronize either of these stores would have no place to park. So before the board makes a decision whether or not to grant the parking variance they need to hear from the library the accommodations being made for people patronizing the library. In regards to the front yard variance being requested, he is not sure what that is. Member Rolf Reiss indicated it is in regards to the handicap accessible ramp. As far as the side yard variances, the reason for the side yard variance law is to protect the neighbors. In this zoning district the twenty (20) foot setback is not met as it is considered pre-existing, non-conforming. If they wanted to re-build the library on the existing footprint, there would be no reason for them to be before the Zoning Board of Appeals. The library is asking for the variances which, is actually asking to encroach on the protected space between the buildings and they have not seen how much closer it will be to their buildings. They understand the ramp and elevator but they have not shown a hardship in regards to the rest of the encroachment.

Mr. Futerfas questioned whether the board has read why the library is requesting the variances (the application). The board indicated they had. There is a section of the law that gives the board the power to grant variances, section 267B, that sets out specific standards. It states "In making this determination the ZBA shall take into consideration the benefit to the applicant if the variance is granted and the weight against the health, safety and welfare of the community and neighbors." So there has to be a balance. There is also, according to the law, in giving its decision must address five (5) requirements. These requirements are:

Whether an undesirable change will be produced in the character of the neighborhood, or is a detriment to nearby properties by the granting of the variance.

Whether the benefits sought by the applicant can be achieved in some way other than a variance.

Is the variance being requested substantial?

Whether the requested variance will have an adverse effect or impact on the physical environmental conditions of the neighborhood or district.

Whether an alleged hardship was self-created.

Mr. Futerfas addressed all of the above issues.

Mr. Hoffmeister addressed the issue of the law indicating trespassing on the neighbor's property. He feels that addresses an existing non-conforming building, not a new encroachments on the building. He feels that law would not pertain to new encroachments. In order for them to build this building they would have to be both on his mother and Mr. Nolte's property. He feels that the old building is pre-existing, non-conforming but not the new building. If the board grants these variances they are basically giving them permission to trespass or forcing them to go to court to fight this. By granting these variances and allowing the library to trespass they are taking away their property rights, which is illegal in New York State.

Mr. Futerfas indicated the statute is clear when the trespassing is to make repairs or improvements and it is legal for the board to permit others to adversely affect the rights of neighbors, that's why variances were created and the Zoning Board of Appeals was given the authority to grant them.

Mr. Wasylyk wanted to clarify the issue with the parking variance. He stated the entire square footage of the new building is three thousand two hundred thirty five (3235) square feet, which at one (1) parking space per four hundred (400) square feet is eight point zero eight (8.08) spaces. He indicates that the existing library already has the benefit of the parking spaces that the existing building is entitled to. They are adding one thousand three hundred forty (1340) square feet, which is an additional three point three five (3.35) spaces.

Acting chair/member Rolf Reiss feels that he is not ready to make a determination on this case tonight, based upon all of the information presented. Motion made by acting Chair/Member Rolf Reiss to continue this case/public hearing until the November meeting. Seconded by Member Keith Johnson, roll call vote taken:

Gary Guglielmetti- Yes

Joe Michaels- Yes

Rolf Reiss- Yes

Keith Johnson- Yes

4 Yes, 1 Absent

New Business: None

Old Business: None

Other Business: Request from the acting Building Inspector for a definition of decks and setbacks  
Discussion on changing the ZBA appointment/re-appointing process

Discussion ensued on the definition of a deck and the setbacks. The board has previously used the same setbacks for a primary structure for the decks. Member Reiss indicated he contacted some of the surrounding towns and they also use the setbacks for primary structures for decks. Member Johnson brought up second story decks. He indicates that in our book the section regarding porches and patios. Member Guglielmetti stated somewhere in the book it indicates patios under eight (8) or twelve (12) inches can extend to the property line. Member Reiss indicated there is no definition of a deck in our book. Member Johnson read the section on porches, patios, and architect features in our book, there is no indication of decks. The board decided to do additional research on this issue for the next meeting.

There was a discussion regarding the way the Zoning Board of Appeals handles the appointment of new members or the re-appointing of members to the ZBA. Member Reiss indicated his term is due to expire at the end of this year. The board currently does not have a policy in place for advertising for this position. Member Johnson indicates that in the past if the member whose term is expiring wishes to remain on the ZBA the board has recommended to the Town Board that that member be re-appointed. Member Reiss indicated the process that the Planning Board follows. He feels that maybe we should be advertising and interviewing any interested candidates as there may be more qualified

people interested in serving. Member Johnson indicates that the Town Board does not have to re-appoint a member even if they are interested in remaining. The board decided to leave the process the same as it currently is.

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Motion made by member Keith Johnson to accept the September minutes as presented, seconded by Gary Guglielmetti. All members present in favor.

There being no further business, member Rolf Reiss made a motion to adjourn, seconded by Joe Michaels. All members present in favor.