

APPROVED
New Castle Board of Adjustment
Thursday, March 21, 2013

Public Hearing re: Marcia Cutting, who resides at 43 Fiddlers Ridge, Ithaca, New York, but is the owner of real property at 79 Wentworth Rd, Tax Map 13, Lot 28.

BOARD MEMBER PRESENT: Todd Baker; Russell Cox; Mark Gardner; Donald Moore; Ned Robinson; Will Smith; Susan Stetson

Chairman Robinson called the meeting to order at 7:00 p.m.

Review of ZBA Minutes of December 20, 2012:

Gardner moved for the ZBA to approve the minutes of December 20, 2012, as amended. Baker seconded the motion. Approved.

Public Hearing for applicant Marcia Cutting, who resides at 43 Fiddlers Ridge, Ithaca, New York, but is the owner of real property commonly known as 79 Wentworth Road, Tax Map 13, Lot 28:

GUESTS: Marcia Cutting, applicant; P. Christian D. Frye, Architect; Attorney Bernie Pelech, representing the applicant.

Chairman Robinson announced this was a public hearing for Marcia Cutting, 43 Fiddlers Ridge, Ithaca, New York, who is the owner of real property commonly known as 70 Wentworth Rd. Tax Map 13, Lot 28. The applicant is seeking a waiver of Sections 7.5.1; 9.2.4 (subsection 1) and Section 9.2.8 (subsection 1) of the New Castle Zoning Ordinance in order to construct an addition enlarging and remodeling an existing dwelling which has been constructed entirely what is now within a 50 foot wetlands buffer, replacement of decks within a 50 foot wetlands buffer and replacement of an antiquated wastewater disposal system, components of which will be located within the 75 foot buffer zone established to protect wetlands within the Town of New Castle. The public hearing has been properly advertised, abutters have been notified and all fees paid.

The Chair said the voting members for this public hearing will be Baker; Cox; Moore; Smith; and the Chair.

Moore expressed his concerns that the Building Inspector made no mention of height non conformance.

Attorney Pelech replied they plan on reducing the height of the structure and, therefore, they do not need that variance.

Attorney Bernie Pelech introduced Christian Frye, Architect, who has done the architectural plans for this building. They originally filed this application in December, 2012, but they had four visits with the Conservation Commission, (CC).

They have adopted their suggestions, they entirely changed their septic system and planned rain gardens and an edge of wetlands plantings. At their last meeting the CC voted favorably to recommend approval of the application, (Attachment C.)

Smith has concerns on one of CC's conditions, "*This resource drains directly to the New Castle beach and Atlantic Ocean through a cistern and a sump. The effluent emerging from the output pipe of the sump was not reviewed by the commission. However, it may be appropriate to understand the content of this flow before expanding this or any other property adjacent to this wetland.*"

Attorney Pelech explained that, at the request of the CC, they changed their septic design from a enviro septic system to a septic system that actually reduces the nitrate content. They do have a nitrate reduction septic system, which is state of the art, and has been approved by the NHDES. There is not another one of its kind in New Castle that he is aware of.

Moore asked Attorney Pelech how the new system works?

Attorney Pelech replied it has three different chambers and it has a method, either through aeration and passing through these chambers, the amount of nitrate is actually reduced. This is something that is new on the horizon.

Attorney Pelech addressed the proposal, (Attachment A, Page 1)He also addressed the five criteria, (Attachment A, Page 2, 3, and 4.)

1. *The variance will not be contrary to the public interest – Attach. A, Pg.2*
2. *The spirit of the ordinance is observed – Attach, A, Pg. 2*
3. *Substantial justice is done – Attach A, Pg. 2*
4. *The values of surrounding properties and not diminished – Attach, A, Pg. 2*
5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship – Attach. A, Pg. 3, 4*

Attorney Pelech also pointed out that the proposed septic system is 70 ft. from the edge of wetlands and 50 ft. from the isolated non bordering wetlands. He emphasized that the existing house sits on a ledge outcrop.

With regard to the variance required for the septic system, this certainly meets the criteria for the Board to grant that variance. This is the only location on the site that a septic system can be located realistically. The test pits are where there are no ledge outcroppings in close proximity to the leach field, it is 70 + ft. from the wetlands to the south and 50 ft. to this wetlands. He feels the Board will agree with him that the site has special conditions, given the ledge outcroppings, given the amount of wetlands on the site. Those special conditions do create a hardship with regard to locating a septic system. What they are proposing to do is state of the art and is better than what is presently there.

What they had were two septic systems for the cottage and for the house, both of which are being removed and the cottage itself is being removed. The new septic system will meet the requirements of the ordinance.

The criteria for the septic system are the same as the criteria for the house. Attorney Pelech addressed the criteria in (Attachment A, Pg.2, & Pg. 3.)

The first variance Section 9.3.8.1 meets the five criteria for the septic system as it will be located 75 ft. of a wetland.

Baker moved for the ZBA to approve the variance under Section 9.2.8, subsection 1, for the Septic System, as proposed, and shown on Site Plan C-2, dated 3-5-13, and as recommended by the Conservation Commission, (See Attachment C.) subject to NHDES approval. Cox seconded the motion.

Approved.

Attorney Pelech said that the second and third variances are for the addition to the existing home and showed the plan to the Board.

The second major addition is in a corner of the house, away from the wetlands, within the 50 ft. buffer. Most of this addition is outside the 50 ft. buffer and would not need the ZBA's relief.

As Attorney Pelech indicated in his memo, the same conditions apply with regard to the two variances. We are expanding a nonconforming structure. Why is it non conforming. It is entirely within the 50 ft. wetlands buffer. Anything that you would do to that house would require that variance to expand a non conforming structure.

The second variance is to allow construction and excavation within the 50 ft. wetlands buffer. What they are doing is taking off this deck and replacing it with a new deck and putting in the addition.

Attorney Pelech reviewed the criteria. What they intend to do is to keep the size and scale small. The applicant is going to be living here year round with one or more children. The house is very small and it is basically being expanded to accommodate the applicant's needs.

Attorney Pelech said it will not substantially alter the characteristics of the neighborhood. It is not a mansion, it is an addition to the existing home in the same location as the existing home and it is not going to threaten the public health, safety and welfare. It is not contrary to the public interest.

Again, the same hardship that exists with regard to the septic system exists with regard to this house. The entire house is within the 50 ft. wetland buffer. They have attempted to put much of the addition outside of the 50 ft. buffer as they could. They have cut the deck back so it is not as close to the edge of wetlands.

Attorney Pelech referred to the L-1 Plan – Landscaping Plan, which shows the new plantings that Etoile Holzaepfel and the Conservation Commission proposed. The rain garden will serve to collect runoff and improve water quality.

Attorney Pelech discussed the hardship. There is no fair and substantial relationship between the purpose of the ordinance, as it is applied to this particular piece of property. When the Conservation Commission, (CC) did their site walk, they saw all of this impervious ground and they said that was helpful because we were not putting impervious roof or building on top of land that once could absorb storm water runoff.

When rain falls onto that ledge now, it does not infiltrate into the ground and, therefore, if you build you are putting impervious surface on top of impervious surface and the net result is zero. The Conservation Commission was impressed with that fact that they had confined their additions to areas over exposed ledge.

This is not going to result in diminution in value of surrounding properties. The house is going to be attractive, it is not a grand expansion, it is in keeping with the characteristics of the neighborhood, it is setback from the street and it is also set back from other abutting residents and it certainly is not going to diminish those property values.

Attorney Pelech believes that substantial justice will be done by granting the variance. In summary, the criteria for the Board to grant those two variances are met by this application. He asked for the Board's comments.

Moore asked Attorney Pelech to explain to the Board why they do not need a height variance.

Christian Frye, Architect, said the house needs a great deal of work to be done. The structure needs a proper foundation. The wiring in the house needs to be replaced, the plumbing is in disrepair, the roofing is old and needs to have a new roof. They have looked at the house and want to bring it up to speed. They need to put in modern wiring, new plumbing, new roof and additional space. They also need to add new doors, new windows, etc.

The concept they have now is to keep the height of the house down as they will be adding a new roof. The house is now 32 ft. and they want to bring the height back 6 or 8 inches, they would like to bring the house down to 31 ft. 6".

Stetson questioned the present ceiling height?

Frye replied the second floor is now 7 ft. 5".

Smith questioned the base line that matches the two existing levels.

Frye replied everything corresponds to the lower level, and the main level corresponds with the floor line that is there now.

Smith said the house, as a whole, is higher. He assumes that Frye will bring the house up.

Frye said they would put a proper foundation under the house.

Baker questioned the peak of the roof.

Robinson said the residential district height limitation is 2 ½ stories above grade, not to exceed 32 ft.

Attorney Pelech replied they have not requested a height variance. They are going to amend the plans accordingly or return to the ZBA.

Cox said if the existing house exceeds 32 ft. and the applicant is putting an addition on it do they have to rebuild the entire house to conform or do you just accept what is there?

Moore replied that, in the past, the ZBA has said what is there is OK but if you go outside of what is there and you exceed the present requirements, then you need a variance.

Moore replied only to replace in kind. As he looks at it, the applicant is in violation of the height variance.

Attorney Pelech was told that the new plans were going to reduce the height to 32 ft.

Chairman Robinson referred to Plan C-1 dated 3-6-13 and said if they are going to expand the existing structure in the wetlands, they will need a variance.

The Chair asked if the Board had further questions for the applicant.

Cox asked if the garage was staying in the present location, as it is. Frye replied yes.

Gardner said if the ZBA approves this, it would be conditioned upon the house to be no higher than 32 ft.

The Chair asked for public comments.

Tom Hammer, abutter, commented on his concerns regarding the application for Marcia Cutting, (See Attachment B.) His particular concern is the location of the septic field.

Hammer believes that the house, as drawn, can be built, just as it is and pushed back approximately 7 or 8 ft. so that the volume and the size does not exceed the current volume and size. The fact that there is, 29,773 sf., almost 30,000 sf., of buildable area on this property, he feels it could be considered that that area should be utilized.

The Chair asked for further comments from the public.

Attorney Pelech said that Tom Hammer, abutter, indicated that he believed they could put up a leach field in this area. He does know that the septic designer and the local contractor looked all over the property and found this was the only suitable area. He does not believe there is room to put a leach field in the area that Hammer indicated and there are no test pits that were done in this area.

Frye pointed out that the Cottage is also sitting on ledge.

The Chair asked Attorney Pelech if they have submitted their application to NHDES.

Attorney Pelech replied the application has been submitted.

Gardner commented on Section 7.3.1 versus Section 7.5.2.

Attorney Pelech replied we do not consider this house a teardown. They want to preserve the existing footprint, as much as possible, and put a new foundation under it. The Building Inspector concurred that Section 7.5.2 is more appropriate to this property than 7.3.1.

Smith asked if a builder looked at what is being proposed here versus a teardown. Typically, when major changes have to be made, often it is more expensive not to start from scratch.

Frye replied it is more cost effective to start from scratch.

Hammer referred to Plan C-1 and noticed there are dotted lines and solid lines. What he sees on this plan is new foundation walls throughout. The foundation wall on the west side of the building does not exist. There is no foundation there.

What is there is a rubble foundation and a structural void that holds this side of the house and under this floor is a dirt foundation. To try to suggest that they are going to build on the existing foundation is untrue.

Cox said if they build a new foundation, how does that affect the variance?

Hammer suggests the applicant do a replacement and not an addition.

Chairman Robinson closed the public section of the public hearing.

Moore commented on Section 7.3.1. versus 7.5.2. His interpretation is that Section 7.5.2 is appropriate; Section 7.3.1 is a “statement of fact.”

Moore moved for the ZBA to determine that Section 7.3.1 does not apply and Section 7.5.1 is applicable and is the appropriate provision for this application. Cox seconded the motion. Approved.

Moore feels the Board should clarify, for the record, that it is important that the applicant stipulates that the building the applicant is going to build will not exceed 32 ft.

Smith is in favor of the motion based on the recommendation of the Conservation Commission and the non-obvious alternative that may exist.

The Chair asked if the Board had further comments.

Gardner brought up discussion regarding a third story house versus a second story house.

Smith would like to follow up on that and he feels the Board has been given a set of plans that do not fit all the discussions. Before the Board approves something we need to see the actual plans. He would not support approving anything without seeing the actual plans.

Stetson agrees with Smith and feels the Board would be remiss to approve without seeing the plans.

Moore disagrees with Stetson and Smith. He feels it is appropriate for an applicant to come in, knowing there are some problems and asking for approval.

Cox said it is a difficult site to work with. He feels with the stipulation that the applicant conform to the height guidelines, it is a reasonable proposal and it is not easy to deal with. He has no problem approving it without detailed plans.

For the record, Chairman Robinson referred to Section 9.2.4, subsection 1 – Permitted Uses that states the following: *“Any use otherwise permitted by the zoning ordinance and state and federal laws that does not involve the erection of a building or structure or that does not alter the surface of the land by the addition of fill or by dredging or any other means.”*

Attorney Pelech replied they are not putting fill in a wetland, it is a buffer and the Conservation Commission is aware of it.

Moore said the zoning ordinance applies to buffer zones and, therefore, the applicant's admission of putting in fill triggers the need for another variance. Moore feels it is important to point this out to the Building Inspector as his statement merely indicates the applicant needs to get approval.

Chairman Robinson agreed with Moore.

Moore feels there are issues that are inadequately addressed in the application. It might be worth while to ask the applicant to bring to the Board the plans. Conforming to the 32 ft. will alter the design.

Attorney Pelech assumes the Board would like the applicant to come back with detailed plans regarding the height limitation, fill, volume, and the question of the basement. Attorney Pelech emphasized they plan on cutting the roof height three (3) feet. He agreed to return next month with revised plans.

The Chair said the Board is asking the Architect to explain to us, since the ordinance provides 2 ½ stories or a maximum of 32 ft. Is it a basement and two stories or is it three stories? Also, assuring that more than 60 % of the lower level is below ground and, therefore, a basement.

Attorney Pelech will return next month with revised plans.

Cox said the Board will also need a basement plan.

Moore said the plans should be reviewed by Don Graves, Building Inspector.

Chairman Robinson suggested the Building Inspector should tell the ZBA if it is a basement or a story.

Attorney Pelech said they would return before this Board next month. They will show the Board the roofline at 32 ft. at the highest point, calculate the basement and figure out if it is at 2 ½ stories or 3 stories and get a determination from the Building Inspector. They will amend the application to show that there will be fill within the 50 ft. buffer and they will look to reduce the nonconformity of the plan.

Chairman Robinson closed the public hearing for Marcia Cutting to be continued until next month.

Other Business:

The Chair introduced Darcy Horgan who has been sitting in as a representative from the Conservation Commission. He introduced Horgan as Vice Chairman of the Planning Board and soon to become the next Chairman of the Planning Board.

Adjournment:

Smith moved for the Board to adjourn the meeting. Cox seconded the motion. Meeting adjourned at 9:30 p.m.

Respectfully Submitted,
Anita Colby, Recording Secretary

Attachment A: Proposal and Application for Variances for Marcia Cutting

Attachment B: Letter given to the ZBA by Tom Hammer

Attachment C: Conservation Commission Recommending Approval by the Planning Board.