

MINUTES
Sachem's Head Association Zoning Board of Appeals
Town of Guilford
April 1, 2009

A meeting of the Sachem's Head Association Zoning Board of Appeals (SHAZBA) was held on April 1, 2009 at 5:00 p.m. at the Town Hall Selectmen's Meeting Room. With Acting Chairman Chris Scriabine presiding, the meeting was called to order at 5:00 p.m.

Present: **Chris Scriabine, Jeff Cooper, Matt Wilson**

Additionally: Tony Terry (architect for applicant), Jean-Marc and Annick Pandraud, Dr. K.J. Lee, Bob Davidson, and David Fisher were in attendance.

Acting Chairman Scriabine certified that the legal notice for the public hearing was posted and was advertised within the specified required time. It was advertised in the newspaper twice within the required notification period.

1. Jean-Marc & Annick Pandraud; property located 59 Chimney Corner Circle. Map 001, Zone C. Zoning regulations being appealed include: relief from section 6.2 relating to enlargement of existing nonconforming structure; relief from the limit imposed on Gross Floor Area in relation to lot size; relief from height restriction; relief from front yard setback. The existing FAR of the property is 5,202 sq.ft. while the allowable FAR under current zoning is 2,978 sq. ft. App # 11/30/09. Received 2/28/09.

Presentation was made by Architect Tony Terry. The applicant is requesting to add an additional 263 sq. ft. of space to the existing house. The improvements are low profile and will not have ill effect on the neighboring properties. They are proposing to add two small areas to the second floor: 1) an office space in place of an existing roof deck. 2) An open balcony of space over the existing living room. These two areas will fill an odd void between two existing masses of 2nd floor space. A skylight would be added to the roof and would be set slightly higher than the existing adjacent roof lines. The hardship for this application lies with the changes of the regulations that require basement and deck space to be included as gross floor area and a reduction in allowable roof height. Because this house predates this zoning, nonconformity was increased. The decks on the house are required as the topography of the lot is such that they are the only accessible outdoor living area and the entrance to the residence. The basement is unusable because of the water flowing through it and the darkness created by the deck overhang.

Letters in support of the proposal were received from Nancy Taylor, Colin Gordon and Bill Quirk.

Chris Scriabine – how are you defining “balcony”?

Tony Terry – This is an interior balcony that overhangs the living room.

Jeff Cooper – The house was bought with the existing zoning regulations in effect?

Jean-Marc Pandraud – no, it was bought before.

Tony Terry – regarding Item “d”. The house is built in the same location as the original house, which predates Zoning and to move it further back would impact neighbors' water views.

Jeff Cooper – the square footage for the house for FAR purposes is what?

Tony Terry – 5,202 SF.

Jeff Cooper – and the applicant wants to increase it by 263 SF. It is already 2,200 SF above the allowable amount if you were starting fresh with this house.

Tony Terry – if we were starting fresh with the house today, there wouldn't be a basement and the grade of the house would be changed to be in keeping with the topography a little more so there wouldn't need to be so much deck.

Jeff Cooper – what is the square footage of the basement?

Tony Terry – 1400 SF.

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Chris Scriabine – is the basement not used at all?

Jean-Marc Pandraud – there is water flowing through it.

Tony Terry – there is one area that is finished with a linoleum floor on slab. It is very musty. The deck looms out over it, making it dark. The walls have sheetrock with a full height ceiling. The window has to be left open all of the time because of the moisture.

Jean-Marc Pandraud – because of Annick's type of blindness, they need a lot of light in the house. She does not go into the basement because it is so dark.

Jeff Cooper – a variance is generally done under the basis of an unnecessary hardship or some exceptional circumstance. This will make it look better but lack of eye appeal is not a hardship. What is the hardship? You can live in it as a house.

Jean-Marc Pandraud – explained that their existing radiant heating system does not work and needs to be removed from the ceiling so they wanted to get the work all done at once.

Jeff Cooper – the applicant is saying there is not enough actual living space?

Tony Terry – the hardship is preexisting conditions.

Jeff Cooper – was it conforming with the zoning that was in place when you bought the house?

Bob Davidson – FAR has been in place since 2001.

Tony Terry – we are not proposing to add something that would be apparent. It will be correcting a deficiency.

Jeff Cooper – if you buy a house that is too small and you want to fix it up but the zoning changes and you can't do anything, that is a hardship. If you buy a house that is too small and the zoning at that time prohibits fixing it up and then zoning changes, you still can't do anything. That is not a hardship.

Tony Terry – what is the legal definition of hardship?

Jeff Cooper – it was discussed and agreed by the Board that a hardship must be unique to the property. He quoted a decision that was handed down yesterday for a case against the Madison ZBA “ ... to authorize the Zoning Board of Appeals to grant a variance only when two basic requirements are satisfied. The variance must be shown not to affect substantially the comprehensive zoning plan and two, adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to carrying out of the general purpose of the zoning plan. Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition of granting a zoning variance and mere economic hardship or hardship that was self created is insufficient to justify a variance.” Is this an unusual hardship that is not necessary for you to endure to carry out the general purpose of the zoning plan?

Chris Scriabine – is there nothing that can be done to rectify the problem in the basement?

Tony Terry – nothing can be done to make the basement good living space as long as it is under the deck. The basement is unusable space.

Jeff Cooper – but this is not isolated to this property.

A motion was made by Matt Wilson, seconded by Jeff Cooper, whereby the Sachem's Head Zoning Board of Appeals voted to close the public portion of the hearing at 5:40 P.M.

Discussion -

Matt Wilson – concurred with Jeff Cooper in that he doesn't see how it qualifies as a hardship. The proposed house would have a much better appearance than it does currently.

Jeff Cooper – if we approve this now, it will set a precedent as to what hardship is. He doesn't see that this is a hardship.

Chris Scriabine – it is so nonconforming now in size, so much larger that she can't see adding to it. If the skylight was submitted separately, she might not be opposed.

Jeff Cooper – he is totally sympathetic but does not see a hardship.

A motion was made by Jeff Cooper, seconded by Matt Wilson, whereby the Sachem's Head Association Zoning Board of Appeals voted unanimously to deny: Jean-Marc & Annick Pandraud; property located 59 Chimney Corner Circle. Map 001, Zone C. Zoning regulations being appealed include: relief from section 6.2 relating to enlargement of existing nonconforming structure; relief from the limit imposed on Gross Floor Area in

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relation to lot size; relief from height restriction; relief from front yard setback. App # 11/30/09.

A motion was made by Jeff Cooper, seconded by Matt Wilson, whereby the Sachem's Head Association Zoning Board of Appeals voted to adjourn at 5:50 p.m.

Respectfully submitted,

J. Donnette Stahnke
Recording Secretary, Sachem's Head Association Zoning Board of Appeals