

VILLAGE OF BARRINGTON HILLS

Zoning Board of Appeals NOTICE OF MEETING



Monday, November 16, 2015 ~ 7:30 pm
MacArthur Room - 112 Algonquin Road

AGENDA

1. Call to Order & Roll Call
2. Public Comments
3. [Vote] Minutes October 19, 2015
4. [Vote] 2 Barrington Hills Road - Appeal Building Restoration
5. Adjournment

Chairman: Dan Wolfgram

NOTICE AS POSTED

**VILLAGE OF BARRINGTON HILLS
ZONING BOARD OF APPEALS
MacArthur Room – Village Hall
Monday, October 19, 2015**

- 1. Call to Order/Roll Call:** The Meeting was called to Order at 7:30 p.m. by Chairman Dan Wolfgram. On roll call, the following members were present:

Dan Wolfgram, Chairman
Debra Buettner
Richard Chambers
Jan Goss
Patrick J. Hennelly
David Stieper

Absent: Jim Root

Staff Present: Robert Kosin, Village Administrator
Mary E. Dickson, Legal Counsel

- 2. Public Comments**

There was no public comment.

- 3. Minutes**

September 21, 2015

Member Stieper moved, seconded by Member Chambers to approve the minutes of September 21, 2015. On a voice vote, all Members voted “aye.” One Absent. The Motion Carries.

- 4. Public Hearing/Meeting – 300 Donlea Road**

Chairman Wolfgram reopened the hearing on the Applicants’ request for Special Use Permit at 300 Donlea Road.

Administrator Kosin once again testified to the notice of hearing having been provided. Applicant Michael Lerner testified in support of the Application, stating that he and his wife owned the 17 acre property and wished to construct an artificial lake and associated brook as a water feature on the Property. He had previously commenced construction, before being notified that a permit was required, and since that time had stopped construction and filed the needed Application with the Village. Dana Dubos from Land Technology, Inc. testified in support of the Application, and Village Engineer Dan Strahan testified relative to the Application and the engineering provided. There were no questions or comments forthcoming from any member of the public. Various questions were asked by members of the Zoning Board of Appeals, relative specifically to whether the requirement of filling the lake by storm flow and the existing well on the Property would negatively impact the aquifer or surrounding property owners. The Village Engineer testified that it would not based on calculations provided.

The public hearing was closed.

Member Goss moved, seconded by Member Hennelly, to recommend approval of the Applicant's request for a Special Use Permit for the artificial lake, the Applicant having presented facts in support of a Special Use Permit, with the condition that the Village Engineer approve the survey to be submitted in support of the Application.

Roll Call: Chairman Wolfgram, Members Buettner, Chambers, Goss, Hennelly and Stieper voting "aye." One Absent. The Motion Carries.

3. Appeal – 2 Barrington Road

Chairman Wolfgram opened the hearing into the Appeal of a Zoning Enforcement Decision affecting 2 Barrington Road.

The Property Owner, Cynthia Pinkos, represented herself on the appeal.

The Zoning Enforcement Officer was represented by Village attorney James Busch. The Property Owner appealed the August 13, 2015 written decision of the Zoning Enforcement Office, who found that a shed existing on the property was non-conforming, and not subject to repair, as it was located within the minimum interior side yard setback. Accordingly, the Zoning Enforcement Officer's decision required the Property Owner to demolish or relocate the structure within 45 days of receipt of the decision.

Evidence was adduced at hearing, and a record taken of the proceedings.

Following a full opportunity for presentation of evidence, and hearing of argument from both the Village and the Property Owner, the hearing was closed.

Discussion ensued relative to the findings made and decision of the Zoning Enforcement Officer in light of the evidence admitted at hearing.

After much discussion, Member Goss moved, seconded by Member Stieper as follows:

It (the shed) was once a legal nonconforming structure. It is unclear whether it was at the time it was reconstructed because it was in such a state of disrepair and had been for a long time and may have been abandoned and therefore we affirm Don Schuman's letter.

Roll Call: Members Goss and Hennelly voting "aye." Members Buettner, Chambers, Stieper and Wolfgram voting "nay." One Absent. The Motion Fails.

Discussion continued.

Member Buettner moved to find that the structure was either previously a legal nonconforming use that was rebuilt without a proper building permit or that it had been abandoned and it was no longer a legally nonconforming use and it was rebuilt in violation of the various sections of the code. And that the work that was done on the structure, itself, was actually a rebuilding of the structure as opposed to repairs. And the rebuilding of the structure in any event would have

required a building permit and a(n) inspection as set forth in the court. And that we affirm Don Schuman's enforcement letter.

The Motion failed for lack of a second.

Member Buettner moved, seconded by Member Goss, to affirm Enforcement Officer Don Schuman's letter with the findings that the work that was done on the structure were not repairs but were, in fact, reconstruction.

Roll Call: Members Buettner, Hennelly and Goss voting "aye." Members Chambers, Stieper and Wolfgram voting "nay." One Absent. The Motion Fails.

Discussion once again continued. At this point, Village Attorney Dickson suggested that a motion to table would be in order to allow her the opportunity to review the Village Code and State law to provide a legal opinion as to the result when the administrative body cannot arrive at a vote required to affirm or deny the decision of the Zoning Enforcement Officer.

Member Stieper moved to table the matter to November 19, 2015, seconded by Member Hennelly.

Roll Call: Members Buettner, Hennelly, Goss, Chambers, Stieper and Wolfgram voting "aye." One Absent. The Motion Carries.

6. Adjournment

Motion to adjourn by Member Goss, seconded by Member Chambers. On a voice vote, all members voting "aye." The meeting stands adjourned.

Approved: _____

Dated: _____

PUBLIC COMMENTS

Public Comments are submitted by the public and are not reviewed or endorsed by the Village.

November 12, 2015

Re: Zoning Board of Appeals October 19, 2015 meeting; 2 Barrington Hills Road

Dear Mr. Wolfgram, Chairman; and Messrs. Stieper, Chambers, Root, Goss and Hennelly and Ms. Buettner, Members of the Zoning Board of Appeals:

I consulted a municipal code professional and reviewed with him the transcript of last month's ZBA meeting regarding my shed. It was extremely helpful in clarifying the law and code applicable to my shed. The Village Code clearly provides for the repairs I conducted on my shed. (All numerical and section references that follow are to the Barrington Hills, IL Village Code unless specified otherwise.)

Shed is legal non-conforming; use has always been permitted use; Code section 5-9-3(A)2 applies:

Early in last month's ZBA meeting, it was stipulated for the record that my shed is a legal non-conforming structure. Beginning with attorney Busch's closing statement and continuing for much of the following discussion, the shed's status is incorrectly referred to "nonconforming use," causing misdirection and discussion of Code section 5-9-3(A)1 which is the wrong provision. The shed's use has always been a permitted use; it is only its location that is non-conforming. Accordingly, 5-9-3(A)2 is the Code section that applies. It states as follows:

Repairs, alterations and structural changes may be made to a nonconforming building or structure, all or substantially all of which is designed or intended for a use permitted in the district in which it is located, provided said repairs, alterations or structural changes conform to the regulations of the district in which said building or structure is located.

When attorney Busch attempts to answer member Stieper's question of how in the Code "permitted nonconformance" becomes no longer "permitted", attorney Busch incorrectly refers to the section that applies to "nonconforming use" (5-9-3(A)1). Not only is that the wrong section, but his assertion that the act of repairing the shed turns it from permitted non-conformance into non-permitted non-conformance is also wrong and wholly undermines the purpose and intent of section 5-9-3(A)2.

Code section 5-9-3(A)2 permits the repairs:

5-9-3(A)2 specifically permits me to make repairs, alterations and structural changes to maintain my non-conforming structure. "Bulk" has no place in the discussion; it is not mentioned at all in 5-9-3(A)2. In any case, I did not increase bulk. "Bulk" means size and location (see definition at 5-2-1), and is not about weight, or how much lumber is in a structure or "adding lumber" as counsel Busch proffered. And even if that were part of the definition, when I replaced lumber, I did

not “add lumber.” To say putting back up a wall that fell down is adding or increasing bulk is nonsense.

5-9-3(A)2 does not restrict the amount or extent of “repairs, alterations or structural changes.” “Repair” is defined as “development activities which do not result in any increases in the outside dimensions of a building or any changes to the dimensions of a structure” (4-5-2). “Alterations” is defined as “any change in size, shape, character, occupancy or use of a building or structure” (5-2-1). The definition of “structural alteration” (5-2-1) exempts repairs, so just because a supporting board is replaced doesn’t mean it is not a repair. (Anyway, 5-9-3(A)2 permits structural changes.) Clearly, 5-9-3(A)2 is not only specifically and directly applicable to my shed, but it allows for activities way in excess of those I performed on my shed.

5-9-3(A)2 provides for, but does not require, issuance of a permit:

Code section 5-9-3(A)2 states that the “repairs, alterations or structural changes” made to a nonconforming structure are to “conform to the regulations of the district in which said building or structure is located.” If such regulations include the need for a permit, to say a variance must be approved before a permit is issued contradicts the purpose of 5-9-3(A)2. (Clearly, there would be no reason for Chapter 9 in the Code regarding nonconformance if variances were practical and viable alternatives.)

When complainant Stellato first tried to get me to take down the shed in 2013, he was told it is a permitted structure and could remain. I remember being in the Building Department office with Wendy on my left, behind the counter, and Mr. Shuman on my right. And Wendy said, “why don’t you just repair the shed?” I said, I will, I intend to. The Building Department knew its condition in 2013 and took no action. It is the municipal code professional’s view that the Building Department had an obligation to have me apply for and issue me a permit (if it is determined a permit would be required for the repairs) in 2013 when they first observed the condition of the shed. But they can’t go back now and tell me I should have gotten a permit when they were fully informed of both the condition of the shed and my repair plans and did not require a permit.

I was never told I needed a permit. Contrary to Mr. Schulman’s recollection, there was no discussion of permit requirements in my conversation with him and never was I told I would or even might need a permit. If there were permit discussions among Village employees or counsel, they did not include me and any claims to the contrary are false. When counsel Busch called me, as I previously testified, he said there was a gap in the code, there was no applicable international building code and that nothing applied to my situation. He said nothing about holding off or to give me any cause for concern. If he had suggested a need for a permit, alarm bells would have gone off in my head. Instead, when I went to the Village with my plans, I was

either told nothing, or that nothing applied to my situation. So of course I believed I was free to proceed. My contractor did ask about Village approval. I told him don't worry, the Village knows about the shed, I told them exactly what I am doing and when, and they have not told me I need any kind of permit. And I have even spoken with the Village attorney who also knows exactly what my plans are, so every thing is ok. And I told my dear friend, whose family has been in Barrington Hills for several generations, when she rode her bike over while the repairs were being done: "The Village knows exactly what I'm doing, I even spoke with their attorney, and it's all ok." I was so happy. And then after the repairs were made, I get that letter from the Building Department? Never would I expect that to happen! Talk about violation of "due process." If a permit application was required, it was the Village's omission to not tell me one was needed.

In any case, I believe that a permit would not have been required. Pursuant to Village Code section 4-1-2, a permit is required "to construct, enlarge, alter, remove or demolish a building," none of which I did. Even if Mr. Schuman decides otherwise, I would not think that he can do so retroactively, especially given that he had previous knowledge of both the condition of the shed and my repair plans.

The shed exists:

The contention that the shed didn't exist and that I built a new shed is against the facts and unsupported by any ordinances or code. How anyone can say that it didn't exist prior to my repairs is beyond me, but I guess you see what you want to see. Furthermore, you've already stipulated that it is a permitted non-conforming structure. You wouldn't have done that if the structure were "non-existing."

Facts and measurements should be used instead of speculative judgments:

The Building Department is basing its entire argument on speculation, inaccuracies, statements such as "in my estimation," "appeared to" and pictures that grossly distort actuality. The collapsed panels were 12 feet out of 32. They were limited to the originally built 12 by 12 structure. Not "most" or "at least half" of the existing structure as the complainant exaggerates and the Building Department repeats. You were given pictures that I explained distort the actual dimensions by the angle from which they were taken. I gave you measurements and actual facts in my September 22 appeal letter. Even with cosmetic replacements/changes, significantly less than 50% of the structure was affected. And if it had been explained to me ahead of time what I was or was not permitted to do, I could easily have made fewer replacements and kept more of the original structure. Had I known it was an issue or would make me subject to a heretofore unknown provision, I wouldn't have replaced some of what I did. It wasn't necessary, but I did it in the interest of preventative maintenance and aesthetics.

The Village Code must be applied, not outside, unadopted codes:

Mr. Shuman references provisions from outside, unadopted codes instead of using the code that the Village is subject to. That is not legally supportable. Maybe the BOCA building code adopted by the Village is outdated, or maybe you don't think the Village Code is clear enough or you don't like what it says, but that doesn't give you the authority to go against or outside such Code. The Village can only change it prospectively. The existing Village Code *does* address my situation (including definitions) and the ZBA is obligated to follow that code. The municipal code professional said that in my situation the Village Code wasn't being enforced effectively or correctly, and that I was given no direction until it was an ultimatum.

Conclusion

There has been a lot of exaggeration and condescending language from the complainant: referring to the shed as a "shack" or a "heap;" saying it has been "completely rebuilt" and is "seemingly larger". The Building Department's case is built on speculation, estimation and reference to codes that the Village has not adopted.

I am not asking for any exceptions or variance. I am only asking that this Board stick to the facts and the law and apply the actual Village Code. If you do, you can only find that I was well within my rights to repair my shed as I did and that the demands in the letter of August 13, 2015 should be rescinded. Thank you.

Very truly yours,



Cynthia Pinkos
2 Barrington Hills Road