

**Minutes of Board of Adjustment Meeting
Held January 9, 2017**

Mayor David Jack called the Board of Adjustment meeting to order at 6:00 p.m., January 9, 2017, in the Borough Assembly Chambers. Assembly Members Rooney, Gilbert, Prysunka, and Powell were present. Assembly Members Decker and Mitchell were absent. Borough Manager Jeff Jabusch and Borough Clerk Kim Lane were also in attendance.

CONFLICT OF INTEREST

Assembly Member Prysunka stated that he had a potential conflict of interest because he had prior discussions with Mr. Guggenbickler prior to the meeting; doesn't feel as though it will prohibit him in the decision that he will make though; wanted to get it out there.

Assembly Member Powell stated that he had a potential conflict of interest because he is a neighbor to both parties; had received all of the notices with regards to the property as well.

Mayor Jack stated that he didn't believe that either of them had a conflict. There were no objections from the Assembly.

ITEM OF BUSINESS

3a Setback Variance to allow a 4-foot Setback on the Side and 7 foot Setback in the Back (shoreline property boundary) on Lot 1-B2, GIHP Resubdivision, appeal received from Chris Guggenbickler, property owned by Charles and Pam Haubrich

Mayor Jack clarified for the Board that they were there to consider if the decision by Planning & Zoning to approve a variance for a backyard setback of 7' and a side yard setback of 4' from the property lines where he is currently encroaching should be upheld. Jack also stated that Mr. Guggenbickler's appeal is asking that the above action by Planning & Zoning be modified so that the enforcement be that both sides have a 5' setback and the front have a setback of 20'.

Jack stated that the Conditional Use Permit and the Building Permits cannot be considered at this meeting.

DISCUSSION AND DECISION OF THE BOARD OF ADJUSTMENT

Carol Rushmore, Economic Director stated that in 2006, there was a survey done on this property; the structure in question is shown to be 5' from on the property line; not sure is

that would be 5' from the building or the overhanging eave; historically, it would have been a measurement from the eave; provided a brief summary of what has transpired to date.

Prysunka – The question is the eave, not the building?

Rushmore – The survey could have been from eave or building, don't know.

Gilbert – Do property owners agree with the property markers that are in place?

Rushmore – The corner markers have been found.

Powell – It's a hard decision to make if we don't know if the measurement is from the eave or from the building.

Rushmore – Perhaps, but it's up to the Board of Adjustment to decide what is appropriate for this building; decision was based off of the assumption that the building is 5' from the property line and the eaves are 4' from the property line; Planning & Zoning made their decision based on where the original structure was.

Rooney – Could this Board require that an as built be done to determine the distance?

Rushmore – Yes you could.

Powell – We could, but it's very expensive; about \$5,000 or \$6,000.

Prysunka – What about the front setback; front was okay but now the deck encroaches on the 20' required setback?

Rushmore – Before the deck was added, the structure did meet the 20' setback; deck that was added on now encroached into that 20' setback area; basing the decision from the measurement from the landowner.

Mayor Jack asked the two property owners to give a statement.

Chris Guggenbickler, 236 Berger St., stated that the boathouse was original a small building; when he purchased his property, he purchased an additional 19' that went towards the boathouse; issue came when it was expanded and went from a single family residential use to a rental business; privacy issue.

Mayor Jack stated that the board could not consider that issue.

Guggenbickler – There has been a history that it's better to ask for forgiveness than ask for permission; shown that Mr. Haubrich knew where the property lines were; would be wrong to reward him because it changed the attitude of the front of my property.

Prysunka – Were you a party to when the building permit went through?

Guggenbickler – No, I didn't know what was happening, I went to Hawaii and when I came back, they were putting the roof on the building.

Jack – We cannot discuss the building permit.

Guggenbickler – It's all part of the timeline though.

Prysunka – It's completely germane to the conversation because we are talking about setbacks and those were listed in the building permit.

Clerk Lane – If there was a complaint on the building permit or on the Conditional Use Permit, there is a separate venue for that; this appeal is only on the decision that was made by Planning & Zoning at their meeting held on December 8th to approve the variance; according to our code and what our attorney said, those two items cannot be a part of this hearing.

Prysunka – I stand corrected.

Gilbert – Do you agree that where the property markers are, are correct?

Guggenbickler – I had paid Mr. Scheff to put those markers in; I believe that it's within a couple of inches; the corner of the building's eve overhangs onto my property by about 5"; pathway and a few of the lights to the structure also is partially on my property;

Powell – What are the rules to building on a setback?

Rushmore – There is not supposed to be construction on the setbacks unless a variance is obtained beforehand; certain fences less than 6' are often allowed on the property line; if running utilities, should be on their own property and not on an adjacent neighbor's property.

Charles Haubrich, 238 Berger St., admit that there was encroachment on the Guggenbickler side; intention is to remove the eve so that it would be the way it had been

originally; when measuring from the wall to where Mr. Guggenbickler's line is, I am measuring 5'4"; when Johnson's Construction took the eve down, they said that it was 18"; what I am asking for is the 7' easement on the porch side because it's the corner that's encroaching; majority of the porch should meet the setback; I thought that if I put the eve where it had been originally, it would satisfy Mr. Guggenbickler; the landscaping lights are frozen in the ground; they will be removed as soon as the ground thaws out enough; I don't believe that when the survey had been done, they didn't take into account where the eve was since when I am measuring, it's 5'4" from the structure to the property line; on the other side, the neighbor's wrap around porch is right on the property line.

There was discussion on if this structure was a remodel or new construction.

Harley Johnson, Johnson's Construction (General Contractor to Mr. Haubrich), stated that the existing structure had been taken down to the sub-floor; the plywood, decking and piling were in place; Haubrich's decision was to take it down to the sub-floor.

Gilbert – So the footprint is the same?

Johnson – Yes, except for the overhang.

Gilbert – What would it entail to remove the corner of the structure?

Johnson - There is a bit of modifications but it's doable.

Haubrich – We are willing to do that.

Pam Haubrich, 238 Berger St., also stated that the building itself is in its original spot; original floor and pilings; took down the walls that were leaning and the roof that was collapsing; we replaced the walls, the roof and added a porch with a wrap-around cover so that when you walked up on the porch you would be protected; back corner is angled and based on the line that Mr. Guggenbickler has run, it is over the property line by about 5"; everything else is clear away from the property line; our proposal would be to cut off the back corner so that we would be back within the 5' setback; question still remains if the original measurement was from the building or the eve; if it's from the building then the eve was already over the setback requirement.

John Taylor, regardless of where the old building is or where it was, the setback is 5' from the overhang.

Clerk Lane – Clarified that the Board could accept, deny or modify the appeal.

Prysunka – His concern was that the unit is so tight on the property line; went from boathouse to a different use now.

Prysunka – Worried that this was done and what's to stop the next person from doing this; building something and then asking for a variance; we lose the process; should set a precedent that the variance should be asked for first.

Johnson – Remember that the Haubrich's took an existing structure to make it better; was there long before Mr. Guggenbickler had purchased his property and had the property line moved closer to the structure.

Guggenbickler – The issue is not where the building was or is; it's that the building is bigger than it was; it's 6' taller now and is bigger; taking it back 4' will not be taking it back to where it was because it's bigger.

Rooney – Why is there a 20' setback there?

Rushmore – It's been that way in the single family residential areas since the 70's or 80's; there is no DNR requirement.

Haubrich – Was told by Johnson's Construction that they had researched the city's code; thought it would be done right; willing to cut it off to make it right.

Haubrich – He had been accused of swaying the Planning & Zoning Commission's decision; stated that he had recused himself whenever this issue came up; additionally, he had seen where variances within 2' were approved.

Lane – stated for the Board that under the WMC, section D of 20.80.010, Procedure for the Board of Adjustment that if the Board is going to grant the appeal, they must state and explain why you are going to grant the appeal.

Guggenbickler replied to Prysunka - He was okay with Mr. Haubrich's proposal for the side; will need some sort of an overhang to shed the water so it's doesn't run down the side of the building.

Recessed at 7:12 p.m.

Reconvened at 7:15 p.m.

M/S: Gilbert/Rooney, to grant the appeal but to allow a 4' setback on the side and a backyard setback of 10', due to an error in the application of the pertinent law.

There was extensive discussion by the Assembly to determine if the setback on in the back would be bigger than the 7' setback, how much of the porch would be cut off.

Johnson – The front porch is on the water side, not the other parties' property line; I don't see what it's hurting by allowing it to stay as is; most of Zimovia's waterfront property is impacted.

Powell - If we stick with a 10' variance in the back, they will have to cut 3' off of the porch.

Lane clarified for Prysunka – Mr. Guggenbickler's appeal was asking for a 5' setback on the side and a 20' setback in the front.

Haubrich – the way that the porch is built, if we have to cut some of it off, we would most likely have to start over.

Powell – This is tough because at what point do we say no more.

Prysunka – If we say okay to this, does it set a precedence; but Planning & Zoning allows variances all of the time.

Rooney – Someone is now objecting and we need to take that into account; I am inclined to award the appeal.

Rushmore replied to Jack - The Haubrich's had applied for the variance after the structure was build; Jack stated that he had a problem with people building and then coming to ask for a variance.

Powell stated that if it's supposed to be 5', we should change it to be 5' so that it's in line with our code.

M/S: Powell/Prysunka, to modify the motion to remove 4' and add 5' for the side yard variance.

Powell – At what point do we say no? We need to decide if we are going to continue with what has been done in the past or if we are going to start by saying no. Do we approve the appeal and have it comply with our code or do we allow the variance?

Rooney stated that the property owner should have followed the code; we should be considering the backyard setback since that was not done.

Powell - If we grant the appeal as it stands, the Haubrich's will have to cut the porch off completely?

Prysunka - The Haubrich's would have to figure that out.

Powell - If the numbers that everyone is throwing around, the original boathouse was already in the setback; Mr. Guggenbickler appears to be saying that he is willing to allow a 4' porch so that they would lose the whole thing.

Rooney - Agreed that a 4' porch would be acceptable.

Powell - We have one property owner saying "I don't want this"; we have another property owner saying "I made a mistake" and are asking for a variance.

Rooney - The only reason why I would be willing to allow the 4' variance is because it was an acquiescence of the appellant.

Prysunka - Mr. Guggenbickler seemed to be extending an olive branch by saying that he would be okay with the 4' on the side if he cut off the portion that was over the property line.

For clarification, Lane read the motion and amendment for the Board.

Guggenbickler - Felt that it would be reasonable to allow for a 4' deck in the front corner.

Rushmore - Clarified that Mr. Guggenbickler was saying a 4' deck; the deck is 10' with a 7' easement; if the deck is cut back to 4', the easement would need to be 13'.

Powell - Mr. Guggenbickler is saying that he would be in favor of allowing a 4' deck; if we grant the appeal as it was presented by Mr. Guggenbickler, that's more stringent than what he is saying he will agree to now.

Jack - I think that we need to set the setback and not base that on the deck.

Lane – Clarified for the Board that if they want to amend the portion for the backyard setback, they would need to take action on the side yard setback first and then make an amendment on the backyard setback.

The Amendment to the main motion failed by polled vote by 0/5.

Rooney – A 13' setback is worse for the Haubrich's.

Powell – Correct, if we grant the 13' setback, based on what is believed to be the property lines, they will have to cut off 6'; if we grant the 10' setback, they will have to cut off 3'.

Gilbert – That is not set in stone though; they would have to have a survey done to determine the exact property line.

Prysunka – Clarified that there is no amendment on the floor for the backyard setback; it's at 10' right now?

Powell – Asked if the Board granted the appeal as proposed by Mr. Guggenbickler, would the two property owners be able to revisit this and take it back to Planning & Zoning?

Lane replied to Powell – If the Board granted Mr. Guggenbickler's appeal in its entirety, which would be the final step for the city; next step would be judicial.

Rushmore – The two parties can bring something back to Planning & Zoning if they worked something out amongst each other.

Gilbert – We are sort of at a compromise state; I don't think that we are going to make both parties happy.

Lane read the motion on the floor:

M/S: Gilbert/Rooney, to grant the appeal but to allow a 4' setback on the side and a backyard setback of 10', due to an error in the application of the pertinent law.

Prysunka – If we pass a motion that follows our code and what is allowed and the two parties can get together and reach a compromise, great; by trying to "fix" it and make it nice for everyone, we are complicating it.

Gilbert – There was a compromise for the side yard setback; would it be appropriate to ask the parties if they could reach a compromise on the backyard setback?

Haubrich – I would like there to be a compromise; would like to be able to enjoy the view on the deck; cutting it down to 4', it would not really be usable.

Guggenbickler – Having a 4' deck on his side would allow for a little sitting area on the Southside.

Powell - He had walked on the property today, wondered if the walkway could be moved so that it wasn't encroaching on the property line, would that be acceptable? Powell stated that if Haubrich moved the walkway from where it was, Guggenbickler might make a compromise on the deck.

Jack asked to take a 15 minute recess so that the two parties could converse and try to come to a mutual compromise.

Guggenbickler – If things had happened the way they should have, we wouldn't all be sitting here.

Recessed at 7:55 p.m.

Reconvened at 8:06 p.m.

Guggenbickler – The 4' setback on the side and the 7' setback on the back; would not have the path on the property line.

Haubrich – We can change the entry way; we can get rid of the steps on his side, we would put a railing up; no more foot traffic on the property line, and remove the overhang on his side.

Lane clarified that the Board can uphold Planning & Zoning's decision but add conditions to that.

Main motion failed 0/5 by polled vote.

M/S: Rooney/Powell: to uphold Planning & Zoning's ruling to allow for a 4' variance setback on the side and a 7' variance setback in the front porch area with the following conditions:

- 1. Move the walkway from the Guggenbickler property side so that there is no more foot traffic on that side of the structure and that the walkway go through the middle of the Haubrich's property; and***
- 2. Remove the steps that are on the Guggenbickler property side and add a railing so that there is no longer an entryway on the Guggenbickler side; and***
- 3. Remove the overhang that is in violation to bring it to a 1' eve.***

M/S: Gilbert/Prysunka, to amend the motion to add that the reason for the motion was because both parties agreed to the conditions in the motion. Amendment to the main motion was approved unanimously by polled vote.


Main motion, as amended, was approved unanimously by polled vote.

Board of Adjustment meeting adjourned at 8:12 p.m.



David L. Jack, Mayor

ATTEST:



Kim Lane, Borough Clerk

