

Attorney Speranza advised that he will not re-read his memo and rest on his papers and take any questions from the Board.

Chair Cuthell asked the Board for comment/question.

Member Appenzeller asked about page 4 - where talking about the concrete footings which appeared to be an element in dispute and asked Attorney Speranza to elaborate. Attorney Speranza said that it is his understanding that the pillar of the carport is anchored by the strip footing and on the survey it does say that the strip footing crosses the property line or comes within a couple of inches of the property line, and looks a little further down from where the carport is, and the strip footing extends but it is the anchor of the carport itself so without that it is not structurally sound. Mr. Wheeler is an Engineer and that is why he had this put in the Affidavit and this is anchored by the strip footing and the strip footing does continue along and does cross the property line and past the setback allowed.

Chair Cuthell said clearly you cannot have a structure without a footing and this is something the Board will want to speak to speak Attorney Polidoro about on how that plays into any consideration or if it actually is part of ZBA consideration for the potential of an area variance requirement for the structure as it exists.

Attorney Polidoro said everyone would benefit if someone put the survey up and explained the strip footing and asked if it was the strip footing going down away from the carport.

Survey was presented on the screen.

Chair Cuthell said the only plans that show any kind of foundation are in the sketch of the original application from 1986 and does not understand the strip footing.

Survey was reviewed and discussed.

Attorney Polidoro said if it is part of the structure you will need to consider it as part of the variance. Attorney Polidoro asked if Mr. Sperry could speak on this.

Attorney Replansky said he does not know what it is but something left over from something prior and there are footings for the carport that are on his client's side of the property line and has nothing to do with the case before the Board. Attorney Replansky said he thought this was addressed by Attorney Polidoro at the last meeting when she indicated that the survey map, which Mr. Wheeler had produced, clearly indicated that the carport is on Mr. Sperry's side of the property and that there is no encroachment. Attorney Replansky said there is no encroachment of the footings for the existing structure.

Dan Wheeler spoke at this time and advised the footing is what Mr. Sperry put in when he tore down the existing lean to shed when he re-did his work and there used to be sonic tubes which are round circular deep footings and there used to be 4 sonic tubes and Mr. Sperry removed everything to include the footings and instead of 4 independent footings there is now a continuous sheet of concrete approximately 2 feet and there was no depiction of that on the plans that were submitted to the building department; and the fact that you are having a little bit

of consternation with respect to the building that is a key element of the building and agrees with Attorney Polidoro that if you consider the structure you must in fact consider the footing because the footing is part of the structure and agreed with Chair Cuthell that this is a building code issue. Chair Cuthell agreed and said you cannot have a structure without a foundation.

Member Javsicas asked when you say original structure do mean the prior carport or the plans for the newer version. Chair Cuthell said the carport was erected based upon on the original variance was shown drawn with posts per footings, which would have been individual sonic tubes and if there is something difference there now then that is new as done by Mr. Sperry.

Chair Cuthell asked for any further comments. No comments.

Attorney Speranza asked if the Board was going to close the Public comment session. Chair Cuthell said at the end of this meeting it will be the end of the public hearing.

Member Javsicas asked about section talking about “detriment to the neighborhood” on page 5 and cites reasons and asked for clarification on “detriment”. Attorney Speranza said in Towns and Villages have their own Zoning rules, variances, etc. and they are there for a purpose and if anybody can build a structure that is outside of the area/use variance and if a Board were to sanction that it, is detrimental to the neighborhood in a sense that ...”ok we are going to change the rules for everyone that does not follow”...and there was a variance issued already and now a completely different structure and knowing, in their position, that it encroaches in some different places, and detrimental in a sense that there are these rules in place for a reason.

Chair Cuthell asked if they were suggesting that a carport or a carport with a deck is somehow violates the community in its essence and very existence. Attorney Speranza said in its essence or existence no, but would say that there was one example of a carport in the neighborhood and not necessarily a structure that is prevalent in the neighborhood.

Member Reilingh asked is it the issue, in the manner of appropriateness to the neighborhood, isn't the issue that there was a variance granted for the one structure initially and the issue is the difference between the present structure and that original carport.

Attorney Polidoro said there are 2 issues before this Board and the building inspector issued a notice of violation based on the differences between the approved carport and what he saw;

1. Whether the Notice of Violation should be upheld or was it improper
2. If the Notice of Violation is upheld, and this carport exceeds or intensifies on the variance that was issued back in the 80's then will this Board grant an area variance to legalize it, using the 5 factory balancing Tests based on State Law.

Attorney Polidoro said in granting an area variance you have to consider whether the detriment to the Community outweighs the benefit to the applicant and you look at those different factors.

Member Reilingh asked if they need to be addressed in the order you presented. Attorney Polidoro said yes and there will be 2 documents to vote on; and if upheld they will take up the variance; and if overturned there is no need for the variance.

Chair Cuthell said the particulars will be discussed when doing the balancing Tests.

Chair Cuthell spoke on Mr. Replansky's response and asked Attorney Replansky if he would like to speak.

Attorney Replansky pointed out an error on the title page. He represents Mr. Sperry. Mr. Replansky said this Board has been fully briefed and is sure Attorney Polidoro will cover Law with the Board and was responding to Attorney Speranza's memorandum and addressed issue of the timeliness of an Appeal and that the Notice of Violation was improperly issued based on issuing the Notice of Violation during construction that has proceeded in accord with building permit which were issued by the building inspector and still in effect and permits being extended and the building permit not being revoked. Attorney Replansky said they were timely in their appeal.

Attorney Replansky said this Board is of limited jurisdiction and only has jurisdiction over matters which are brought to it by the appeal and the appeal is that the notice of violation issued by the building inspector was improperly issued and feels this Board does not have jurisdiction to do anything but nullify the building inspector's notice of violation and feels we addressed the concrete strip footing and feels this is irrelevant and it is clear of no encroachment on Mr. Wheeler's property and erected in accordance with plans and work was inspected and no notice of violation issued to his client in the 3 years subsequent to the issuance of the building permit and if there is a property line dispute that would be a personal issue between the 2 property owners which can be litigate it in another form; and if this Board rules against his client and sustains the Notice of Violation then alternatively his client will seek an area variance from this Board to allow for the deck and railings to remain in place which were installed pursuant to plans approved by the building inspector.

Attorney Replansky spoke on letters received from neighboring property owners which he believes all felt the property has had a positive effect on the character of the neighborhood and not a detriment.

Attorney Replansky asked that this Board not deliberate in private. Chair Cuthell said no they are not allowed.

Chair Cuthell thanked all and asked the Board for comment. No comment.

Chair Cuthell advised of another letter received in response to the public hearing:

1. Robert & Angelyn Haan – 12 Church St. Ext.
in favor of the construction/appearance.

Chair Cuthell made a motion to close the public hearing for application of 28 Prince Street listed under Tax Parcel ID #6272-10-337721 at 7:35pm. Motion seconded by Member Ou-Yang.

ROLL CALL:

Chair Cuthell – yes

Member Reilingh - yes

Member Javsicas – yes

Member Appenzeller – yes

Member Ou-Yang – yes

All in favor. Motion approved.

Chair Cuthell made a motion to table the application for 28 Prince Street to June 24, 2021 at 7:00pm. Motion seconded by Member Javsicas. All in favor.

Chair Cuthell made a Motion to adjourn the May 27, 2021 Meeting at 7:36pm. Motion seconded by Member Javsicas. All in favor. Motion approved.

Lara Hart,
Secretary
Village of Red Hook ZBA