

**VILLAGE OF RED HOOK
ZONING BOARD OF APPEALS MEETING
JULY 22, 2021
7:00 PM**

Present: Chair Erik Cuthell; Member Maarten Reilingh, Member David Javscas, Member Steven Appenzeller and Member Sherry Ou-Yang.

Chair Erik Cuthell opened the July 22, 2021 Zoning Board of Appeals Meeting at 7:01pm.

Chair Cuthell announced there was a quorum for tonight's meeting with full Board.

Present:

Victoria Polidoro, Esq. - Village Attorney

Patrick Logan, Esq.

Warren Replansky, Esq. - Attorney for Nick Sperry/Applicant

Dan Wheeler – resident of 24 Prince Street

Chair Cuthell made a motion to accept and approve the meeting minutes of the ZBA dated May 27, 2021. Motion seconded by Member Appenzeller. All in favor. Motion approved.

Chair Cuthell advised we did not have a ZBA Meeting in June and thanked everyone for their indulgence and in postponing the meeting.

Chair Cuthell advised that tonight's meeting is to review, discuss and vote on the two applications in front of the Board, both submitted by applicant, Nick Sperry. Chair Cuthell advised that the public hearing was closed and discussions this evening will be for the Board only and any questions the Board may have can be addressed to Attorney Polidoro.

AGENDA ITEM #1.

Nick Sperry

28 Prince Street

Interpretation

Tax Parcel ID 6272-10-337721

Chair Cuthell advised that this Interpretation for this Board to consider is directly and only associated with the validity of a Notice of Violation/Order to Remedy that was issued by the current Code Enforcement Officer of December, 2020.

Chair Cuthell said upon review of the property this is the 4th Zoning/Code Enforcement Officer that the Village has had and Mr. Kimble was familiar with the property but the question came up after the most recent renewal of the permit in December, and when he inspected the property it was his determination that the expansion of the carport that existed had a deck on top of it and violated our Chapter 200 Zoning.

Chair Cuthell advised that the question that Mr. Sperry is asking is if this is a valid Notice of Violation/Order to Remedy. Chair Cuthell advised the direct application here he is referring to Section 200-9-7 (side yard setbacks).

Chair Cuthell advised this property received a variance for a carport in 1986 and that application explicitly defines a carport with a sloped roof placed within a foot & 1/2 within the property line and what that variance allowed. Chair Cuthell said when Mr. Sperry bought the property and filed for his original building permit in 2009 that permit was explicitly intended to cover work done to the rear of the building with a price created of \$20,000.00 as a basis for that application which has been carried over throughout the project, and that permit had no mention of the carport and subsequent to 2009. Chair Cuthell said upon another a renewal plans were presented in 2012 that showed work to the rear of the property but now included drawings to show framing detail for a new carport and a foundation plan that makes no mention of the footings for the structure of the carport, and the issue has risen that the carport that exists today is not a carport but a carport with a deck on top and certainly closer than a foot & 1/2 to the property line.

Chair Cuthell said as a Zoning Board we cannot condone, allow or granted anyone the right other than to stay within their property and advised Mr. Wheeler if there is any issue as to where those footings are that is not something this Board can directly address.

Chair Cuthell said the issue is... is this work order that was issued in December of 2002 valid and this Board has to determine, if per Chapter 200 of Village Zoning, if Mr. Kimble's determination was correct. Chair Cuthell said the fact that it was not picked up or not considered at the time as a big deal, but it is clear to him that there was a mistake made by prior Code Enforcement Officers and picked up by Mr. Kimble.

Chair Cuthell referred to Village Zoning Section 200-44 (and read said Section aloud). Chair Cuthell said in his opinion this work order is valid and justified and that fact that it took as long as it did to get picked-up is not the point and you don't get away with something because you didn't get caught right away.

Chair Cuthell asked each Board member to express their review of the paperwork and talk of any other perspective on this.

Member Reilingh said the analysis was correct but asked to note that in terms of the increase in use that there are also expansions of use in size and dimensions and creating living space on the line.

Member Javicas said he agrees with Member Reilingh and in terms of use and intensity that it is very different to have a space that clearly is intended to be exited and entered to use.

Member Appenzeller said he would concur that there is intensification in both size and use and the intent for the original variance was not carried through with the structure.

Member Ou-Yang said she agrees this was missed by prior inspectors.

Chair Cuthell said he has gone through all permits and said he feels when something is removed he recalled having to get a demo permit prior to take down and replace in kind.

Attorney Polidoro said the Board should note that both plans showed a door.

Chair Cuthell said correct, but it wasn't in the original building permit and showed up 3 years later. Chair Cuthell said it doesn't even show the carport on the house. Attorney Polidoro said correct that it doesn't show the carport. Chair Cuthell said there is no way to check if the current carport is bigger or closer to the property line because there are no records and that the original variance called for a setback of a foot & ½ from the property line so things have changed.

Attorney Polidoro presented the Board with a prepared draft copy of a "Resolution to Uphold the Determination of the Code Enforcement Officer". The Board took a few moments to review said document. Chair Cuthell said this explicitly involves only the interpretation.

VILLAGE OF RED HOOK ZONING BOARD OF APPEALS

A meeting of the Village of Red Hook Zoning Board of Appeals was convened in public session at the Village Hall, 7467 South Broadway, Red Hook, New York on July 22, 2021. The meeting was called to order by Chairperson Erik Cuthell.

Moved by:

Seconded by:

RESOLUTION TO UPHOLD THE DETERMINATION OF THE CODE ENFORCEMENT OFFICER

Sperry – 28 Prince St

WHEREAS, on or about December 11, 1986, the Village of Red Hook Zoning Board of Appeals granted an area variance to allow construction within the side yard setback for a carport over an existing driveway serving a one-family dwelling in the R10,000 Zoning District (the "1986 Variance") for property identified as 28 Prince Street, tax no. 6272-10-337721 (the "Property"); and

WHEREAS, the 1986 Variance permitted a side yard setback of 1.5 feet where a 15-foot setback was required; and

WHEREAS, the applicant, Nicholas Sperry, a subsequent owner of the Property, reconstructed the carport to be closer to the property lot line and constructed a deck/porch with railings above the carport with a door installed on the second floor of the dwelling to provide a means of access to the deck/porch to be used as a living space (the "Project"); and

WHEREAS, by letter dated December 11, 2020, the Village of Red Hook Code Enforcement Officer issued a Notice of Violation and Order to Remedy to Nicholas Sperry regarding the Project, stating that the 1986 Variance did not permit the installation of a porch

above the carport and that the Project impermissibly intensified the use within the side yard setback (the “Notice of Violation”); and

WHEREAS, the applicant has submitted an appeal of the Notice of Violation (the “Appeal”) and has alternatively submitted an application for an area variance to allow a side yard setback of 0 feet where 15 feet is required in order to permit the Project as constructed (the “Requested Variance”); and

WHEREAS, the Project is depicted on plans entitled, “Sperry Residence,” prepared by Michael R. Berta, dated December 15, 2012 (“Project Plans”); and

WHEREAS, the neighboring landowners, the Wheelers, have provided an uncertified copy of a survey depicting the deck, entitled “Lands of Wheeler” dated January 7, 2020, prepared by John H. Decker L.S., 050572 (the “Survey”); and

WHEREAS, on January 28, 2021, the Zoning Board of Appeals determined, pursuant to 6 NYCRR 617.5, that both the Appeal and the grant of the Requested Variance are Type II actions under the State Environmental Quality Review Act and that no further review under the Act is required; and

WHEREAS, a duly noticed public hearing was opened on February 25, 2021, and closed on May 27, 2021, during remote meetings held by the Zoning Board of Appeals in accordance with New York State Governor Cuomo’s Executive Order 202.1 and the subsequent extensions thereof, during which all those who wished to speak were heard; and

WHEREAS, pursuant to Village Law Section 7-712-b(1), upon an appeal of a determination of the Village of Red Hook Code Enforcement Officer, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the determination appealed from and shall make such determination as in its opinion ought to have been made in the matter by the Code Enforcement Officer and to that end shall have all the powers of the Code Enforcement Officer; and

WHEREAS, the Zoning Board of Appeals has reviewed all relevant submissions, information, and documents pertaining to the Appeal, including, among other things:

1. The application for the 1986 Variance, dated October 9, 1986.
2. The 1986 Variance resolution referenced above.
3. The Notice of Violation referenced above.
4. The Appeal referenced above.
5. Nicholas Sperry’s application for an area variance referenced above, as supplemented by the applicant.

6. The Project Plans referenced above.
7. The Survey referenced above.
8. A submission with exhibits in support of the application prepared by Warren S. Replansky, Esq., dated April 19, 2021. These exhibits include, among other things, building permit applications, building permits, and building plans for the Project dating back to 2009.
9. An Affidavit of Samuel Harkins dated April 19, 2021.
10. An Affidavit of Nicholas Sperry dated April 20, 2021.
11. A memorandum of law with exhibits in opposition to the application prepared by Daniel C. Speranza, Esq., dated May 14, 2021.
12. A reply memorandum of law prepared by Warren S. Replansky, Esq., dated May 25, 2021.
13. All public comments received or heard during the public hearings for the Appeal.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 7-712-b of the Village Law regarding the Appeal of the Notice of Violation:

1. The application for the 1986 Variance stated that the proposed carport was 10 feet in height. Neither the written application nor the hand-drawn sketch included living space above the carport. The resolution granting the 1986 Variance does not contemplate a porch or any other construction above the carport. The sole listed purpose for the carport is to “minimize the difficulties [the Owners] encounter when they use their car in winter.” The only addition to the carport discussed in the resolution is the installation of a gutter along its roof.
2. The grant of the 1986 Variance for the carport does not allow additional construction or new uses within the setback other than what was expressly presented to the Board in 1986. The construction of the porch is an intensification of the use within the side yard setback on the Property. Thus, the second-floor porch or deck is not permitted under the 1986 Variance as it is a change in use from solely that of a carport.
3. It also appears that the carport structure has been reconstructed to be located closer to the property line. The Survey shows that the corner of the carport is located at the property line. The Survey also depicts concrete footings that encroach on the Wheeler property, although it is unclear from the Survey if the footings are related to the carport. The applicant has not provided its own survey to dispute the location of the carport as shown on the Survey.

4. As the Project was not approved by the 1986 Variance, the Village Zoning Law's standard side-yard setbacks apply. Pursuant to Zoning Law § 200-9D(7), the required side yard setback for the R10,000 Zoning District is 15 feet. The Project is in violation of this restriction because it is located at the side yard property line and contains second floor living space.
5. The Zoning Board of Appeals has considered the applicant's argument that the prior Building Inspector determined that the deck and railings were permitted when it issued a building permit for the Project, as shown on building plans dated as of 2009 and 2012. The following is noted:
 - a. Sheet S-3 of the building plans entitled, "Sperry Residence" dated November 10, 2009, prepared by D.F. Wheeler Engineers, P.C., indicates that there would be a "New Doorway to Open Up to Carport," but does not indicate that there would be railings and a deck on the carport roof to convert it to usable living space.
 - b. The December 15, 2012, building plans, prepared by Michael Berta, show construction plans for the construction of the carport but do not specifically call out the space as living space.
 - c. Samuel Harkins, the former Code Enforcement Officer for the Village of Red Hook, submitted an affidavit dated April 19, 2021, in which he recalled reviewing plans for the reconstructed carport and determining that the deck and wooden railings would not violate the 1986 Variance.
 - d. There are no notes or memos in the Village's file indicating that the Code Enforcement Officer had explicitly determined that living space on the carport was permitted under the 1986 Variance.
6. Even if the former Code Enforcement Officer was explicitly aware that the carport was being increased in size to be closer to the property line and would be modified to contain a deck with railings, the Code Enforcement Officer was without authority to vary the Zoning Law or modify the variance. The Code Enforcement Officer's actions were therefore ultra vires.
7. To the extent that the carport structure is closer than 1.5 feet to the property line and contains second floor living space consisting of a porch/deck, it constitutes a violation of the Zoning Law. The Notice of Violation is upheld and modified to the extent it may be inconsistent with the Zoning Board's findings herein.

Erik Cuthell _____
Maarten Reilingh _____
David Javsicas _____
Steven Appenzeller _____
Sherry Ou-Yang _____

Erik Cuthell, Zoning Board Chairperson

Attorney Polidoro advised Chair Cuthell he could just motion to adopt the Resolution and not read in its entirety.

Member Javsicas asked Attorney Polidoro if she said the door was on the 2009 plans. Attorney Polidoro said she interprets the plans not showing or mentioning the carport but shows an egress. Attorney Polidoro showed the Board the plans from 2009 prepared by Mr. Wheeler and the section which shows “new doorway to open up to carport”...but does not show dimensions of the carport or show living space but identifies a door to a carport; and said it’s an interior view with a note about egress.

Chair Cuthell asked the Board if they had and any corrections or changes to said Resolution. No comment. Chair Cuthell said he does not disagree with any part of the Resolution.

Member Reilingh made a motion to adopt “Resolution to Uphold the Determination of the Code Enforcement Officer” as prepared by Village Attorney Victoria Polidoro dated July 22, 2021. Motion seconded by Member Javsicas.

ROLL CALL:

Cuthell – yes

Appenzeller - yes

Javsicas – yes

Reilingh – yes

Ou-Yang – yes

All in favor. Motion approved.

AGENDA ITEM #2.

Nick Sperry

28 Prince Street

Area Variance

Tax Parcel ID 6272-10-337721

Chair Cuthell said applicant is seeking a variance to Section 200-9-D-7 and that per Village Zoning there should be 2 side-yards each with a minimum of 15 feet and that this carport, no matter how big or small, requires a variance to exist and application is seeking relief from the side-yard setback from 15 feet to 9.5 inches. Attorney Polidoro said they did receive subsequent information that he was seeking zero feet per a survey. Chair Cuthell said then this application needs to be amended to indicate zero feet. Attorney Polidoro said yes. Attorney Polidoro said all parties were aware of this. Chair Cuthell said ok.

Chair Cuthell said he feels in reviewing this application would be to treat as a new application and that to build a carport with a deck on top of it accessible from the house is an expansion of

living space. Chair Cuthell said he sees it being reasonable to seek a variance for but in this situation it bring it right to the property line and already exists.

Chair Cuthell said in going through motions, appeals, memorandums, outside cases and precedent he does not find any of them to be compelling to him as being the same and therefore precedent for this and feels this is its own thing.

Chair Cuthell said there is a series of questions that this Board has to go through and asked the Board to consider carefully the questions as they stand.

Member Reilingh asked if we are able to take it as a point of assumption that it is essentially for the lateral area currently covered by the carport by the structure itself and not including some sort of extended staircase to the back. Chair Cuthell said that application was earlier removed. Member Reilingh said then we are talking about lateral area along the line that it is currently occupied by a structure, no more or no less. Chair Cuthell said yes. Member Reilingh said then basically applicant is asking for a variance on the setback requirement for the purpose of having a carport with a habitable deck on top. Chair Cuthell said this is no longer just a carport.

Attorney Polidoro said this is for two things:

1. For a carport to occupy a bigger footprint than the 1986 variance allowed
2. And a second story use

Chair Cuthell said it is a request to legitimize the structure to get inspected and the issuance of a Certificate of Occupancy when completed and that the structure as it exists is not a replacement for what is there and as a result the Order to Remedy was generated and this Board has to find a way to consider this as an application and make this work so that it does not set a bad precedent down the road. This Board now has to review, when going through the questions, is not just the footprint of the carport but the fact that it is living space accessed through a door from the house.

Attorney Polidoro said the applicant had asked for a larger setback but through the course of the application it changed.

Chair Cuthell started with discussions of the Variance test sheet questions:

#1. Undesirable Change in the Neighborhood Character:

Chair Cuthell said this was a 2-part question.

1. Whether an undesirable change will be produced in the character of the neighborhood
2. Or a detriment to nearby properties will be created

Member Ou-Yang asked if this Board takes into consideration the letters received by nearby residents on Mr. Sperry's behalf. Chair Cuthell said yes and the Board has seen it and it is generally concluded that aesthetically it is not unpleasing and has no negative impact on the community as a visual element.

Attorney Polidoro explained to the Board the difference between question #1 and question #4 pertaining to impact.

Chair Cuthell said he feels there is no undesirable change. Member Javicas asked when thinking about character are we thinking about if you were in a yard between having neighbors at ground level with a fence between you vs. neighbors 10-12 feet up. Attorney Polidoro said that is part of that question – 2nd part as a detriment.

Chair Cuthell felt in this case the deck is right up to the property line, above the fence and thinks realistically no one would want that next to them right up to the property line and finds it problematic.

Chair Cuthell feels no impact to character, but feels significant impact on neighboring property and feels that is something this Board has to consider seriously.

Chair Cuthell asked if Members were in agreement. Member Reilingh said in agreement.

#2. Alternative Cure Sought:

Chair Cuthell said clearly there is alternative cure, the backyard – rear of the house. Chair Cuthell felt the carport was ok but the deck could have been somewhere else.

Chair Cuthell said the structure itself is not offensive to neighboring property.

#3. Substantiality:

Chair Cuthell felt you could not get more substantial than to allow someone to remove a side yard set-back to zero. Member Reilingh said numerically it is substantial but asked about the first part and living space being at a zero line. Chair Cuthell said regardless it is to the property line. Attorney Polidoro said we look at the question if it is substantial and you should consider both ways and numerically you are finding it as substantial. Chair Cuthell said he feels it should not have been put on the property line.

#4. Adverse Effect or Impact:

Chair Cuthell said he does not see how it can and sees no adverse effect or impact. Board agreed.

#5. Not Self-Created:

Chair Cuthell said there already was a carport and it was changed so yes this is self-created and had it come before being built this Board would be considering something different but in this case it exists and yes he didn't have to do it, but it is self-created, but doesn't mean it is unacceptable in getting a variance.

Chair Cuthell said this Board will deliberate now.

Attorney Polidoro presented the Board with a Resolution to Grant Area Variance. Attorney Polidoro said changes will be required per Board's discussions this evening. Board took a few moments to review.

**VILLAGE OF RED HOOK
ZONING BOARD OF APPEALS**

A meeting of the Village of Red Hook Zoning Board of Appeals was convened in public session at the Village Hall, 7467 South Broadway, Red Hook, New York on July 22, 2021. The meeting was called to order by Chairperson Erik Cuthell.

Moved by:

Seconded by:

**RESOLUTION TO
GRANT AN AREA VARIANCE**

Sperry – 28 Prince St

WHEREAS, on or about December 11, 1986, the Village of Red Hook Zoning Board of Appeals granted an area variance to allow construction within the side yard setback for a carport over an existing driveway serving a one-family dwelling in the R10,000 Zoning District (the “1986 Variance”) for property identified as 28 Prince Street, tax no. 6272-10-337721 (the “Property”); and

WHEREAS, the 1986 Variance permitted a side yard setback of 1.5 feet where a 15-foot setback was required; and

WHEREAS, the applicant, Nicholas Sperry, a subsequent owner of the Property, reconstructed the carport to be closer to the property lot line and constructed a deck/porch with railings above the carport with a door installed on the second floor of the dwelling to provide a means of access to the deck/porch to be used as living space (the “Project”); and

WHEREAS, by letter dated December 11, 2020, the Village of Red Hook Code Enforcement Officer issued a Notice of Violation and Order to Remedy to Nicholas Sperry regarding the Project, stating that the 1986 Variance did not permit the installation of a porch above the carport and that the Project impermissibly intensified the use within the side yard setback (the “Notice of Violation”); and

WHEREAS, the applicant submitted an appeal of the Notice of Violation (the “Appeal”) and has alternatively submitted an application for an area variance to allow a side yard setback of 0 feet where 15 feet is required in order to permit the Project as constructed (the “Requested Variance”); and

WHEREAS, the Project is depicted on plans entitled, “Sperry Residence,” prepared by Michael R. Berta, dated December 15, 2012; and

WHEREAS, the neighboring landowners, the Wheelers, have provided an uncertified copy of a survey depicting the deck, entitled “Lands of Wheeler” dated January 7, 2020, prepared by John H. Decker L.S., 050572 (the “Survey”); and

WHEREAS, on January 28, 2021, the Zoning Board of Appeals determined, pursuant to 6 NYCRR 617.5, that both the Appeal and the grant of the Requested Variance are Type II actions under the State Environmental Quality Review Act and that no further review under the Act is required; and

WHEREAS, a duly noticed public hearing was opened on February 25, 2021, and closed on May 27, 2021, during remote meetings held by the Zoning Board of Appeals in accordance with New York State Governor Cuomo’s Executive Order 202.1 and the subsequent extensions thereof, during which all those who wished to speak were heard; and

WHEREAS, by resolution dated July 22, 2021, the Zoning Board of Appeals upheld the Notice of Violation and determined that the Project, due to its location and intensified use, is not permitted under the 1986 Variance and constitutes a violation of the Zoning Law; and

WHEREAS, the applicable standards for considering an area variance are set forth in Village Law Section 7-712-b, which requires the Board to take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the general neighborhood or community by such grant.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 7-712-b of the Village Law regarding the Requested Variance:

1. The Requested Variance will not result in an undesirable change in the character of the neighborhood but will result in a detriment to nearby properties.

The Property contains a one-family dwelling served by a driveway located in the eastern portion of the parcel. The driveway has been covered by a carport located within 1.5 feet of the neighboring parcel for decades. The current iteration of the carport at the property line with railings has been in existence for approximately 3 years. Members of the Zoning Board of Appeals and the public have reviewed the constructed carport and have determined that the impact to the character of the community from the carport structure with railings is not significant. The porch and carport are partially obscured by existing vegetation to the south and east of the site, meaning their visual impact on the neighborhood is lessened. To the extent they are visible, the porch and railings are designed in an aesthetically pleasing manner that is consistent with the remainder of the dwelling. The neighborhood will retain its present residential character if the Project is allowed.

The grant of the Requested Variance will have a detrimental impact on a nearby property. Impacts on the property the Project abuts, 24 Prince Street, will be mitigated due to a fence and existing vegetation between the properties that would at least partially screen the Project from view. Nevertheless, a second-story living space would be higher than the fence and occupants of the porch would be directly adjacent to and elevated above the 24 Prince Street property. Extended use of the porch as a living space would necessarily impact 24 Prince Street and its occupants due to noise, lessened privacy, and the visual intrusion caused by the Project.

2. The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue.

The applicant seeks to utilize the existing carport which has been constructed closer to the lot line than permitted and to continue to use the roof of the carport as living space. The location for the carport is necessitated by the location of the driveway and the Zoning Board of Appeals finds that it is not reasonably feasible to construct the carport elsewhere on the Property because of the small size of the parcel and the requirement for a 15-foot side yard and a 25-foot rear yard. The Property is approximately 40 feet x 107 feet.

The applicant's goal to construct and use a second-floor deck is also limited by the size of the Property. While a second-floor deck could be constructed in the rear yard, it could only be 10 feet wide due to the side yard setbacks and would be awkwardly placed in the middle of the lot above an existing entryway unless an area variance was received.

3. The Requested Variance for the carport to extend to the property line is substantial numerically but the impact of the variance is minimized by an existing fence and the open nature of the carport structure.

The Requested Variance for outdoor, second-floor living space with no setback from the property line is numerically substantial and will substantially impact the neighboring property.

4. The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Project has already been constructed and some iteration of the carport has been in existence for decades. Moreover, pursuant to SEQRA, these types of projects are presumed not to have significant adverse environmental impacts.
5. The alleged hardship is self-created. Second-floor decks are not common in the neighborhood and are not necessary for the enjoyment of a single-family home. There is sufficient room in the backyard to construct a patio or to otherwise enjoy the outdoors.

BE IT FURTHER RESOLVED, that the Zoning Board hereby grants applicant the Requested Variance, subject to the following conditions:

- 1. Payment of all fees and escrow.**
- 2. The door accessing the porch from the second floor of the dwelling shall be removed and the roof of the carport shall not be used as living space. The wooden railings may remain as a decorative element.**

Erik Cuthell _____
Maarten Reilingh _____
David Javicas _____
Steven Appenzeller _____
Sherry Ou-Yang _____

Erik Cuthell, Zoning Board Chairperson

Chair Cuthell asked about #1 and language about detriment. Attorney Polidoro said she will make the changes.

Chair Cuthell asked about #2 (3rd paragraph) – he feels applicant could apply for a variance so feels that needs to be changed. Attorney Polidoro said she will change to reflect “unless an area variance was received”.

Chair Cuthell said for alternative cure sought – there are alternatives and there would have been options and mentioned that the applicant wanted it for egress and he feels he knows no one who has a second floor egress off their house and that this is not a building code issue.

Attorney Polidoro said this is something he is telling you he wants. Chair Cuthell said there are alternatives. Attorney Polidoro said when you get the self-created you can say it is what he wants but the question is asking if what he wants is feasible.

Member Javicas asked are we making assumptions about what his goals would be. Chair Cuthell said what he three in the egress. Member Javicas said he thought that was for the application for the stairs that was withdrawn and that discussion was putting stairs down from the deck. Attorney Polidoro said the way he drafted it was a general goal of having a second floor deck. Member Javicas said he feel it is not said anywhere what his goal was. Chair Cuthell said it is to approve this carport with a deck on it. Attorney Polidoro said you are going through these questions in a two part way.

Attorney Polidoro said in #3 there was a typo and will be corrected.

Attorney Polidoro asked the Board about #5 and “second floor decks are not common in the neighborhood”. Chair Cuthell asked if it matters if it is common or not. Attorney Polidoro said she felt it did.

Chair Cuthell said before we accept this he referred to Section 200-51 – Remedies: penalties for offenses and that this Board has the authority as a Board in reviewing an application and to approve an application with conditions.

Chair Cuthell said he felt this Board asking it to be torn down is unreasonable and this variance is really asking for 2 things:

1. A carport
3. An extension of the living space off the carport/deck

Chair Cuthell feels there is nowhere else to put the carport but feels the issue that raises concern is about the deck and before we get to a vote, advised that this Board was not able to meet with the Village Attorney and discuss the aspect of legal rights as a Board.

Chair Cuthell said his concern is how they find a way so that they don't set a trap for themselves in the future. Attorney Polidoro said there is no problem with approving a request if you make the findings. Chair Cuthell said before a vote on this, because this Resolution indicates under conditions more specifically #2 – “door accessing the porch from the second floor of the dwelling shall be removed”.. and the possibility of someone buying the house and the use and that the issue is the deck. Chair Cuthell said he feels you can remove the deck, take railings down, but the solution is to remove the door and stipulate that this structure can remain but the deck is purely a decorative element. The door makes it living space.

Member Ou-Yang asked if we were not going to approach this as if it hasn't been built. Chair Cuthell said when we started this process we have to assume how we would react to something as if this was a new application in front of us.

Chair Cuthell said the living space is the issue. Attorney Polidoro said your analysis should be based on saying it's not there.

Member Appenzeller said there are 2 elements – removing access or removing the structure and asked if there was a 3rd – which would be saying living space could be accommodated at some reduced size, and finds it problematic having elevated living space right up to the property line, so can they reduce the space. Chair Cuthell said like a having an intermediate rail to create half the space as living space – but would not recommend doing that. Member Appenzeller said he is not sure how the size is determined but mentioned maybe a Juliette balcony. Chair Cuthell said that is a valid question but did not think it is reasonable, but a consideration. Attorney Polidoro said there are 2 issues:

1. How to identify the distance from the house
2. How to enforce that line

Chair Cuthell said he does not feel that is a consideration this Board should recommend.

Attorney Polidoro said you can put reasonable conditions on this but how do you create them.

Member Appenzeller said he does not have an answer as to what is appropriate being it is at the property line but that there may be something.

Attorney Replansky asked if he could speak. Mr. Wheeler made a comment, and Chair Cuthell said this is not a public meeting.

Attorney Polidoro said this Board can advise the applicant that he can reapply for a smaller variance. Chair Cuthell said right now we are considering a variance for a structure that already exists and personally, does not think, reasonably, this Board can conclude that the deck be retained as living space and agrees with #2 in the Resolution listed under conditions.

Member Javsicas said he feels what make sit living space is the door.

Member Reilingh said we do have option in saying no-100%- and that it has to come down, and everyone should recognize that we are trying to avoid that and feels that outdoor living space to the property line is problematic, and even with 1./2 deck, because you are still putting people way up high and looking down, so he feels ½ deck approach is not the way to go and an alternative may be to ask that the carport itself be reconstructed to its original dimensions, but could be expensive, but he is comfortable with the way the proposed Resolution is written.

Member Ou-Yang asked in the future, if it was used a living space would it be neighbors that complain. Chair Cuthell said yes and this Board is not a police force but we have a Code Enforcement Officer to address this should it become an issue.

Attorney Polidoro said or that person could apply to this Board.

Chair Cuthell said the easiest resolution is the way this final statement sums it up in the Conditions.

Member Javsicas asked if we need to specify what goes there when the door is removed. Chair Cuthell said if it should be a wall or a window. Member Javsicas said a French window is another term for a French door.

Attorney Polidoro said this Board shouldn't be explicit with what can be replaced.

Chair Cuthell said the reasonable thing is to require that the door be removed and thereby rendering the roof of the carport strictly aesthetic and that it cannot be used as living space.

Member Reilingh made a motion to adopt "Resolution To Grant Area Variance" with Conditions and amendments as discussed, prepared by Village Attorney Victoria Polidoro. Motion seconded by Member Ou-Yang.

ROLL CALL:

Cuthell – yes

Appenzeller - yes

Javsicas – yes

Reilingh – yes

Ou-Yang – yes

All in favor. Motion approved.

Chair Cuthell said the next regularly scheduled ZBA Meeting will be August 26, 2021 at 7:00pm.

Chair Cuthell made a motion to adjourn the July 22, 2021 ZBA Meeting at 8:18pm. Motion seconded by Member Reilingh. All in favor. Meeting adjourned.

Lara Hart,
Secretary
Village of Red Hook ZBA