

**Zoning Board of Appeals
SPECIAL MEETING MINUTES**

**November 10, 2016
7:00 p.m.**

**Berlin Town Hall
Room 7**

Members Present

Antonio Francalanga, Chairman
Nelson Graca, Co-Vice Chairman
Sandra Coppola
Christine Mazzotta (alternate, seated)
Ryan Zelek, (alternate, seated)
Hunter Mathena (alternate, not seated)

Members Absent

Leonard Tubbs, Co-Vice Chairman
Corey Whitestone

Staff Present

Hellyn Riggins, Director of Development Services
Maureen Giusti, Zoning Enforcement Officer/Assistant Town Planner

I Call to Order

Chairman Francalanga called the meeting to order at 7:00 p.m. He introduced the members noting the five seated as himself, Commissioners Graca, Coppola, Mazzotta and Zelek and Commissioner Mathena was present as an alternate.

II Public Hearing

#2016-11-17

76 Reservoir Road, Map 14-3/Block 12/Lot 20

David and Anna Presutti are requesting a variance of 7 feet for a side yard setback of 13 feet when 20 feet is required, per Berlin Zoning Regulations Section V.A.10, for a shed dormer addition. The property is owned by David and Anna Presutti and is zoned R-21.

Director Riggins asked to address the Board, prior to the applicants' presentation, as she was scheduled to be at the Planning and Zoning Commission meeting which was being held simultaneously. She explained that her testimony would be part of the public hearing and asked Chairman Francalanga to allow her, and then go back and introduce and explain the public hearing as he usually does.

Director Riggins explained that as the Director of the department, she felt she should explain the situation at hand. She noted that the applicants had followed due process and applied for a building permit for the dormer which was then issued without zoning review. Director Riggins further explained that the ZEO found the error when the related

permit applications for electrical and plumbing work were routed for zoning review. A stop work order was then issued pending this decision, and the applicants have complied. She noted that the applicants were not in error, they had appropriately applied for the permit and framed after it was issued.

Director Riggins went on to explain that the upward expansion along a nonconforming wall, which does not meet the setback, requires a variance for the new upward extension. She noted that the Zoning Board of Appeals should look at the application as though no construction had commenced; the finding needs to be based on hardship and the fact that the Town was in error cannot weigh the reasoning. Director Riggins noted that the ZEO will assist with the history. Director Riggins apologized again for the situation which resulted in the Board scheduling this special meeting and excused herself.

Director Riggins left the meeting.

Chairman Francalangia introduced the Board and staff. He explained the meeting process, noting alternate Commissioners Zelek and Mazzotta will be seated to make the quorum of five.

David and Anna Presutti introduced themselves as applicants. Mr. Presutti explained that they are renovating the cape style home. With the renovation they are finishing the second floor framed space into two bedrooms and a bath. He stated that as the permits were issued back in August work was started. He continued noting that with inside permits for the electrical in October, the issue was called to their attention and they have stopped all work. Mr. Presutti further noted that they are anxious to continue work, to insulate and to move in. The addition adds necessary headroom; it brings the wall straight up with no change to the footprint and not exceeding the existing peak.

ZEO Giusti noted that the applicant needs to describe the hardship for the record, which needs to be particular to the property not the situation we are in. Ms. Giusti pointed out that they had listed a hardship on the application which was distributed to the Board.

Mr. Presutti read from the variance application: "location of the house was legal at the time the house was built. Subsequent change in zoning regulation created a nonconformity." He continued noting that being 13' from the property line was legal and in 1962, after the house was built the setback changed to require 20 feet.

Chairman Francalangia pointed out that this was considered outside "town" at the time the house was built. There were no setbacks in the outlying areas.

Ms. Giusti handed out a map from the 1948 regulations, noting that there are no lot lines but scaling puts this property in the Farm zone, the farm zone did not seem to have

setbacks, but in the next more restrictive zone, the residential zone which was adjacent to this area the setback was also less than the current 20 feet, it was eight feet.

Chairman Francalanga pointed out that the board has ruled on similar situations in the past where the house was built prior to current regulations. He asked Ms. Giusti if she had further staff comments.

Ms. Giusti noted that a plan had been included, which was prepared by the surveyor who had staked the adjacent lot to the east. The 1960 plot plan shows that house wall staked at 15 feet; the surveyor's current measurement shows that this section of the house was actually built 13.91 feet from the lot line. The variance application is rounded to the foot and therefore the request was noticed at 13 feet, with the horizontal distance to the lot line unchanged.

She further explained that the bedroom count was remaining the same and how the height is defined and therefore increased when the wall height is increased along any wall.

Commissioner Coppola asked if the addition was flush with the previously existing exterior wall.

Chairman Francalanga stated it was.

Public Comments:

Laure Modifica introduced herself as the neighboring property on Reservoir Road. She stated that they share the easterly boundary of this property. She stated that the wall is flush as seen from the road; however the upward expansion is an invasion into the privacy on that side of her yard. She stated that while she is okay with the addition, she would feel better if a fence was required, or someway to limit the encroachment toward their yard. Ms. Modifica stated she came to the meeting to make sure the application was only for what they saw had been built. Ms. Modifica stated she did not want to them to have to remove what has been built but wanted to note that it does negatively impact their property privacy.

Christine Berger, she identified herself as living at 858 Chamberlain Highway and also owning Berger nursery another neighboring parcel on Chamberlain Highway. She stated she was speaking in favor as the addition would not create any safety issues and there is no further encroachment to the property line than currently exists. Ms. Berger noted she does not feel there would be any impact to her properties with no wetlands or water impacts evident. She further stated that a young family moving into and contributing to our town would be a benefit. She added that a fence requirement would seem unusual and may result in an area for dumping or lack of maintenance, particularly if it was set off the property line. Ms. Berger commented that her neighbor's vinyl fence

creates a nighttime reflection that is an annoyance. She added that this is not a city, and feels a fence could take away the neighborhood character.

Chairman Francalanga asked the applicant if there were existing windows facing the property line.

Mr. Presutti stated there were two bedrooms and a bathroom with windows.

Ms. Giusti clarified the fence regulations.

Commissioner Mazzotta noted that a six foot high fence would not shield second floor windows.

Chairman Francalanga commented that absent wall windows, a second floor skylight would also not be shielded and could be installed in the roof slope without a variance. He added that the footprint would not change. He stated the house was constructed prior to the current zoning.

Ms. Giusti pointed out the location map in the packet and clarified that the houses are not accurately located on the GIS, they may be offset on the print, and she noted that the plot for the parcel to the east was available for reference.

Commissioner Mazzotta noted she felt enough information had been presented to close the hearing.

Chairman Francalanga made a motion to close the hearing, seconded by Commissioner Graca. The motion passed unanimously.

**III. Regular meeting
#2016-11-17**

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Commissioner Graca made a motion to approve the application, seconded by Commissioner Zelek.

Commissioner Zelek noted that he would like, and thinks the ZBA should be able to recognize hardship relating to financial reasons or the town error; however it is understood that it cannot be considered in the decision.

Chairman Francalanga reiterated it could not be a hardship.

The motion was unanimously approved.

IV. Adjournment

Chairman Francalanga moved to adjourn the meeting, seconded by Commissioner Graca. The motion passed unanimously.

Respectfully submitted,
Maureen K. Giusti
ZEO / Assistant Town Planner

UNAPPROVED