



Minutes for Meeting

Zoning Board of Appeals, via Zoom

May 9, 2023 at 7:00 PM

Members present: Jane Fisher Carlson, Wendy Kaplan Armour, Laura Mintz

**506 North Avenue:** a continuation of a hearing on a request by Henry P. Arnaudo on behalf of C&L Home, LLC, requesting a variance for relief of the building height.

The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary
- Wendy Kaplan Armour
- Laura Mintz

Additional documents in the record:

- 506 North Avenue, Certificate of Action Site Plan Approval Amendment, 5/1/23
- 506 North Avenue, Landscape and Lighting Plan, prepared by Karen Sebastian, LLC, Landscape Architects, Rev. 8, 5/4/23

The Petitioner and his attorneys, Joseph Duquette and Brian Grossman, appeared before the Board. They explained that the Planning Board had approved an amendment to the Certificate of Action, Site Plan Approval, by a vote of 4-1, based on the determination that this case was not likely to be precedent-setting and that it would be better to amend the Certificate of Action by mitigating the dwelling's height discrepancy through landscaping, rather than requiring that the Petitioners modify the height of the existing roof.

Landscape architect Karen Sebastian, of Karen Sebastian, LLC, presented the revised Landscape and Lighting Plan that was approved by the Planning Board to mitigate the additional 14" of roof height. The Plan included the addition of 11 large trees for screening, moving a tulip tree

closer to the home, and adding ground cover.

The Petitioner stated that the portion of the roof that exceeded the maximum height was only a small fraction of the roof, approximately 4%. The additional height did not provide the Petitioner with any advantages such as additional living space or other kinds of value. The Petitioner stated that a variance was warranted because of hardships due to the time and cost that it would take to renovate the existing roof to be conforming and due to unique aspects of the lot. The lot has wetlands, flood protection zones, and steep grading.

The Petitioner explained again that the existing height of the home was due to an error in inputting data. He said that he recognized that the height violates the Zoning By-law, but wanted the Board to understand that the average existing grade plane on which the By-law's height measurement is based does not appear to a casual viewer. Gary Litchfield, builder and developer of the property, appeared before the Board to state that the project was constrained by the existing grade of the lot at the time it was purchased. The Board responded that the new construction had taken the Grade Plane into account before the home was built and that it could not be taken into consideration as a hardship after completion of the dwelling.

The Board discussed the fact that the criterion of "substantial hardship" required to obtain a variance is always difficult to demonstrate. In this case, the Board did not believe that there were any unique aspects of the lot that justified granting a height variance, particularly when the By-law violation itself was created, albeit inadvertently, by the Petitioner. Board members did not believe that financial hardship was a valid legal reason to grant a variance in this case. The Board also discussed whether a 14" height violation could be considered "de minimis" and agreed that this discrepancy was too large for such consideration.

Following due and open deliberation, the Board, by unanimous decision, denied the Petitioner's request for a variance for relief of the building height. The Board agreed that the Petitioner did not show the prerequisite hardship, due to soil conditions, lot shape, or topography, which is a necessary requirement for a variance.