

Just as the May 23<sup>rd</sup> session was, the June 20 meeting of the Zoning Board of Appeals became a marathon. With ten items on the agenda, several of which included their own hiccups, the agenda item saved for last was the one I've been following: Builder John Witt's Downton Walk Proposal for 27 Jumel Place.

With Vice Chairman Keith Kaplan, sitting in for Chairman Bill Moore, the Board worked on comparing this year's Application with the previous version(s) that had been approved in 2013/14. It was stressed in the last meeting that ***Significant Changes from the previous application are the only things that could allow the Board not to approve this project***, so this was the focus of questioning throughout the evening.

It is important that it be clear that there ***are significant differences*** between the two applications submitted.

The ensuing financial discussion brought strong objections from Witt's attorney Elizabeth Coreno, insisting the approval did not hinge on financials in 2013. But Board Member Susan Steer countered that the first point on the earlier decision -- whether or not the benefits can be achieved by any other means feasible -- ***was financially-based***, to which Coreno acquiesced. Steer concluded that the difference between the financial information in 2013 and 2016, in and of itself, represented ***a significant change*** between the two applications.

In 2013, the applicant reported that his 7 homes would sell at an average price of \$640,000, bringing the total of all of them to \$4,480,000. After land acquisition and development costs of \$905,640, \$3,574,360 remained.

In 2016, the applicant states the average price of the 7 units will be \$930,000. Building and selling only 5 units at that average price, after subtracting the \$1,303,380 land acquisition and development costs, the remaining \$3,346,620 is feasible, because it is nearly the same amount as in 2013 with 7 units.

Additionally, selling the 7 units using today's average price of \$930,000, in essence will reward the applicant with \$1.6 million more than in 2013 -- to make up for the difference of only \$397,740 in land and development costs.

Furthermore, the prices now being used by Mr. Witt and his attorney do not take into consideration the even higher prices that he supplied to the Board in February 2016 -- prices between \$700,000 to \$1,500,000, instead of the \$587,000 to \$1,255,000 being used now. The prices Mr. Witt provided to the Board in February 2016 were reduced by 16% after Mr. Witt acquired an attorney in May 2016, even though Mr. Witt continues to allow the higher numbers of \$700,000 to \$1,500,000 to be used in newspaper articles promoting his Downton Walk development. There has been a ***constant calibration in price*** ranges, which represents an additional ***significant change***.

***Feasibility has significantly changed*** and must be considered now in evaluating “Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an [these] area variance[s].”

Yes, the numbers supplied by Mr. Witt prove he can feasibly build five homes now, not seven, which would thereby significantly reduce the substantial nature of the variances that he is requesting.

When discussion turned to drawings, which have been part of the Applications, Board Member Cherie Grey questioned the size and proportions of the structures – saying she felt that the 2016 Downton Walk homes look ***much larger*** than those drawn for Magnolia Lane in 2013. Although Witt protested that the size hasn’t changed, Grey persisted, citing that original application drawings show fewer second stories on garages and were not as tall as those in 2016, which present as three stories with their 30’+ heights.

Coreno continued to insist their square footage has remained static, which was met with dubious responses from more than one Board member, relative to footprints versus number of stories, which absolutely affects overall size and how much more crowded it makes the lot appear. ***Only the footprint*** (first floor) measurement is “set in stone,” because that is what is used to calculate lot coverage and permeability. Hence, those are the only numbers the Board and public see prior to approval. So, in essence, both parties are correct: the footprint sizes have not changed; but the overall ***massing (interior square footage), more stories, and higher rooflines clearly indicate a significant change*** -- when one compares the drawings from 2016 with those from 2013/14.

The Board’s final area of concern was an intensive discussion of the swimming pools, which illustrate another difference between the applications of 2013/14 and 2016. Board Secretary Adam McNeill supported 2016 as, in his words, a mirror image of 2013/14, saying, “I’ve never seen or heard of before a more precedential picture,” alluding to the Doctrine of Precedence (the legal ruling which requires a Board to approve an unchanged re-application of one that had previously been approved and then allowed by its applicant to expire.)

However, Board Member James Helicke pointed out that the drawings in the 2014 Variance Application indicated only ***three pools, versus four*** in the 2016 drawings – thus spoiling its status as a mirror image and representing ***another significant change in the application***. There was a retort from Coreno that the drawings had not changed. But, Witt clarified for her that he did remove one pool for the 2014 submission.

Coreno also contended that the lot coverage measurement had not changed – ***although no pool measurements were included in those figures in any of the applications***. In our view, this means that ***all the applications – 2013, 2014, and 2015 - were incomplete and misstated as far as lot coverage is concerned***. We

also do not know if the **optional porches** shown in the presentation were included in the original footprint measurements in any of the applications, which would add to the pools as **two more significant changes**.

And one must note that, since the pool measurements clearly were not included in lot coverage, and possibly the optional porches were not included either, these things also will mark a **change in the permeability of the land** that is part of the approval process is **another significant change**.

We realize the Board is anxious to close this matter, but ignoring such issues and significant changes will not be doing the City any favors. So, although they plan to present a resolution at the next meeting, on July 11, it is clear that **they will be voting on something about which they do not even have all the facts**.

During the Public Hearing, Kira Cohen reiterated the City Attorney's explanation about significant changes in circumstances, which needed to be presented for a basis to deny the application. She directed the Board's attention to ANW's response to the May 23<sup>rd</sup> question of why they had not subdivided the land to which Coreno replied that one of the two purposes of building seven condos had been because of the desire for **shared maintenance, which would not be available with a subdivided parcel**. Cohen countered that **State Law** not only **allows shared maintenance in subdivisions**, but also the Attorney General's office had simplified the procedure for applying for it in January 2014, **another significant change** in the application.

Sam Brewton presented the changes in the neighborhood the project would cause on the small, settled, more than 100-year-old community, many of the inhabitants of which have lived there for a very long time. His comments centered on things that neighbors wrote when signing the neighborhood petition – at least 14 of them **reversing** their original signatures from the developer's petition they signed in the early days of the process. These individuals voluntarily added their names to what is a list of 47 neighbors, and some signed the change.org petition of more than 500, mostly Saratogians or individuals who have lived here – some who have grown up here and moved on but return to visit family and lifelong friends.

Although Kaplan stopped this presentation saying it was irrelevant, the Board's 2013 resolution cited "The Applicant has demonstrated, and several neighbors have testified in support, that this development will have a very beneficial impact on the neighborhood," which refutes Kaplan's determination that it is irrelevant to the 2016 Application. So our showing the **valid diminishment of that support does represent a significant change**.

Question number 1 in the evaluation criteria that the ZBA must consider is, "Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance."

Members of neighborhood do increasingly feel that this development, as currently designed, will be overwhelming in both size and price. The structure sizes will dwarf the homes surrounding it, and it will bring a superfluity of populace, traffic, and noise to this single lot.

Gerald Mattison addressed the financials -- how much they have changed since 2013/14, reiterating such things as how home prices have risen and the lower cost of constructing fewer homes would provide the builder the ability to make the project feasible with only five homes on a subdivided lot, at today's selling prices.

Jane Valetta persisted that the neighborhood **has** changed since the ballet and karate schools have gone. **Now it's quiet with little traffic.** She also noted that none of the homes currently there rise to the \$500,000 range, so even the ones at the lowest end of Witt's spectrum **will** change the nature of neighborhood. **She cited that the drawings have changed.** The 2013 drawings made the homes look smaller and cottage-like – **which is how the developer described them when he came to get signatures on his petition.** But the new drawings depict three-story homes **much** larger in volume. **That is another significant change.**

Debra Mattison spoke of the **dangers presented by the dead-end lane** into the community and the issue of **not having accounted for the swimming pools in the original measurements.** She pointed out that **pools also need their own separate fences,** which must follow code. She explained that the pools **will cause increase in land coverage,** and would **lower permeability,** none of which had been taken into consideration in the original numbers. **And the absence of pool fences in the drawings is another significant change.**

At the finish of comments, the Board approved a motion to hold open the public comment period until the next meeting when they would vote.

These **NINE** changes -- **financial information and feasibility, overall home sizes, differences in number of pools** and complete **lack of pool fencing, price fluctuations,** possible **lot coverage increase,** possible **permeability decrease** as a result of these other issues, **new knowledge of HOA law and its more recent changes,** and the **increased undesirable change in the character of the neighborhood** -- are **each significant and substantial changes** that could and should allow that vote to change without violating the Doctrine of Precedence.

At the ZBA's meeting on July 11, 7 p.m. at City Hall, private citizens will have their last chance to speak to the Board before they vote on this project. Currently, Downton Walk is first on the agenda. We hope many of you will take advantage of this opportunity.