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**July 13, 2016**

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Zoning Board of Appeals

City of Saratoga Springs

474 Broadway

Saratoga Springs, NY 12866

Via Fax 580-9480 and [susan.barden@saratoga-springs.org](mailto:susan.barden@saratoga-springs.org)

RE: Murphy Lane - Parcel 165.84-1-22 – Interpretation Application - South Alley, LLC

Variances Granted 04/02/2015

Dear Chairman Moore and Zoning Board of Appeals Members:

On behalf of the applicant, please allow this to respond to the “Stop Work Order” dated July 8, 2016, which gives reasons for the issuance of the Stop Work Order dated January 20, 2016.

The applicant disagrees that the work that has progressed thus far was beyond the variances that were granted in 2015. I respectfully remind you that the lot in question is a pre-existing non-conforming lot, i.e., it is legal buildable lot.

To effectively respond to each of the issues raised in the Building Inspector’s explanation, I will refer to each paragraph in the explanation by number:

Paragraph 2: Crawl space shown on August, 2015 Building Permit Application and an increase in foundation creates basement – deviated from plans. Changed “deemed minor” and revised plans have been requested.

RESPONSE: Revised plans from engineer have been submitted. See pages 21-22 of current interpretation application.

Paragraph 3: Between the time of the pouring of the foundation and time that stop work was issued in January, 2016, the project became significantly different from what was approved by the Zoning Board of Appeals and Building Department.

A. Fill was brought in. "Now a level site is much higher than adjoining properties."

RESPONSE:

1. There is no violation of any law, rule, ordinance, or of the 2015 resolution granting the variances. This is a legal buildable lot and the ZBA in the resolution granting the variances did not condition the variances on any height restriction.

2. In our April meeting with Mr. Shaw, Mr. Izzo, and Mr. Birge, it became apparent that what was being complained of (by some neighbors perhaps) was that the base of the new foundation was now exposed compared to the old barn to which its siding extended down to the grade. At that meeting, the applicant said that matching siding of the new structure could be placed to the grade so long as doing this was within code.

3. The applicant was given the "ok" to backfill by the building department. See page 25 of current appeal.

B. Requirements of NYS Residential Code 401.3 should be assessed to insure that there is not a run-off problem. The Applicant "may qualify for this section's exception."

RESPONSE: A speculative issue is not enough to issue a stop work order. This is a requirement (and concern if it's a problem) for every new foundation. This is the first time this issue has been raised and it can easily be determined.

Paragraph 4:

A. The foundation change created a "significant" higher first floor than the original barn and is higher than depicted on the plans submitted.

RESPONSE:

1. There is no violation of any law, rule, ordinance, or of the 2015 resolution granting the variances. This is a legal buildable lot and the ZBA in the resolution granting the variances did not condition the variances on any height restriction whatsoever.

2. The first floor is not "significantly" higher - it's only inches higher.

B. The constructed foundation led to the need for additional steps for the front entrance creating more "principle building" coverage than the granted variances allowed.

RESPONSE: This is false.

1. There is no violation of any law, rule, ordinance, or of the 2015 resolution granting the variances. This is a legal buildable lot.
2. The steps are within the setback requirement and do not need a separate variance.

C. The change in elevation led to new construction in "areas" of the required setbacks not previously considered by the ZBA. This requires an amendment to the granted variances from the ZBA.

RESPONSE: This is false. What is assumed to be meant by "areas" is the air space above the structure, i.e., the height. The resolution granting the variances was not conditioned on any height restriction. Per local Zoning Code 5.5, this is a buildable lot and per the applicable Zone, a single family residence may be constructed up to 60 feet. Although it may have not been discussed at any meetings prior to the variances being granted, due to the lack of any conditions (specifically here dealing with height) in the resolution granting the variances, there is no violation as the current structure could be constructed up to 60 feet.

To put it another way, the current construction does not deviate from or increase the building's *footprint* of what already has been granted from the ZBA in 2015 (see *Hoffman* case below).

Paragraph 5: The resolution granting the variances did not authorize "tearing down the barn and starting new" or the "removal of the existing barn."

RESPONSE: Neither was done. The applicant has not torn down the barn and started new. All of the materials from the original barn have been preserved and as many as can be safely and effectively used has and will be used.

There is no question that what will be constructed will not look like the old barn. It is inherent in granting variances for "the renovation and conversion of an existing barn structure to a single family house" that what is being authorized is a significant change in construction and appearance of what used to be a barn for livestock to a single family residence suitable for human habitation. The new construction must be built to code and will ultimately not look like a functioning livestock barn. Notwithstanding that, the applicant has strived to and has submitted plans depicting a barn like exterior in an effort to please the buildable inspector and neighbors.

The renovation and conversion of any structure (especially an ancient barn) into a livable structure will entail that original materials will not be able to be used due to rot and normal wear and tear. It's an issue of safety and what will meet code. In the instant case, the applicant has saved and used every possible piece of material that could be salvaged for use. The applicant had never intended to and did not tear down the barn and start new.

Please refer to my June 14, 2016, letter to this Board which refers you to the City of Saratoga Springs Zoning Ordinance §5.4.4 and §5.5 which explains that the lot in question has existed with its current dimensions (and filed in the County Clerk's office) since at least 1927 (see certified title report submitted with application). This lot is therefore considered a "legal non-conforming lot." Pursuant to subsection C of 5.5, the owner of this lot may erect a single family residence upon the lot without any variances.

Also, the resolution granting the variances in 2015 contained no limitations or conditions whatsoever with respect to what the applicant may construct on that site, i.e., *it is unconditional*. Therefore there is no legal impediment for a structure to be elevated to the maximum height of sixty feet per what that district allows.

Please review *Hoffmann v. Gunther*, 245 AD2d 511 (2<sup>nd</sup> Dept, 1997): the ZBA of the Town of Mamaroneck granted an area variance "to allow the construction" of an addition "in strict conformance with plans filed with this application provided that the applicant complies in all other respects with the Zoning Ordinance and Building Code of the Town of Mamaroneck." In annulling the ZBA's decision with regard to the "strict compliance" language, the Appellate Division stated:

The ZBA had the authority to attach conditions to the granting of the area variance (*see, Matter of Kumpel v Wilson*, 241 AD2d 882). However, it also had the obligation to clearly state any conditions imposed, so that the petitioners, their neighbors, and Town officials, would be fully aware of the nature and extent of any conditions imposed (*see, Matter of Sabatino v Denison*, 203 AD2d 781, 783; *Matter of Proskin v Donovan*, 150 AD2d 937, 939; *South Woodbury Taxpayers Assn. v American Inst. of Physics*, 104 Misc 2d 254, 259), without reference to the minutes of the proceeding leading up to the granting of the variance (*see, South Woodbury Taxpayers Assn. v American Inst. of Physics, supra*, at 259). Here, it is not apparent from the language of the 1979 resolution granting the side-yard variance, that the variance was granted on condition that the petitioners leave the addition constructed in accordance with the plans on file unchanged in perpetuity. Nor did the 1979 variance impose any height conditions other than those imposed by the zoning ordinance.

Since the project in issue here was within the height limitations of the zoning ordinance, it did not deviate from or increase the building's footprint, and did not encroach upon the required side yards established by the 1979 variance, once the ZBA granted the necessary front-yard variance, it should have authorized issuance of a building permit and a certificate of occupancy.

Based upon all of the facts and the law, it is clear that no violation has occurred. We respectfully request that the ZBA rescind the Stop Work Order and reinstate the building permit. Thank you.

Sincerely,

James A. Fauci

cc: South Alley, LLC