

**ZONING BOARD OF APPEALS
WESTERLO, NY
MEETING**

DATE: September 20, 2023

Location: Richard Rapp Municipal Building

ZBA Members: Chairman George Spahmer, James Gallogly, Sean Leary, Guy Weidman and Rich VanInderstine.

Town Attorney: George McHugh- present

Code- Enforcement Officer: Jeff Pine- present

Non-Members Present: Michael Sterthous Esq., Thomas Smith, Didi Rea, Contractor Justin Smith, Town Board Member Josh Beers, Town Clerk Karla Weaver, and few audience members.

OPEN MEETING:

Meeting was open at 7pm with the Pledge of Allegiance

PUBLIC HEARING

Michael Sterthous Esq. represented the Smith's regarding their Stop Work Order and Variance request V-23-3. He presented the Board Members, Attorney, and CEO Pine with a timeline and documentation to be added to the file as follows:

5/9/23- Letter that compelled CEO Pine to issue a Stop Work Order

7/5/23 Appeal- Variance application, SQ Short Form

7/20/23 Letter to Mr. Pine to review legal basis claiming Mr. Pine lacks authority

12/1/22 DOS letter manufacture home- indicating met code-certified

2/2/23 Letter from Silman Engineers- indicating home met code for concrete piers foundation

7/18/23 Letters from neighbors in support

The appeal in 2005 started the process of the regulations to be added to subdivision. The Town Board which at the time was the Planning Board, had deed restriction requirements added on the maps. The restrictions were to be enforced privately through the landowners.

The representative for the Smith's mentioned that the Code Enforcement Officer does not have the ability to enforce the deed restrictions. The deed restrictions do not have anything to do with code and are only there for purchasing/selling the property.

It was mentioned that the living space must be 2,000 sq ft., but the living space of the property is only 2,000 sq ft if both containers are included in the dimensions. The two containers are only attached together by a deck. There are utilities and a bathroom in each container. It was mentioned that one container is more of a man cave, not a storage container.

According to the deed restrictions, the property must have a poured concrete foundation. This property has poured concrete piers that are equally spaced to support construction. The applicant agreed to potentially install a curtain wall foundation. Mr. Pine indicated the containers meet NYS requirements and conditions for manufactured and modular homes.

The Contractor for this build, Justin Smith of Brooklyn NY, informed the Zoning Board that his manager spoke to Mr. Pine. They were waiting for a letter from NYS Modular Program which took a long time and the containers were already on their way. Mr. Smith's manager had indicated to Mr. Pine that he felt no other foundation would work except piers.

It was mentioned that they did not open the Public Hearing but the Attorneys on both sides agreed that it was opened. Chairman Spahmer asked for comments from the ZBA.

CEO Pine mentioned that the Town has jurisdiction over deed restrictions due to the 2005 appeal. This case also supersedes previous ones. He also indicated that the property meets code, the foundation is approved but not based on the deed restrictions. NYSDOT approved pour foundation or a stacked wall. Mr. Pine had allowed the containers to be put on the property however, the contractors set it up before Mr. Pine could do any inspections on the utility, plumbing and septic.

Chairman Spahmer asked if the owners were aware of the 2000 sq ft requirement when they purchased the property. Ms. Rea commented that she knew of the requirement because she bought the adjacent property.

The initial building permit applicant shows two buildings.

Attorney McHugh mentioned that the Code Enforcement Officer can't change the stipulation and is supposed to enforce it.

ZBA Member Weidman advised Zoning Law Section 8.42A for 1-4 family dwellings must be attached under the same roof, no studio, garage, or separate buildings. All this property has is a deck that connects the two containers, not a roof.

The applicant's attorney informed the ZBA that Mr. Santos, the developer for PONY apparently wrote a letter in favor of waiving the deed restriction. This is the developer who created the stipulations. The ZBA asked for a copy of the letter.

With no other questions or comments the Board asked for a motion to close the Public Hearing on the condition that the letter from Mr. Santos must be given to the Board in one week. Chairman Spahmer made a motion to close the Public Hearing at 8:13 pm. Member Weidman seconded; motion carried all in favor.

Chairman Spahmer advised that they will postpone making a decision until the ZBA Meeting on October 23, 2023 to give the members time to process the information and see if the letter from Santos arrives.

With no other comments or questions Member Gallogly closed the Meeting at 8:15 pm. Member VanInderstine seconded; motion carried all in favor.

Respectfully submitted,

Claire Marshall- Clerk to ZBA