

RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF SOUTH ORANGE VILLAGE

Decided: June 6, 2017
Memorialized: July 6, 2017

**APPROVAL OF APPLICATION
JEFF AND NICOLE DRURY
“C” VARIANCE
410 SUMMIT AVENUE
BLOCK 2213, LOT 12
ZBA APPLICATION #1029**

WHEREAS, Jeff and Nicole Drury, (“Applicant”) having made application for “c” variance relief to exceed the maximum number of stories in a residential dwelling to the Township of South Orange Village Zoning Board (Application #1029) regarding property located at 410 Summit Avenue, South Orange, NJ (the Premises”), and known as Lot 12 in Block 2213 on the tax map of the Township of South Orange Village (the “Village”); and

WHEREAS the Board having accepted jurisdiction based upon proof of publication and notices provided in accordance with the Municipal Land Use Law; and

WHEREAS, a public hearing having been conducted at a meeting held on June 6, 2017 and the Applicant having appeared and the Board having heard testimony of the Applicant and their witnesses Michael Drury, RA and Rich Keller, PE, PP and considered the exhibits and expert reports submitted by Applicant and, considered the comments and review memos from planner Topology dated April 27, 2017 and May 26, 2017, and considered the comments of all members of the public desiring to be heard and deliberated on the merits of the application;

NOW, BE IT RESOLVED AS FOLLOWS:

EVIDENCE SUBMITTED

In summary, the following evidence was submitted in connection with the application and considered by the Board:

1. The Board received the application form and the documents submitted therewith, including the following:
 - (i) South Orange Planning and Zoning Board Application form received on April 19, 2017;
 - (ii) Supplemental Statements (2 pages)
 - (iii) Affidavit of Ownership;

- (iv) Affidavit of Service;
- (v) Certificate of Paid Taxes;
- (vi) Notice;
- (vii) 200' list;
- (viii) Survey prepared by Morgan Engineering & Surveying dated July 17, 2009;
- (ix) Deed;
- (x) Checklist;
- (xi) Architectural Drawings prepared by Seiler & Drury revised through April 13, 2017 (Sheets CS1.0, AD1.0, A1.0, A1.1, A3.0; and
- (xii) Color photographs of the subject premises (3).

Subsequent to the initial submission but prior to the hearing the Board also received:

- (i) Architectural Drawings prepared by Seiler & Drury dated June 6, 2017 (Sheets EX-2.0, EX 3.0, EX 3.1, EX 4.0, EX 4.1, EX 1.0);
- (ii) Land Title Survey prepared by Casey & Keller, Inc. dated May 22, 2017; and
- (iii) Color photographs of the subject premises and nearby dwellings (17).

During the hearing the Board accepted into evidence the following exhibits:

- A-1 Architectural Drawings prepared by Seiler & Drury
 - A-2 Satellite photo dated April, 2017 by Casey & Keller and color photographs by Applicant taken May 12, 2017 (1 sheet)
 - A-3 Colorized survey dated May 22, 2017
2. Jeff Drury introduced the application stating that he and his wife had purchased the home 8 years ago and were interested in expanding to create a master bedroom suite.
 3. Michael Drury, RA was sworn and qualified as an expert in architecture. He described the existing home as a 1900 Dutch Colonial with a large gambrel roof, cedar shingles, full front porch, a one story addition in the rear, and two dormers on the third floor in the front. The plans are to convert the third floor into a master bedroom suite by installing a dormer in the rear, and to convert a small bedroom on the 2nd floor into the laundry room.
 4. The witness noted that the existing attic stairs are in the center of the attic space where most of the ceiling height is located. This makes it difficult to configure habitable space without raising the ceiling elsewhere which Applicant proposes to accomplish by adding a dormer at the rear façade. The dormer will not be seen from the street. The dormer is Nantucket-style and

will be centered and 25' wide which will be narrower than the existing roof which is 31' wide.

5. The Board questioned how the 3rd floor space was being calculated recognizing that if the floor area having a ceiling height greater than 7' exceeds 50% of the floor area of the floor below then it becomes a full "story" rather than a half-story.¹ The Ordinance limit in the zone is 2½ stories.
6. During Board questioning the witness acknowledged that in the event a third story was created which required different building code requirements such as sprinklering then the Applicant would comply.
7. The Board Engineer Sal Renda noted that when the plans are submitted to the Building Department they will review the floor area and determine the applicable Construction Code requirements including fire safety, sprinklering and egress.
8. Rich Keller, PE, PP was sworn and qualified as an expert in engineering and planning. He testified that by examining tax records he was able to identify a number of homes in the area which have 3rd floors which are greater than 50% of the floors below them. He stated that the median lot size for the neighborhood was 8,300 sf and the subject lot is 7,500 sf. The lot is only 50' in width where 90' is required.
9. Mr. Keller noted that Applicant's proposal to raise the ceiling height of a portion of the 3rd floor consisting of approximately 150 sf from its current height below 7' to a height above 7' would result in the house having more than 2½ stories.
10. He introduced Exhibit A-3 and noted that the home has a first floor with 1,281 sf, a second floor with 840 sf, and a proposed third floor with 534 sf having a ceiling height of 7' or more. This would result in the home having approximately 2.65 stories.
11. Mr. Keller testified that the proposed dormer would be recessed from the edge of the existing roof, would provide shading which would break up their mass. He also noted that there was an existing first floor addition at the rear of the home and if the Applicant chose instead to build above the existing bump out by adding a second floor above it that it would not require a variance but would have a greater detrimental impact upon the neighboring homes.

¹ §92-3 of the South Orange Village Land development Ordinance defines "Story, Half" as follows: "That part of a building located above a story and under a sloping roof that meets at least two opposite exterior walls not more than 12 inches above the plate of the story below and providing habitable space, as defined by the Building Code, with a floor area of not more than 50% of the floor area of the story below."

12. Mr. Keller argued that the variance could be justified on either c(1) or c(2) grounds. For c(1) grounds he contended that the placement of the stairs in the center of the floor of the existing home made it difficult to create habitable living area on the 3rd floor without raising the ceiling height due to the sloping roof. Alternatively for c(2) grounds he contended that the proposed improvements would further purposes of zoning, namely, MLUL §2(a) by promoting the general welfare by guiding the appropriate use of land, §2(i) by promoting a desirable visual environment by adding attractive, well-designed Nantucket style dormers, and §2(j) by promoting the preservation of an historic 4-square architecture home by upgrading it to today's standards. For the negative criteria he argued that the improvements would not be seen from the street, would not be higher than the existing roof line, would not extend beyond the rear building lines of the adjacent homes to the right and left, and there would be no negative impact upon air, light, open space or shade.
13. Responding to Board questions Mr. Keller stated that the purpose of the Ordinance maximum of 2½ stories was to limit massing and impact upon light and air. He opined that the operative question was similar to a request for a FAR variance, i.e. whether the site could accommodate the increased bulk.
14. There was no public comment for or against the application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. The premises are located in the RA-50 zone where single family homes are permitted.
16. The property is located in a single family neighborhood with homes of substantial size. It is improved with a 2½ story wood frame structure built in 1904 and an accessory shed in the rear yard. The lot is non-conforming for lot width (90' required, 50' existing) although it exceeds the minimum lot size (5,000 sf required, 7,500 sf existing). This results in a generous rear yard setback (30' required, 64' existing).
17. The proposal involves raising the ceiling on part of the 3rd floor in order to construct a master bedroom suite. A new dormer would be added at the rear of the home. In addition, a second floor bedroom would be converted into the laundry room.
18. The improvements would result in approximately 64% of the third floor having ceiling height above 7' which changes it from a half-story to a full story. In other words the home would have more than 2½ stories which is the maximum allowed by the Ordinance.

19. The Board finds that the variance can be granted on MLUL §70c(2) grounds. The benefits of improving this traditional 4-square architecture home outweigh the detriments and offer a better alternative to the zone plan. The variance will allow the home to have a master suite which has become a modern day requirement for newer residential construction. It will help prevent demolition and thereby preserve this architectural style. It is appropriately sized and will not be seen from the street. The dormer will not extend above the existing roof line, nor beyond the rear facades of the neighboring homes to the right and left. The lot can accommodate the added bulk at the back of the home because the rear yard setback is double the size required by the Ordinance. The Applicant could avoid a variance by simply building above the existing 1st floor rear addition, but such an improvement would have a greater impact upon the adjacent neighbors. The size of the new dormer is limited, unlike an entire new 2nd floor addition would be, and it is narrower than the existing home. For these reasons the improvements will not have a substantial detriment on the public good, nor substantially impair the intent and purpose of the zone plan and ordinance.
20. The Board finds that the Applicant has provided sufficient proofs for both the positive and negative criteria to warrant grant of the variance requested.

THE DECISION

WHEREAS, the Board, having reviewed the application “c” variance relief, and having considered the impact of the proposed application on the Village and its residents and the surrounding property owners, and having considered whether the proposal complies with and furthers the goals of the Master Plan and zoning ordinances of the Township of South Orange Village and the Municipal Land Use Law; hereby concludes that good cause has been shown to grant the application;

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of the Township of South Orange Village that the application for “c” variance relief as set forth in the plans, reports, representations, testimony, stipulations and Exhibits offered by the Applicant is hereby granted with the following conditions:

1. The Applicant shall comply with all applicable Township, County and State laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local and state approvals and/or permits.
2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in

conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.

3. The Applicant shall pay all outstanding taxes, application fees, technical review fees and inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within ten (10) days of notification.

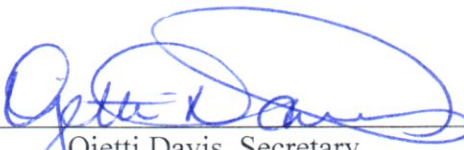
4. All construction, use and development of the property, including but not limited to sprinklering, fire safety and egress, shall be in conformance with applicable code requirements, the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.

5. The amount of 3rd floor area having a ceiling height above 7' shall not exceed 66% of the 2nd floor area.

6. All conditions and approvals will be noted on the plans.

7. The Applicant is encouraged to consider including a window centered in the middle of the proposed dormer.

IN WITNESS WHEREOF, the Board has caused this Resolution to be executed by its Secretary on the 6th day of July, 2017



Ojetti Davis, Secretary

Vote on the Action Taken by the Board:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene			X			
Cranko (2 nd Alt)						X
Dahn (V.Chair)						X
DiScala		X	X			
Levine (1 st Alt)			X			
Parlapiano			X			
Reeves (Chair)			X			
Semper			X			
Shapiro	X		X			

Vote on the Memorializing Resolution

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
Breene						
Cranko (2 nd Alt)						
Dahn (V.Chair)						
DiScala						
Levine (1 st Alt)		X	X			
Parlapiano			X			
Reeves (Chair)	X		X			
Semper						
Shapiro						