

Village of Pittsford
PLANNING and ZONING BOARD OF APPEALS
Regular Meeting – December 18, 2006 at 7:00 P.M.

PRESENT:

Chairperson:	Remegia Mitchell
Members:	Sally Chamberlin
	Lili Lanphear
	Ted Weniger
	Tom Dannhauser
Attorney:	Jeffrey Turner
Record Secretary:	Linda Habeeb

Chairperson Mitchell called the meeting to order at 7:00 P.M.

Zoning Board

1. Robert Tierney, 17 Green Hill Lane ~ Appeal from APRB Decision

Present: Robert Tierney
Reuben Ortenberg, Esq.

Discussion: This is a continuation of an open public hearing for an appeal from a decision rendered by the Architectural and Preservation Review Board denying the applicant's proposal to install vinyl siding at his residence, located at 17 Green Hill Lane.

Chairperson Mitchell asked the applicant if he had any additional information to present to the Board, and Mr. Tierney stated that he did not. She then asked Board members for their comments, and Member Dannhauser thanked the applicant for allowing the Board additional time to review this matter. He presented a chart of all the applications to the APRB for replacement of siding for the years 1988 through 2006, indicating whether each was approved or denied. He stated that the denials in the earlier years were for older homes, and that the APRB had indicated that since vinyl was not available when the house was built, it was not an appropriate replacement material for wood. He further stated that around the year 2000, there was a change in the APRB's standards for review and a difference in their interpretation of Village law.

Mr. Ortenberg stated that since there were three houses within view of the applicant's house with vinyl siding, the Board's decision was arbitrary.

Mr. Turner stated that the standard of this Board's review is whether the decision rendered by the APRB was arbitrary and capricious and not supported by credible evidence. It is not a de novo review of the case. He further stated that inconsistent decisions are not prima facie evidence of arbitrariness. The Board has evolved over time to come to a different interpretation of the law regarding vinyl. This Board needs to determine whether the APRB followed the law in reaching its decision, and whether the findings support the decision.

The Board pointed out that since 1991, the entire Village has been designated as a Local Historic Preservation District. Chairperson Mitchell further stated that the Village Code and the Secretary

of the Interior Standards, which have been adopted by the APRB, require that deteriorated architectural features be repaired rather than replaced, wherever possible, and in the event that replacement is necessary, the new material should match the material being replaced in composition, design, texture, and other visual qualities. The APRB is also guided by the New York State Office of Parks and Recreation and Historic Preservation (SHPO) standards.

Mr. Ortenberg pointed out three houses in the applicant's neighborhood that received approval from the APRB for vinyl siding because vinyl was available at the time the house was built. He also pointed out that in 1996, the APRB approved an application for vinyl siding with conditions, and he suggested that this Board has the authority to modify the APRB's decision.

Mr. Turner stated that the measure of arbitrariness is whether or not the decision is supported by the evidence, not whether it's different. Mr. Ortenberg disagreed, citing *Rudey v Landmarks Preservation Com'n of City of New York*, where the court held that it was arbitrary for the Commission to differentiate between residents in the same building.

Mr. Turner further stated that it could be argued that previous decisions of the Board that allowed vinyl did not follow the Secretary of the Interior's Standards appropriately.

Mr. Ortenberg pointed out two more recent decisions to approve vinyl siding in the Village. Member Weniger stated that one decision was for hardiplank, not vinyl, and the other decision was for replacement of existing cedar shingle shakes with concrete clapboard with the same reveal as the existing clapboard siding. He further stated that this is different from an applicant who is requesting replacing 13-inch reveal cedar shingle shake with 4-inch reveal vinyl clapboard, which significantly changes the appearance of the house. The architectural nature of a 13-inch reveal versus a 4-inch reveal was decided to be an historic characteristic of a house of that time period.

Chairperson Mitchell pointed out two recent decisions where vinyl siding was denied by the APRB on homes of the same era: 15 Austin Park (2004) and 7 East Jefferson Circle (2001). Mr. Ortenberg argued that 44 E. Jefferson Circle (1993) and 11 Austin Park (1992) are examples of similar homes where the APRB approved vinyl siding. Chairperson Mitchell stated that these were two different timeframes, and the houses that were approved for vinyl siding in the earlier decisions are 10-15 years older now. Mr. Ortenberg stated that the fact that there were different members of the APRB when the decisions were rendered is not a basis for evolving law.

Mr. Turner stated that the Board can affirm, deny, or modify the decision. If the Board decides to modify the decision of the APRB, they will be required to supply findings of fact to explain the appropriateness of the decision under the APRB Code and standards. There was some discussion of modification of the APRB's decision. It was suggested by Board members that this Board is not in a position to modify the decision because the members are not trained in evaluating the architectural appropriateness of the decision and would need to acquire the necessary expertise to modify the decision.

Public Hearing Closed: Chairperson Mitchell closed the public hearing.

Motion: Chairperson Mitchell made a motion, seconded by Member Weniger, to affirm the decision of the APRB, and that based on the findings of fact, the APRB has acted within its duties and powers as indicated in Village Code § 210-61(C) Standards of Review – Repairs.

Vote: Dannhauser – yes; Chamberlin – yes; Mitchell – yes; Lanphear – yes; Weniger – yes.

Motion carried. The decision was filed in the Office of the Village Clerk on December 18, 2006.

Mr. Turner informed the applicant that Bero Architecture, through Historic Pittsford, offers a complete architectural evaluation of Village houses at no charge to the homeowner.

Findings of Fact:

1. 17 Green Hill Lane is located within the Historic and Architectural Design District of the Village of Pittsford.

As stated in Village Code section 210-68:

§ 210-58. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DISTRICT — The Historic and Architectural Design District.

EXTERIOR ARCHITECTURAL FEATURE — The architectural style and general arrangement of such portion of the exterior of a structure as is designed to be open to view from a public street or waterway, including the kind and texture of building materials, siding materials, types of all windows, doors, lights, fences, signs and other fixtures appurtenant to such portion.

HISTORIC AND ARCHITECTURAL DESIGN DISTRICT — The area within the corporate limits of the Village of Pittsford, New York.

2. Some of the purposes of the Historic and Architectural Design District are stated in Village Code 210-57 (b) Protect and enhance the attractiveness of the District to homebuyers, visitors, shoppers and residents and thereby provide economic benefits to the Village and its citizens, (c) Conserve and improve the value of property within the District, and (d) Foster, encourage, and advise the preservation, restoration and rehabilitation of structures, areas, and neighborhoods.
3. The APRB has jurisdiction of this application to install 4-inch reveal vinyl siding so as to conceal 13-inch reveal cedar shakes, pursuant to Code § 210-61(c).
4. The house was built circa 1960. The house was designed architecturally for the application of 13-inch reveal cedar shakes as the exterior finish.
5. This application requests the installation of vinyl siding, the purpose of which was to mimic wood clapboard siding having a 4- to 5-inch reveal. The application also included wrapping all fascia window and door trim and porch posts with aluminum.
6. The applicant indicated that some of the existing cedar shakes could be repaired and some needed to be replaced.
7. Pittsford Village Code § 210-61(c) requires that in the event that architectural features can be repaired, that they be repaired rather than replaced. In the event that they cannot be repaired, “the new material should match the material being replaced in composition, design, texture and other visual qualities.

8. Vinyl siding intending to mimic wood clapboard with a 4- to 5-inch reveal does not match the existing 13-inch cedar shakes in composition, design, texture, or any other visual qualities.
9. The proposed aluminum wrapping of fascia window and door trim and porch posts would significantly alter the architectural appearance of 17 Green Hill Lane.
10. Thirteen-inch reveal cedar shakes are a key feature of the architectural style that is predominant in the Green Hill Lane neighborhood and is a style worthy of preservation.
11. Thirteen-inch reveal cedar shakes are available to replace the unrepairable cedar shakes at 17 Green Hill Lane. The repairable cedar shakes at 17 Green Hill Lane should be repaired.
12. The decision to deny the requested vinyl siding and aluminum trim wrap is required by Code § 210-61(C), and therefore, was not arbitrary or capricious.
13. No vinyl siding has been approved by the APRB as a replacement material for the past 10 years. Vinyl siding has been approved, in limited circumstances, on new construction.
14. Recently, hardiplank and cement siding have been permitted as replacement material, since that siding matches wood siding in design, texture, and other visual qualities, where vinyl does not.
15. Prior to 1997, there were APRB approvals of vinyl siding based upon the concept that since vinyl siding was available at the time of the original construction, vinyl siding would be an appropriate replacement material. Over time, as the knowledge and educational levels of the members of the APRB increased, it became evident that this standard did not accurately reflect the requirements of the repair and replacement provisions of the Village Code. In fact, it appears that decisions that permitted vinyl siding as a replacement material, solely on the basis that vinyl siding was available at the time of the original construction, were incorrect.
16. As justification for his application, the applicant identified other homes on Green Hill Lane that had been vinyl sided. Of these vinyl-sided residences, some had no APRB approval whatsoever, some had already been materially altered from their original appearance at the time of their application for vinyl siding, and none had been approved after 1997.
17. The applicant stated that replacement of cedar siding in kind is more expensive than installing vinyl siding. It was not appropriate for the APRB to consider the cost savings involved with vinyl replacement siding, as this was not a hardship application under Village Code § 210-62(D).

D. Hardship Criteria

(1) An applicant whose certificate of approval for a proposal has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that:

- (a) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible.

- (b) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return.
- (c) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

Member Items:

- Member Weniger stated that a large, front window is being installed at 31 North Main Street.
- Member Lanphear stated that Sutherland Auto has cars for sale that exceed the permitted amount in violation of the approved site plan. It was specifically noted that the Planning Board limited the inside bays to two vehicles for sale. There are currently four vehicles in the inside bays.
- Member Weniger informed the Board that he will be participating in a meeting regarding the joint board meeting on December 29th.

Minutes: Chairperson Mitchell made a motion, seconded by Member Dannhauser, to approve the November 27, 2006 minutes, as amended.

Vote: Dannhauser – yes; Chamberlin – yes; Mitchell – yes; Lanphear – yes; Weniger - yes.

Motion carried.

Adjournment: There being no further business, Chairperson Mitchell adjourned the meeting at 8:30 pm.

Linda Habeeb, Recording Secretary