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Building/Zoning/Planning Department
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June 25, 2020

Board Attendance: Matt Akari, Jerry Manning, Pat Quillan, Eric Smassanow and Chairwoman Meg Soden

Zoning Alternate: JD Wood
Zoning Attorney: William Keniry, Esq
Zoning Official: William F. Lewis

1. Pledge to the Flag

Led by Mr. Akari

2. Chairwoman Announcements

Chairwoman Soden: Welcome to the Zoning Board of Appeals meeting. Today is June 25, 2020.

3. Minutes approval from May 28, 2020 and June 4, 2020 Zoning Board Meeting

Motion to approve meeting minutes for May 28, 2020 and June 4, 2020 made by Mr. Smassanow, 2nd by Mr. Manning. Mr. Akari- yes; Mr. Manning-yes, Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

4. Public Comment:

Chairwoman Soden: If anyone has any Public Comment, please raise your hand.

Chairwoman Soden: It is 7:05 PM and we will now close out the Public Comment section

5. 7:05pm Public Hearing- Country Club Dr. James R O'Brien Revocable Trust – Area Variance -215.-1-27 & 215.-1-28

Chairwoman Soden: I would like to have Mr. Toohey speak regarding the Area Variance for Country Club Drive. Please be specific about what relief you are requesting for this property.

Mr. Toohey: We are attempting to combine two lots. These are two existing tax parcels that were part of the original 1966 subdivision that was authorized by the Town. By combining these lots, we would have the largest single family lot on Country Club Drive. It is larger than the majority of them. I have given you a chart showing those averages. We still need variances because the lot is too small, even when combined, for the zone in which it exists. One lot, parcel 28, has a deed restriction that requires the house be located 85 feet from the road. As a result, we are seeking a setback on the front yard from 85 feet. The lot is wide enough but large enough. We have taken setbacks from Route 67 and Country Club Drive. We received the County Planning Boards opinion and we agree that the roadway for the driveway would not come off of Route 67, it would have to come from Country Club Dr. The relief that we asked for is the relief that we've come forward with today.

Chairwoman Soden: I'd like to be very specific when we discuss this. There are several variances that you are seeking. I'd like to spell them out so we are on the same page and the Board understands what is that you're seeking. For the Lot Width, the permitted is 200 feet and you are proposing 135.73 feet. Front setback permitted is 150 feet, you are proposing 85 feet. Side set back, the permitted is 50 feet staying with the 50 feet on both sides. Rear setback, the permitted is 75 feet, you are proposing 35 feet. For the Area density, 5 acres is permitted, the purposed is .92 acres.

Mr. Toohey – Correct. One of the points you made originally regarding the frontage, the 135.73 feet is on the Route 67 side. On Country Club drive side, we have 232.74 feet.

Chairwoman Soden: I will make a note of that. At this point, if anyone from the public would like to comment, this would be the time to do so.

Lilly Beyers: We live on Country Club Drive and are very concerned about this combination leading to building of a home on a property where you are on a small street with a lot of wells, one of which has already dried up. They have had to find another well on their property. I have submitted comments and questions ahead of time. How can you protect the Town's people and their drinking water? Who is culpable when we no longer have water or when our water is poisoned or undrinkable? The school and the golf course are right next to our neighborhood. If you do allow this, are we able to get Town water? You so far have not supplied that for our area. The two properties in front of the lot have wells in their front yard and yet, the neighboring lot has a well in their back yard. Where is the septic tank going to go? Where is the leach field going to go and how do you protect the wells? We have a very small neighborhood. The homes are on the smaller side. They are ranch style homes. What type of house will you allow to be built here? Are you going to keep allowing development throughout our Town and ruin the land that we have? We are a right to farm community. There are several people that garden all summer long to provide

food for our families. What are you going to do to protect us from this building happening? How do you protect our water?

Chairwoman Soden: Thank you. It is a Public Hearing so we will take that into consideration as we hear the different comments and look through the application as we make a decision.

Mr. Toohey: Under this subdivision, we would have the right to build two homes on this property. We are not increasing the problem but minimizing the problem by having a larger lot of .92 acres and a single family home on the property. The alternate that is being suggested is that the owner of this property has no usable right to construct a home on the land and that is not true.

Lilly Beyers: What Mr. Toohey said, it sounds like we either get the one house or we get the two houses. I am under the impression that within the two lots, we get septic within 100ft range. Can Mr. Toohey clarify that? Also, he didn't answer my question on how he will protect our water. What happens when our wells dry out?

Chairwoman Soden: I can address that to some extent but this is a Public Hearing. It is not a question and answer section. We will consider the questions that you have. The property is zoned as residential. I appreciate your comments.

Chairwoman Soden: Mr. Kane, are you able to speak yet? No answer from Mr. Kane

Chairwoman Soden: Can I get a motion to close the public hearing?
Motion made by Mr. Quillan

Mr. Smassanow: Since someone was trying to make a comment and our technology isn't allowing him to, should we allow a grace period to make sure people are heard?

Mr. Keniry: I would consider that. I would also consider, if Mr. Lewis is willing, to provide Mr. Lewis' cell phone number to receive Mr. Kane's comment in that manner. The Q&A section can be utilized as well. I think the most expedient way is to allow Mr. Kane to contact Mr. Lewis' cell phone while the Board talks.

Mr. Lewis: Yes, my cell phone number is 518-376-1831

Chairwoman Soden: Bill K, do you propose that we keep the Public Hearing open to allow Mr. Kane to call in?

Mr. Keniry: Yes. You can either discuss the application with the Board while you wait, or adjourn the Public Hearing.

Chairwoman Soden: We will discuss the application and give a few minutes for Mr. Kane to call in. Looking at the application, let's discuss some of the merits, specifically the Area Variance language.

Mr. Smassanow: Bill K, if someone owns property; they have a right to use it. Is that correct?

Mr. Keniry: The applicant has indicated that there two previously subdivided lots that exist in this subdivision. There are some confines with respect to what Zoning allows you to do as it relates to the use. One of the issues is that this applicant, in all likelihood, identified that the two, pre-existing, non-conforming lots probably present some building envelope configuration problems. With that said, and I infer this, that the applicant made a determination that it seemed to make sense for purposes of their project, their intended use. I am assuming that their project is a combination of two lots they will merge the two lots to make it one. It is reasonable for you to ask the applicant what they intend to do on the property if the relief is granted. The Use of the property, at this point, is subject to Zoning.

Mr. Kane: I don't understand why someone said they can't build on the one lot. All the lots are the same size. Why can't they build on that lot?

Mr. Lewis: It is two pre-existing, non-conforming lots. Zoning changed to 5 acres lots after this subdivision was put into play in 1966. The applicant is trying to merge the two lots to make one larger lot, to try to conform to Zoning. He submitted the application for relief to the Zoning Board. The existing lots that you have now are pre-existing, non-conforming lots. The well and septic separations on them, with a house envelope, it is very hard to get the 100 foot leach field to well separation and 50 foot tank to well separation and meet current Health Department code. In the R1 district, we allow 1 acre minimum lots to get well and septic on. You are in the R2 district which is 5 acre minimum. The applicant is asking for area relief of the lot. In doing so, he is trying to conform to all the regulations, to fit a well and septic into that lot.

Mr. Kane: On lot #3, which is going to be the applicants, does that mean he can't put a well and septic within 100 feet of my well?

Mr. Lewis: The septic tank can be up to 50 feet from that, but the leach field has to be a minimum of 100 feet. A NY State design professional has to design a system to go on that lot.

Mr. Kane: Is there a rule about building a well on lot two?

Mr. Lewis: If he owns the property, he has the right to construct a well. It is a permitted use. He will have to submit a DEC report and he has to get a water quality test.

Mr. Kane: I have a well on lot #3 that is close to lot #2.

Chairwoman Soden: Since I have a motion from Pat to close the Public Hearing, I will need a second.

Motion to close the Public Hearing made by Mr. Quillan, 2nd by Mr. Smassanow; Mr. Akari-yes; Mr. Manning-yes; Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Chairwoman Soden: I'd like to get the Boards input on the proposed Area Variance. We have to look at the merits of the application as it applies to our specific criteria in Zoning.

Mr. Manning: The well and Septic do not apply when considering an approval or disapproval?

Chairwoman Soden: Correct. It is good information but does not apply to the Zoning criteria we are looking at.

Mr. Keniry: I do think it is appropriate for you to consider the extent of the relief that you are being asked to grant as it relates to the health, safety and welfare of the community. With respect to what Ms. Beyers and Mr. Kane have indicated, if what they talked about related to that consideration, then you should consider those factors in your decision.

Mr. Manning: The applicant is trying to get to a 1 acre, which is R1 criteria. In their engineering studies, if they can make everything come together, does it become a non-issue?

Mr. Keniry: The outcome is unknown. It is possible that it may end up as a vacant lot.

Chairwoman Soden: The Area Variance is a balancing act. Can the benefit be achieved by other means feasible to the applicant? Is it a detriment to nearby properties? Is the request substantial? Will the request have adverse physical or environmental affects? Is alleged difficulty self-created? This is the criteria that we have to weigh as we look at this application.

Mr. Manning: It appears they created the lots before there was Zoning. It doesn't appear self-created to me.

Mr. Quillan: Those lots were created in the 1960's. I don't know what type of Zoning was in effect back then. My concern is about the well and septic. If we had a drawing, we could look at it. There is nothing there yet.

Chairwoman Soden: Anything further from the Board, in regards to this application? If there is nothing, I need a motion to approve or disapprove this Area Variance. When combined, this would become 5 Country Club Dr.

Motion to approve the combining of the two lots, to create 5 Country Club Dr. made by Mr. Manning. 2nd by Mr. Quillan; Mr. Akari-yes; Mr. Manning-yes; Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Chairwoman Soden: In the resolution, we will spell out the specific reliefs.

Mr. Toohey: Thank you for the vote. This is a single family home. We have to comply with the rules and regulations that have to do with the placement of septic, well, etc. The neighbor's wells and septic's are already there. One reason this lot is being combined is that we believe we can do that on the .92 acre lot. 5 County Club Dr. will only have a single family home on this lot.

Chairwoman Soden: Thank you.

6. 7:30pm Public Hearing – Suzanne Barg & Lisa Burns – Area Variance- 8 Oakwood Ct. 189.19-1-1

Chairwoman Soden: This Area Variance is for the construction of a detached garage. I'd like to give the applicant an opportunity to give the Board a brief update.

Ms. Burns: Our request for a Zoning Variance is regarding the cemetery that adjoins our property. Our objective in constructing this garage is to keep it to the rear of our yard without impacting the wetlands as well as keeping the garage as much as we can in the wooded area to screen it from our neighbors. We don't want our neighbors to have to look at this structure. That has been our objective in coming to the Zoning Board to ask for an Area Variance. The developer of Oakwood Ct. put deed restrictions on all of the lots that stipulated that the developer must also approve this construction. We do have written approval from the developer. We shared that with Tina and asked her to share with the Board members.

Chairwoman Soden: Thank you. Would anyone from the public like to make a comment?

Mr. Cook: I live at 14 Oakwood Ct. We are thankful that Lee and Sue have put a lot of thought into this. We have no qualms in what they are doing.

Mr. Cooper: I have no objections and have taken the neighbors interest into consideration. The neighbors on the right have no objections at all. They are keeping it back, hidden by trees. I am wondering when the 150 foot setback was established. There have been exceptions made on other properties.

Mr. Lewis: Refer to 154.13 (B) of the Town Code. It was set in effect 3/17/04. Also, you can see section 180.42 under Cemetery.

Mrs. Cooper: was that established when the property was sold to the builder?

Mr. Cooper: Was the homeowner notified of that setback?

Mr. Lewis: Yes. It is dated 7/24/06

Mr. Cooper: I don't believe Sue and Lee were made aware of the restrictions

Mr. Lewis: The prints that were submitted for 8 Oakwood Ct. has the 150 ft setback right on it. It was submitted by the applicant.

Mr. and Mrs. Kelly: live at 5 Oakwood Ct. We live across the street and are all for their garage.

Ms. Burns: We have the original lot building map. When we started to do this, we didn't understand. We went to the Town and Mr. Lewis explained it to us. We are not disputing the setback.

Chairwoman Soden: Any other comments? Not seeing any other comments or questions. Can I get a motion to close the Public Hearing?

Motion to close the Public Hearing made by Mr. Smassanow; 2nd by Mr. Manning; Mr. Akari-yes; Mr. Manning-yes; Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Chairwoman Soden: Looking at the Area Variance language and criteria, we are going to weigh the merits of the application as we deliberate and state the reasons you are in favor of opposed to this variance.

Mr. Quillan: If they moved the garage more toward the house, away from the cemetery line, they can obtain the distance that would meet the requirements.

Ms. Barg: I appreciate Mr. Quillans comments. What is not shown on the map is where the woods are. Our sketch is not to scale. There is one tree in our back yard. In order to move the garage closer to the house, that one tree would need to come down. That area is wide open and the garage would be visible to everyone in the neighborhood. We drew this map. It is not up to scale. The reason we put the garage as close to the cemetery line was to screen it from the neighbors. The further you move it to the house, the only tree in the back yard comes down. The leach field is behind the house and we are trying not to impact that. I will add that we are more than happy to have anyone from the Board to come out. JD Wood came out and looked at the property. He has first-hand knowledge of the layout of the land and the landscaping that is not shown on the map.

Chairwoman Soden: Do you have the proposed location staked out?

Ms. Barg: Roughly. We have not had a surveyor come out. We could certainly have a surveyor come and stake out the building to ensure that we are not closer than our requested 20 feet.

Mr. Smassanow: It is very rare that you have everyone in the community in favor of a project. It is obvious to me that the applicants are trying to do the right thing. The neighbors are all in favor. Unless they raise an objection, I think we should move forward.

Mr. Manning: I agree. They are doing everything they can to make the neighborhood as good as they can. Once the building is established, it's out of the way and no one can see it.

Chairwoman Soden: The neighbors are in favor of this. It is in a good spot. The request is substantial. Can we limit the variance at all? Maybe there is a middle ground where it isn't so visible and that it is not so close to the cemetery. When I was looking at the sketch, I was assuming it was to scale. That is a little concerning to me. I'd like to see something that is drawn to scale to get a better understanding of where the trees are. I liked what was said in regards to the leach field, the shed and the trees, but, it is hard to get the picture of exactly where that is without seeing it staked out or drawn to scale. I'd like to see a more up to scale map. How the Board feel about that?

Pat Quillan: I agree with Chairwoman Soden: They could provide us with revised drawing. That would be helpful.

Chairwoman Soden: I'm not trying to make extra work. I want to get a better picture of what we'd be approving. A picture of the staked out area(s) and a detailed sketch that is up to scale would be helpful. I'd like to see those two things before we make a decision.

Ms. Barg: The fenced area of the Oakwood Cemetery is large. The majority of the gravesites are from the 1800's. They gravesite are on the opposite side of the property from where we would like to construct this. To incur the expense of having a surveyor come out, without knowing what the Board would approve, puts an expense on us without knowing that we could move forward with this. We do not have a site plan with the septic on it. We have had an opportunity to drive around to see where homes are close to cemeteries in the community. I'd like to ask the Board to look at The Factory Village Cemetery and the relatively new development that included Berkshire and Stockbridge, off of Northline. There is a home against the fence of that cemetery. There is a garage on Stockbridge that is not 100 feet from the cemetery. We are trying to accommodate our neighbors. We will happily share pictures. We are not looking to build a mansion. We just want to get our vehicles out of the driveway and put away our RV so the neighbors don't have to look at it. I would like the Board to consider what was done to the Berkshire Dr. and Stockbridge Ct. homes that abut the Factory Village Cemetery.

Mr. Manning: That is my neighborhood and she is exactly right

Chairwoman Soden: I'm not saying that you have to have a surveyor come in or that you need to incur the expense but I'd like to see a sketch that is drawn to scale. I do appreciate that you are doing everything you can do for the neighbors. That is a huge consideration.

Chairwoman Soden: How does the Board purpose that we proceed? Are we ready to make a motion or do we need additional information?

Mr. Smassanow: I make a motion to grant the variance. 2nd by Mr. Akari;

Mr. Akari-yes; Mr. Manning-yes; Mr. Quillan-no, Mr. Smassanow-yes, Chairwoman Soden-I have some hesitancys about the minimum requirements or variance. Looking at all the other considerations; Can they achieve it another way? Possibly; would it substantially change what they are doing? Probably not; The change to the neighborhood – The neighbors are going to appreciate the garage being covered, the RV and other equipment being stored in the garage. It doesn't have any physical or environment effects so I will say Yes

Ms. Barg: Using the scale on the map, we measured the site. We sketched this with a ruler using the scale on the map.

Mr. Cooper: All the neighbors support this project.

Chairwoman Soden: Congratulations.

7. Other announcements

Chairwoman Soden: We received a request for an extension on the Rowland St. Subdivision 203.-3-11.11. We have an email from Lansing Engineering requesting an extension. This project was originally approved by the Zoning Board on July 26, 2018. We extended this for one year from July 26, 2019 through July 26, 2020. The project is currently under review by the Planning Board, awaiting Public Hearing on July 15, 2020. They are pending additional information for water, Endangered Species, Archeological Resource and County Referral. If the Planning Board approves the application in July, it will then proceed to the other involved agencies, such as the Saratoga County Sewer District, the NYS DEC, the Department of Health, and the Village of Ballston Spa. Construction should start in the winter months and push the start to the spring of 2021. That is why they are looking for an extension. NY Developmental Group is requesting the extension to July 26, 2021. The ZBA has the discretion to grant the extension of time to complete the necessary project work, based on the determination that conditions has not changed since the variance was initially granted. In accordance with the Town Code 180-76 (G), the ZBA directs that the applicant annually advise the Board, in writing, of the status and progress of the project, which they have. The Board will make a determination based on the written submission for the extension.

Motion to approve the extension for the Rowland St. Subdivision through July 26, 2021 made by: Mr. Manning, 2nd by Mr. Quillan. Mr. Akari-yes; Mr. Manning-yes; Mr. Quillan-yes, Mr. Smassanow-no, Chairwoman Soden-yes

8. Adjourn

Motion to adjourn made by Mr. Manning, 2nd by Mr. Smassanow. Mr. Akari-yes; Mr. Manning-yes; Mr. Quillan-yes, Mr. Smassanow-no, Chairwoman Soden-yes

APPROVED