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October 22, 2020 Zoning Board Meeting

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

Pledge to the Flag

Led by Mr. Quillan

Chairwoman Announcements

Chairwoman Soden: Our November meeting falls on Thanksgiving this year. We will be moving next months Zoning Board meeting to the week before, which is Thursday, November 19, 2020 at 7:00PM.

Minutes approval from September 24, 2020 Zoning Board Meeting

Motion to approve minutes made by Mr. Manning, 2nd by Mr. Quillan.
Mr. Akari- yes; Mr.Manning-yes, Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Public Comment

Chairwoman Soden: Is there anyone from the public that would like to like to speak? There being no Public Comment, I will close out the Public Comment section at 7:05 PM

Public Hearing for the Area Variance- 11 Deerfield Place. Richard and Denise Swahlan- 190.15-2-70

Chairwoman Soden: This is a Public Hearing for an Area Variance to construct a 14x25' carport. They are seeking a 5 foot side setback relief from the 10 foot permitted.

Ms. Swahlan: I had a couple neighbors that came over to see where it was going. They were fine with it. The neighbors across the street talked to my husband and saw where it is going. Everyone is okay with it. Our driveway is on a hill so if they are down on the road, they can't see up and over to where the carport is going to be.

Chairwoman Soden: I received a couple emails from neighbors. The email from 15 Deerfield Place read *'I live at 15 Deerfield Place Ballston Spa NY. I have no objection to the erection of a carport at 11 Deerfield Place Ballston Spa NY. The property appears large enough to accommodate a carport without having a negative impact on the environment or the appearance of the neighborhood'*.

Chairwoman Soden: We also received one from 13 Deerfield place stating *'We reside at 13 Deerfield Place and we grant approval for the carport at 11 Deerfield Place.'*

Chairwoman Soden: Would anyone from the public like to speak in regards to this?

Ms. Stevens: 13 Whippetree Rd. I can speak for myself and my neighbors who also received a notification. It fits the neighborhood. There are three or four carports on that street already. There is one across the street. It fits the character of the neighborhood.

Chairwoman Soden: Are there any other comments? If not, can I get a motion to close the Public Hearing?

Motion to close the Public Hearing made by Mr. Manning, 2nd by Mr. Smassanow.

Mr. Akari- yes; Mr.Manning-yes, Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Chairwoman Soden: Are there any addition questions or comments from the Board? If not, I'd like to get a motion to approve the 5 ft. Area Variance at 11 Deerfield Place Ballston Spa?

Motion to approve the Area Variance made by Mr. Manning, 2nd by Mr.Smassanow.

Mr. Akari-yes; Mr.Manning-yes, Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Chairwoman Soden: Just to be more specific, it is a relief of five (5) feet granted. That is what will go in the resolution.

Continued review of the Area Variance Application - Sticks & Stones Holding- Stuart Thomas- 1073 Middleline Rd. 176.1-1-23.2

Chairwoman Soden: As stated in the September Zoning Board Meeting, an Area Variance for the new residential construction in a lot that is less than five (5) acres in the R2 District,

there are five (5) adjoining properties that are also less than five (5) acres. These lots were created prior to the Zoning changes of requiring a five (5) acre minimum lot in the R2 District. To recap what happened at the last meeting and what has transpired since; on the property, there are headstones that date back to 1797, Ms. Staulters, the Historian, has stated and those should be protected. There shall be a fifty (50) foot distance from the Cemetery to where they are building and that he provided a fence. The Historic Committee also stated there should be a three (3) foot Easement off of Circle C Road to the Cemetery, for people to visit. Mr. Thomas stated he believes they are just grave markers on private land, not a cemetery. The Zoning Board stated that it is in the Town's best interest to preserve historical sites. Mr. Keniry also pointed out the definition for Cemetery as defined in section 291 of the Town's Law which doesn't differentiate between Municipal Cemeteries and grave markings. It also states: "A place for the interment of the dead or in which human bodies have been buried".

Chairwoman Soden: Mr. Lewis also stated that Mr. Thomas has a pre-existing lot of record and that there is a doublewide on that property. There is an existing structure on it that can be fixed up if Mr. Thomas chooses to do so, but he can't build new construction without the Zoning Board approval.

Chairwoman Soden: I proposed that we keep this on the agenda for this month and have the applicant talk to his partner and talk to SHPO. At this point, I'd like to hear from Mr. Thomas to see what the status is of those items that we asked him to look into.

Mr. Thomas: We retained Mr. Sutton as an attorney to look into the matter of the grave markers. You have a proposed Plot Plan. I am not building anything. This is based on where I suspect someone will build something. The green marks are the grave markers. We have taken the three (3) closest ones to the proposed house, and measured more than fifty (50) feet from each one. As well as one hundred (100) feet from the current well and the proposed septic below that. My understanding is that we are asking for an Area Variance of 1.986 Acres. We do not need any side setbacks. We retained Mr. Sutton to figure out what the grave markers have to do with this. I do not understand at all how these two issues are tied together. I have not heard from Karen since the last meeting. Mr. Sutton told me he will reach out to Karen to find out what the issues are. This Plot Plan shows clearly that we are trying to follow the laws and the Town Code and also be respectful of the grave markers.

Mr. Smassanow: The Board asked you to check with SHPO. I am wondering what you found out when you checked with them.

Mr. Thomas: Mr. Sutton is handling that. I understand you have concerns, but I am not sure if that can't be a continuing conversation versus granting me the variance.

Chairwoman Soden: In the Plot Plan it showed about 52-53 feet to the property from some of those grave markers. What is the area of disturbance around that?

Mr. Thomas: Bill explained to me that we have to be fifty (50) feet from the structure. Since this is a proposed Plot Plan, it would be up to Bill to look at the Building Application to decide what the disturbance would be. That is something someone else is going to have to

discuss with Bill. It doesn't have to be where it is. It may move to the left, back front or right.

Mr. Lewis: The applicant is asking for 1.986 acres of relief. When he submits a building application with a Site Plan, he would have to locate the grave stones on that with the Building Plan. It would be our job to make sure he is a minimum of fifty (50) feet from any point of the structure, to the grave stones.

Chairwoman Soden: Since our last meeting, Mr. Keniry reached out to SHPO and Jessica Schrier is the point of contact for Saratoga County. She stated that she would be willing to review and comment on the application. After talking to Mr. Keniry, I did give my approval for them to move forward in reviewing and commenting on that. It was the recommendation of Mr. Keniry and Mr. Craig that we wait to hear back from SHPO before we proceed with the Variance, as it is the best interest of the Town to consider all the factors.

Mr. Thomas: Since there is no building application submitted and I have hired an attorney, why can't we get an Area Variance approved? The two things are separate. I do not have a problem working things out but I haven't submitted a Building Application.

Mr. Keniry: The first deficiency in your plan is that you failed to depict and measure the distance from at least two different burial sites, maybe four. What you are hearing from the Board is that they are sensitive to the plan. First, they want to know how many burial sites are there. There is also a question as to the duration of time that this has been used as a burial site as to whether or not there are other burial sites that may be more proximate to the proposed house that you depicted of 2500 ft. This Board is sensitive to not granting relief to only create an impossible condition. You stated to the Board that your intent was to use this for a Single Family residence. The Board has to look at it in total. It is my understanding that the Town hasn't had access to this property. I believe the Cemetery Committee has been denied access. Finally, you were directed to contact SHPO at the last meeting and the Board has learned you did not do that. The Board has the right to first hear from the State what the historical significance may be from the States perspective and then ultimately from the Towns perspective.

Chairwoman Soden: Mr. Thomas, now that you have an attorney, Mr. Keniry and Mr. Sutton can work some items out, however, we want to follow up on this meeting on November 19th, once we receive additional information from them. That is how we are going to proceed on this application at this time.

Ms. Staulters: I would like permission to go in and do an inventory of the stones, if that is ok.

Mr. Keniry: That would be the obligation of the applicant to provide consent. From the Towns perspective, I think the Town would like to have that benefit of that effort and that work.

Mr. Thomas: I never said I didn't contact SHPO just to make that clear. Karen submitted some items. One was a book insert. The information has been documented. The Plot Plan is

proposed. I don't think how many feet away matters on a proposal. The problem is there are 2.5 grave markers on someone else's property; I don't know what that has to do with it or how many feet they are away from the property line. I don't have permission for you to inventory someone else's property. There is a clear inventory of who's there.

Chairwoman Soden: As far as the grave markers on your property, are you giving permission to Karen and her committee to inventory those?

Mr. Thomas: That is something that my attorney has to figure out. There is about an 8-10 ft high sandbank and downed trees. I would be concerned about anyone going back there. I am sure this can be worked out with the attorneys.

Chairwoman Soden: We will have this on our agenda for next month's meeting, November 19, 2020 and will wait to hear more from SHPO.

Continuation of Public Hearing for -Area Variance- Active Solar 434 Sodeman Rd 163-1-56.11

Chairwoman Soden: We are dismissing Mr. Keniry. Jim Craig will be our council for this action. The Planning Board met last night in regard to the SEQR for this. It was issued a Negative Declaration. Since this is a coordinated review, we are able to move forward. The Public Hearing was left open from our last meeting. Are there any additional comments on this? If there are no additional comments, I'd like to 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: Does the applicant have any additional information?

Mr. McCleneghen: No additional information. Nothing has changed.

Chairwoman Soden: Does the Board have any additional comments or questions?

Mr. Smassanow: The decommissioning, is there something set in place so if those numbers don't add up that the Town isn't going to be responsible?

Mr. McCleneghen: We either put up a bond or a letter of credit. The Town has control of the interest bearing account. I don't know of any insurance for decommissioning. If you think that the amount isn't sufficient, let's have a discussion.

Chairwoman Soden: Any additional questions? If not, I'd like to get a motion to approve the Variance for Active Solar.

Motion to approve the Area Variance as stated in the application made by Mr. Quillan, 2nd by Mr. Manning. Mr. Akari- yes; Mr. Manning-yes, Mr. Quillan-yes, Mr. Smassanow-yes, Chairwoman Soden-yes

Other Announcements

Chairwoman Soden: There are no other announcements.

Adjourn

Chairwoman Soden: Can I get a motion to adjourn?

Motion to adjourn made by Mr. Manning, 2nd by Mr. Smassanow.
All in favor. Meeting adjourned.

APPROVED