

Town of Otsego Zoning Board of Appeals (ZBA)

Minutes – April 19, 2022

(Will be approved with any necessary amendments at the next meeting)

PUBLIC HEARINGS

22.01 – Nettie Jean Scarzafava (Elizabeth Davidson) – Area variances, construction of garage within 500 feet of Otsego Lake – 6771 State Highway 80 (#69.60-1-11.00)

Chairman Greg Crowell opened the Scarzafava public hearing at 7:01, and gave guidelines for public hearing behavior and comments. Clerk Bill Deane read aloud from the March 15 ZBA minutes relevant to the application. Crowell asked if anyone from the public had comments or questions about the application. No one responded.

Chairman Crowell read aloud an April 18 e-mail from David Creedon of 6763 State Highway 80, saying the project was not compatible with the neighborhood. His wife, Deb Creedon, participating via Zoom, said that she did not want snow to be dumped on their property. She also asked where the proposed garage was to be located; Crowell showed her the site map.

John Dewey read aloud an e-mail from Joseph and Maria Stabile of Saint's Rest Lane, with concerns about the proposed project. Mr. Stabile, participating via Zoom, expanded on those. He said he was concerned about the location of the garage, snow removal, and water runoff affecting his retaining wall, septic system, and well. Representative Elizabeth Davidson responded to these via Zoom. Stabile also discussed the proposed cottage replacement. Deane explained that that had been removed from the ZBA application, and was under consideration by the Planning Board. Deane said that Board would be having a public hearing on May 3, and that Stabile would be invited.

With no further comments or questions, Chairman Crowell closed the hearing.

22.02 – Otsego Consulting, LLC (Joe Galati) – Area variance, construction of sheds and deck within 100 feet of Otsego Lake – 101 Badger Lane (#69.44-1-24.00)

Chairman Greg Crowell opened the Otsego Consulting public hearing at 7:35. Clerk Bill Deane read aloud from the March 15 ZBA minutes relevant to the application. Crowell asked if anyone from the public had comments or questions about the application.

Bob LaDue read from an April 17 memo. He said he was concerned about safety, and wondered where the electrical wires would be located. Representative Joe Galati, participating via Zoom, said it would be NYSEG's call. He said he was meeting with NYSEG on-site on April 21 at 9 AM, and invited LaDue to join the meeting. LaDue asked about putting up a fence; Crowell said the ZBA does not govern boundary fences. LaDue also wondered about the bridge, which he said had washed away in the 1990s. Crowell said the replacement was not on the application. Galati said he should not need Town permission to replace it, as it would be a replacement-in-kind of a bridge which stood for nearly 100 years, and which is part of a deeded right-of-way. Crowell said he consult the Town Attorney on that matter and get back to Galati.

Armin Sommer of 108 Badger Lane expressed concerns about lighting. His wife Nancy Sommer asked who would be using the four "boat slips." Galati said it would be "dark sky lighting," and the slips would be used by guests of the Blackbird Hollow hotel and Hickory Grove Motor Inn, and would not be leased to the public. He said they are under the jurisdiction of Parks & Recreation.

Chairman Crowell read aloud an April 19 e-mail from Sue Ann and Cliff Goodwin of 104 Badger Lane, expressing concerns about the project. They said it would affect their peace and enjoyment.

Deane noted that hearing notices addressed to neighbors Isidora Marra (insufficient address) and the Robert B. Seaver Trust (attempted, not known) had been returned to sender.

With no further comments or questions, Chairman Crowell closed the hearing.

22.03 – Leatherstocking Association Common Area/Vince Pyle (Chad Whitbeck) – Area variances, stairway & deck within 100 feet of Otsego Lake in RA1 district (revised plan) – 162 Browdy Mountain Road (#84.08-1-29.00)

Chairman Greg Crowell opened the Leatherstocking Association public hearing at 8:05. Clerk Bill Deane read aloud from the March 15 ZBA minutes relevant to the application. Crowell asked if anyone from the public had comments or questions about the application.

Tracy Killian of 119 Parshall Road said that Vince Pyle has not paid his taxes on the property. She said the deck is not necessary, and will disturb the peace of the property.

Tim Killian said that he and his wife own three of the 13 shares of the Association, whereas Pyle owns only one. He said that some neighbors may not have been able to attend or e-mail concerns due to today's storm, and asked that the Board delay its decision on the application.

Chairman Crowell and John Dewey read aloud from an April 19 letter (filed) from William Hurst of Young/Sommer LLC, representing neighbors Bill Michaels (owner of three shares of the Association), Phil Holz (one share), and the Killians (three shares). Hurst said that the Association members are not in agreement with this project, which fails on every criteria on *Land Use Law* #9.03. He disputed Pyle's authorization to apply on the Association's behalf, citing deed language which says "All building plans must be checked by the grantors or their authorized agents or representatives and approved in writing." Hurst said that the Board must deny the application. Representative Chad Whitbeck responded that the project will make the area safer.

Deane noted that a hearing notice addressed to neighbor Giles Hamlin had been returned to sender due to no mail receptacle.

Sal Furnari said that neighbors' objections to the project are unclear. Chairman Crowell explained the ZBA's process and timelines.

With no further comments or questions, Chairman Crowell closed the hearing.

REGULAR MEETING

The monthly Town of Otsego Zoning Board of Appeals (ZBA) meeting was held on this date at the Town Office Building in Fly Creek, NY. Chairman Greg Crowell called the meeting to order at 8:29 PM and led the Pledge of Allegiance.

Roll call was taken by clerk Bill Deane. Board members present were Crowell, John Dewey (vice-chairman), Sal Furnari, Tony Scalici, and alternate members Mary Anne Whelan and John Tedesco. With Corinne Armstrong and alternate member Dean Robinson absent, Whelan joined the meeting table. Also present were Town Supervisor Ben Bauer and Zoning Enforcement Officer Wylie Phillips.

Chairman Crowell asked whether any Board members had an ethical conflict with any of the applications. No one reported any conflict.

The Board reviewed the minutes of March 15, 2022, e-mailed to the members. Chairman Crowell moved to approve the minutes as written. Sal Furnari seconded the motion and it was approved, 5-0.

The only correspondence received since the last meeting was from the Otsego Lake Association, regarding Lake-area enforcement issues. Chairman Crowell turned it over to Phillips.

Deane noted that the Fly Creek Area Historical Society had published a book, *Fly Creek Area History*, and he had copies available for purchase.

The Board moved on to applications.

APPLICATIONS

22.01 – Nettie Jean Scarzafava (Elizabeth Davidson) – Area variances, construction of garage within 500 feet of Otsego Lake – 6771 State Highway 80 (#69.60-1-11.00)

Representative Elizabeth Davidson participated via Zoom. She said Scarzafava had bought the property 1½ years ago and wants to add a garage. The Board had determined that she would need the following variances: 26 feet on the north side, 17'6" on the west (rear) side, and 1'6" on the south side.

Board members expressed their concerns about the application. John Dewey noted that the lot measures only 0.15 acres, making the proposed project substantial and close to neighbors. He said that it would be the only garage in the area, thus not in harmony with the character of the neighborhood. He and Mary Ann Whelan also expressed concern about the height of the garage.

Chairman Crowell said it would be “a lot of structure on a very small lot,” and not in keeping with the neighborhood.

Tony Scalici said that the building would cover a high percentage of the lot, making it substantial. He said that it would be the only garage in the area, thus not in keeping with the neighborhood. Scalici said that Scarzafava bought the property knowing the laws, and that the difficulty was self-created. He said that water runoff was a concern, and that a simple parking area would achieve the desired effect.

Davidson asked if a carport would be more acceptable. Scalici said that Board members can't tell an applicant what might be approved; they have to consider the application before them. She could submit a new application if this one were denied.

Dewey moved to deny the variances sought. He said that the benefit sought could be achieved with a lesser project; that an undesirable change will be produced in the character of the neighborhood, as there are no other garages nearby; that the requested variances are substantial; that the project will have an adverse effect or impact on the physical or environmental conditions of the neighborhood; and that the alleged difficulty is self-created, as no garage existed on this property before. Scalici seconded the motion and it was approved, 5-0.

22.02 – Otsego Consulting, LLC (Joe Galati) – Area variance, construction of sheds and deck within 100 feet of Otsego Lake – 101 Badger Lane (#69.44-1-24.00)

Representative Joe Galati participated via Zoom. The Board reviewed the application. It was noted that Galati had a \$150 credit due to a previous application which had been withdrawn.

Chairman Crowell said that the deck would be almost at grade, and the sheds would be used just for storage, with no more feasible place to put them. He said there were other sheds and boathouses in the area. Crowell said he would like to see the sheds put on posts.

John Dewey said the creek and shrubs offer some buffering along the property line.

With input from Crowell, Tony Scalici moved to approve the variances sought: for Shed “A,” 29’1” on the south side and 19’6” on the north side; for Shed “B,” 29’7” on the south side and 11’11” on the north side; and for the deck, 29’8” on the south side and 24’11” on the east (rear) side; along with a variance from *Land Use Law* 4.04 for all three structures. Scalici said that there is no other feasible way to achieve the benefit sought; that no undesirable change will be produced in the character of the neighborhood; that, though the requested variances are substantial, they are not unreasonable; that the project will have no adverse effect or impact on the physical or environmental conditions of the neighborhood; and that, though the alleged difficulty is self-created, it will improve the property and put it to better use. Sal Furnari seconded the motion and it was approved, 5-0.

Galati asked to be put on the May 3 Planning Board agenda.

22.03 – Leatherstocking Association Common Area/Vince Pyle (Chad Whitbeck) – Area variances, stairway & deck within 100 feet of Otsego Lake in RA1 district (revised plan) – 162 Browdy Mountain Road (#84.08-1-29.00)

Representative Chad Whitbeck was present. He submitted the requested documentation of vegetation and elevations. Whitbeck said the pilings had been removed. He explained the plans to neighbors Tim & Tracy Killian.

Tony Scalici asked about William Hurst's question regarding Pyle's standing to apply on behalf of the Association. Clerk Bill Deane read aloud from the ZBA's minutes of January 19, 2021, relevant to a previous iteration of the proposed project. Town Attorney Ryan Miosek had opined that, “The ZBA does not have the authority to determine how this Association is going to conduct its business. If there is not an

operating agreement or some other document memorializing how the Association is to conduct itself and what members have the authority to speak on behalf of the Association, the ZBA can't decide those questions for them. If the other Association members do not wish for Mr. Pyle to speak for them they should take the proper legal steps to enjoin Mr. Pyle from doing so. Failing that, if Mr. Pyle submits the documents and information that the ZBA requires, the ZBA must process his application and make a determination based on the documents and information before it." Sal Furnari and Tony Scalici noted that Miosek did not cite any law or legal precedent for this opinion.

Deane noted that, based on Hurst's letter, owners of seven of the 13 shares of the Association were on record as opposing the proposed project. According to the Town Clerk, the \$150 ZBA application fee has not been paid.

John Dewey said that the revised project is roughly half the size of the original ones, which the Board denied. It fits in better, and will help with safety and erosion control.

Chairman Crowell moved to approve the variances sought: 15 feet on the west (State Highway 80) side; 20 feet on the east side; 21 feet on the north side; and a variance from *Land Use Law* 4.04, which prohibits construction within 100 feet of Otsego Lake. Crowell said that no undesirable change will be produced in the character of the neighborhood; that the requested variances are moderate, not substantial, and the minimum needed to achieve the desired effect; that the project will have no adverse effect or impact on the physical or environmental conditions of the neighborhood; and that, though the alleged difficulty is self-created, it will improve the property and put it to better use; with the conditions that any areas where vegetation is removed be revegetated; and that there be an erosion control mat underneath the deck. Furnari seconded the motion and it was approved, 4-0, with Mary Ann Whelan abstaining due to the ownership/standing issues.

Whitbeck asked to be put on the May 3 Planning Board agenda.

22.04 – Mary Alyce Peterson (Barb Monroe) – Area variances, demolition & replacement of house within 100 feet of Otsego Lake – 6690 State Highway 80 (#69.76-1-8.00)

Representative Barb Monroe was present. She said that applicant Mary Alyce Peterson wants to demolish and rebuild a two-story house within 100 feet of Otsego Lake. Because she wants to "square off" a 3x10' open space in the southwest rear corner of the existing house, it would not be in the same footprint. Monroe said the building would be no closer to the property lines, and gave members permission to visit the property. She submitted a check for \$150 (delivered to the Town Clerk) for the ZBA application fee.

The Board determined that the following variances would be required: 35' on the front (State Highway 80, or west) side; 28½" on the south side; and a variance from *Land Use Law* 4.04, which prohibits construction within 100 feet of Otsego Lake.

Chairman Crowell said that the Board would need elevation drawings, and documentation of the distances from neighboring structure(s) on the south side of the house. Crowell moved to deem the application complete, contingent on those items to be delivered to the Zoning Enforcement Officer by May 3, and to schedule a public hearing for May 17, with the same contingency. Tony Scalici seconded the motion and it was approved, 5-0.

22.05 – Charlton Jones – Area variances, construction of porch within 100 feet of Otsego Lake in RA1 district – 6680 State Highway 80 (#69.76-1-11.00)

Applicant Charlton Jones was present. Chairman Crowell reminded the Board of the situation: The Planning Board approved a site plan for replacement of a camp in the lakeshore protection area for Jones in 2018; it was supposed to be a replacement-in-kind with no porch. Former Zoning Enforcement Officer Jess Lanza subsequently gave Jones permission to add a porch, then issued a "stop-work" order when he learned of his mistake. Jones now wants to apply for a variance to complete the porch. The Board normally cannot entertain an application while a property is in violation, but Crowell said he would allow a ZBA application here due to the circumstances.

Jones said it would be a partially-cantilevered porch with three posts and no railings. He gave members permission to visit the property. Zoning Enforcement Officer Phillips said that Jones had paid the \$150 application fee.

The Board determined that the following variances would be required: 16' on the west (State Highway 80) side; 33" on the east (Lake) side; and a variance from *Land Use Law* 4.04, which prohibits construction within 100 feet of Otsego Lake.

John Dewey moved to deem the application complete and schedule a public hearing for May 17. Chairman Crowell seconded the motion and it was approved, 5-0.

22.06 14 – Emily Stolarczyk (Sarah Campbell) – Interpretation re: hamlet residential/RA1 district – 259 Goose Street (#98.00-1-40.01)

Applicant Emily Stolarczyk was present, and attorney Sarah Campbell participated via Zoom. Clerk Bill Deane said that the \$150 application fee had been paid, according to the Town Clerk. Deane read aloud from the ZBA's minutes of October 19, 2021, where the Schaer family requested an interpretation regarding the Stolarczyk property:

<< Applicants Al & Mary Schaer explained the situation for which they are asking an interpretation. Their new neighbor to the east, Emily Stolarczyk, recently put up a fence along her property line, about 18 feet from the edge of Goose Street. Stolarczyk has had three horses in that area, causing some angst to the Schaers. Their understanding is that the property within 250 feet from the road is zoned "hamlet residential," therefore horses should not be permitted there.

Clerk Bill Deane explained that there was a discrepancy between the zoning maps which hang in the Town building, and that which was on the Town's web-site. The latter showed the property to be in the residential-agricultural district, so Zoning Enforcement Officer Lanza had advised Stolarczyk that she could have horses there. However, the wall maps confirm that the area within 250 feet of Goose Street is hamlet residential, and the RA district commences beyond that. The Town Board determined that the wall maps are correct, and the web-site has been or will be corrected.

After discussion, Tony Scalici moved to instruct the ZEO to apply the correct zoning map, and inform Stolarczyk that the horses are to be kept at least 250 feet from the road. Chairman Crowell seconded the motion and it was approved, 5-0. >>

Crowell explained that that was a "courtesy" decision, not a formal resolution by the Board, since Lanza had not issued a written determination to appeal.

Campbell said that the keeping of horses was a pre-existing, non-conforming use of the property. The Stolarczyks bought the property from Jim & Joan Foutch in June, 2021. The Foutches were present, and Crowell gave them permission to speak. They said they and their family had owned the property since 1961, and kept horses and goats on it until 2006. At some point, part of the property had been rezoned to hamlet residential, affecting only them, but no one had ever informed them about this change nor complained about their livestock. Chairman Crowell asked them to put that all into writing for the Board.

Crowell moved to deem the application complete and schedule a public hearing for May 17. Sal Furnari seconded the motion and it was approved, 5-0.

OTHER BUSINESS

Zoning Enforcement Officer Phillips said that he had issued two land use permits in the past month.

With no further business, at 10:16 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Clerk