

Town of Otsego Zoning Board of Appeals (ZBA)

Minutes – May 17, 2022

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

PUBLIC HEARINGS

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

Chairman Greg Crowell opened the Peterson public hearing at 7:02 PM, and gave guidelines for public hearing behavior and comments. Crowell asked if anyone from the public had comments or questions about the application.

Bernard Madden of 6686 State Highway 80 said he had no objection to the proposed project.

Betty VanHeusen of 6693 State Highway 80 said the Petersons had been wonderful stewards of the property, and she supports the project.

David VanHeusen of 6693 State Highway 80 said he supports the project.

Helen Rees of 6696 State Highway 80 said the variances requested were small, and she totally supports the project.

Chairman Crowell read aloud a May 13 e-mail from Jim & Caroline Sever of 6691 State Highway 80, saying the Petersons had been good stewards of the property, and the Severs support the project.

With no further speakers or correspondence, Crowell closed the hearing.

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)

Chairman Crowell opened the Jones public hearing at 7:07 PM, and asked if anyone from the public had comments or questions about the application.

Bernard Madden of 6686 State Highway 80 said he had no objection to the proposed project.

Helen Rees of 6696 State Highway 80 said she was thrilled about the project, and supports it.

Mary Alyce Peterson of 6690 State Highway 80 said she supports the project.

With no further speakers or correspondence, Crowell closed the hearing.

22.06 – Emily Stolarczyk (Sarah Campbell) – Interpretation re: hamlet residential/RA1 district – 258 Goose Street (#98.00-1-40.01)

Chairman Crowell opened the Stolarczyk public hearing at 7:09 PM, and asked if anyone from the public had comments or questions about the application.

Former Town Supervisor Meg Kiernan reviewed the map discrepancies which led to this application. The Town Board had approved a color-coded map in 1995, and it hangs on the wall of the nearby room. A map had been added to the Town's web-site in 2014, but it differed from the 1995 map with regard to the Goose Street properties. After the discrepancy was brought to the Town's attention, Kiernan contacted the Department of State, but learned the only Town of Otsego map they had on file was one included with the 2008 Comprehensive Plan, and matching the one on the Town web-site. The Town Board held a public hearing in September, 2021, and voted to approve the wall map as the correct one. (Representative Sarah Campbell clarified that the Town did not formally adopt the wall map, just chose it as the correct one.) Kiernan said the Town and Zoning Enforcement Officer had made a mistake in informing the Stolarczyks that their land was wholly in the RA1 district, so they should be grandfathered to use it as such.

Joan Foutch of 119 Bailey Road said she and her husband formerly owned the Stolarczyk property. She said theirs was the only property affected by the 1995 change, yet they were never invited to any hearing on the subject nor advised about the change.

Jim Foutch of 119 Bailey Road said the property had been in the Foutch family since 1961, and used as a "hobby farm" with farm animals on it until 2006. He disputed some of the Schaers' contentions.

Julie Huntsman of 2151 County Highway 26 said the Stolarczyks had bought the property thinking it was in the RA1 district, based on Town errors by the web-site map and Zoning Enforcement Officer. She suggested a mediated solution, such as the Town paying for a fence.

Jeff Foutch of 153 Bailey Road noted that the nearby Cider Mill has chickens and ducks on their property.

Jamie Foutch of 153 Bailey Road said the Stolarczyks have been trying to keep peace, putting up a good fence and keeping the area clean.

Brian Leyde of 157 Stone House Road said the map has still not been updated on the Town's web-site, and this was a ridiculous situation.

Chairman Crowell read aloud a letter from Alene Foutch, saying she had moved to that property in 1961 and had various animals on it over the years. She did not understand the current neighbors' concerns.

Chairman Crowell read aloud a May 16 letter from Mary Schaer of 272 Goose Street. She wrote that the property was not singled out in 1995, as there are three neighboring properties that are partially hamlet residential and partially RA1. She said real estate documents show that their property next-door is hamlet residential. Schaer said that the Stolarczyks have 26 acres, and there is no reason they have to keep their horses so close to the Schaers' home.

John Dewey read aloud a May 16 letter from Al Schaer of 272 Goose Street. Schaer wrote that the application does not meet the requirements of *Land Use Law* 9.01. He noted the October 19, 2021 ZBA decision on the matter, wherein the Board voted "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." (Tony Scalici disputed the word "correct.") Schaer said that by the Foutches' testimony, there have been no animals on the property since 2006, and *Land Use Law* 1.05 says that "recommencement of non-conforming uses is not permitted following a lapse of the use for more than two years."

With no further speakers or correspondence, 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 7:44 PM and led the Pledge of Allegiance.

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

The Board reviewed the minutes of April 19, 2022, e-mailed to the members. Dewey noted that the correct address for Stolarczyk is 258 Goose Street, not 259. Dewey moved to approve the minutes as amended. Scalici seconded the motion and it was approved, 5-0.

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

Other than that read during the public hearings, there was no correspondence received since the last meeting. The Board moved on to applications.

APPLICATIONS

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

Applicant Mary Alyce Peterson and representative Barb Monroe were present. Clerk Bill Deane read aloud from the minutes of April 19 relevant to the application.

Chairman Crowell said the proposed project was reasonable, and would have no negative impact. John Dewey agreed, but noted that the deck comes out two feet further than the building footprint, and 6'6" from the Lake, changing the necessary variances that the Board had determined at the last meeting. The

correct variances needed would be 38 feet on the front (State Highway 80, or west) side; 28½ feet on the south side; 29 feet on the rear (Lake, or east) side; and a variance from *Land Use Law* 4.04, which prohibits construction within 100 feet of Otsego Lake.

Crowell moved to approve those variances. He said 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 so in comparison with the existing structure; 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. Corinne Armstrong seconded the motion and it was approved, 5-0.

Monroe asked that the application be put on the June 7 Planning Board agenda.

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. Clerk Bill Deane read aloud from the minutes of April 19 relevant to the application.

Chairman Crowell said the project is in keeping with the neighborhood, but expressed concern about the runoff created by increased roof area. He said he would want to see gutters installed on both sides and directed into dry-wells.

Allowing one foot for the gutters, the Board determined that the following revised variances would be required: 17 feet on the west (State Highway 80) side; 34 feet 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 approve those variances, stipulating that gutters be installed on both sides and directed into dry-wells. Dewey said there is no other feasible way to achieve the benefit sought; that no undesirable change will be produced in the character of the neighborhood, and in fact the change will be desirable; that, though the requested variances are substantial, they are invisible to neighbors; that, with the runoff mitigation, 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 is reasonable and will improve the property. Chairman Crowell seconded the motion and it was approved, 5-0.

Jones asked that the application be put on the June 7 Planning Board agenda.

22.06 – Emily Stolarczyk (Sarah Campbell) – Interpretation re: hamlet residential/RA1 district – 258 Goose Street (#98.00-1-40.01)

Applicant Emily Stolarczyk and representative Sarah Campbell were present. Clerk Bill Deane read aloud from the minutes of April 19 relevant to the application. Former property owner Jim Foutch submitted a written timeline of his family's former use of the property, as requested at the last meeting. Stolarczyk submitted a letter for the file.

Campbell, an attorney with Hinman, Howard & Kattell, LLP, submitted a letter for the file. She said she had been an attorney specializing in municipal, zoning, and land-use law for the past 31 years. She said Town officials had been helpful in getting her the information she has requested. Campbell said that the Zoning Enforcement Officer had issued a cease-and-desist order and a notice of violation to Stolarczyk, both dated March 23, 2022, and citing her maintaining of livestock in the Town's hamlet residential district. This is what they are appealing. Campbell offered the following arguments, contained in her letter:

- "Agricultural use" is defined in the *Land Use Law* as "Any parcel of land which is used for the raising of agricultural products or livestock for commercial purposes." These horses are not being used for commercial purposes, and therefore should be permitted anywhere in the Town.
- The 2008 Comprehensive Plan was adopted with the map shown on the web-site. This effectively rescinded the 1995 map, and shows the Stolarczyk property to be in the RA1 district.

- The Town Board acted improperly in 2021 in designating the 1995 map as correct. There were no referrals to the County Planning Board nor to neighboring municipalities, and no environmental study done.
- The parameters of “hamlet residential” are not addressed by the Town’s *Land Use Law*.
- Any ambiguity in the law must be construed in favor of the applicant, in this case Stolarczyk.

Campbell concluded that she wants both the cease-and-desist order and the notice of violation overturned. She suggested that, in the future, the Town should identify specially-affected properties by tax map number. With respect to identifying the correct map, Campbell cited *Land Use Law* 1.04, which says that the ZBA “shall determine applicability” in cases of doubt. Tony Scalici and Chairman Crowell said that the ZBA is an appeals board, whereas the Town Board is legislative, thus responsible for any correction to the maps.

Deane pointed out the copy of *A Planners’ Dictionary* in the meeting room. Its definitions (e.g., “livestock”) may be helpful in cases where the Town’s are lacking.

Mary Anne Whelan said the question was a functionally correct map vs. a technically correct map, and wondered which is legally binding. Chairman Crowell said he would be consulting with Tom Fucillo, a land-use attorney hired by the Town. Crowell wants his input before the Board makes any decision, and suggested the application be tabled until the June 21 meeting.

Stolarczyk said she was eight months pregnant, and said that date may conflict with her scheduled delivery date. She asked that, if the decision cannot be made tonight, it be tabled until the July 19 meeting. Deane noted that would be 63 days after the public hearing, whereas the Board is required to act within 62 days. Stolarczyk said she was willing to waive the 62-day “clock” on that process, to accommodate her request. Campbell reminded the Board that the public hearing had been closed.

Chairman Crowell moved to table the decision to July 19, by mutual agreement with the applicant. John Dewey seconded the motion and it was approved, 3-2, with Scalici and Corinne Armstrong opposed.

OTHER BUSINESS

Zoning Enforcement Officer Wylie Phillips said there had been no new ZBA applications received. Phillips said that Town Supervisor Ben Bauer had asked him to solicit ZBA member input on the mysterious light blue or green-colored section of the Town maps.

Clerk Bill Deane explained that the zoning map hanging in the Town Building was approved by the Town Board in 1995, and signed off by its members and Clerk with a gold seal. Deane showed some members the map in question. There are two sections which appear to be colored light blue or green, but there is nothing in the key which identifies this color. Town Clerk Pam Deane is the only one remaining from the group which signed the map, and she does not recall any special decisions regarding these areas, nor is there anything in the *Land Use Law* about them. ZBA members were not familiar with the issue and had no input for the Town Board.

With no further business, at 9:03 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Clerk