

Town of Otsego Zoning Board of Appeals

Minutes – May 19, 2015

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 7:02 PM and roll call was taken by Secretary Bill Deane. Board members present were Crowell, John Tedesco, and Michael Pelcer. Members Meg Kiernan (Vice-Chairman) and Christopher Voulo, and alternate members Nicholas Weir and Dean Robinson, were absent (Robinson arrived at 7:44, during the Bissell applications). Deane reminded the Board that, with only three members present, a unanimous vote would be required to pass any motion. Zoning Enforcement Officer Tavis Austin and Town Attorney Michelle Kennedy were also present.

Chairman Crowell asked if anyone had a potential conflict with tonight's applicant. No one reported a conflict.

The Board reviewed the minutes of April 21, 2015, e-mailed to the members. Tedesco moved to approve them as written. Pelcer seconded the motion and it was approved, 3-0.

Chairman Crowell reviewed correspondence received since the last meeting, including an April 1 memo from the County Planning Department regarding Department of Transportation notification on certain Planning Board applications. Other correspondence was related to the Otsego Apple Growers application.

The Board moved on to applications.

APPLICATIONS

15.03 – Otsego Apple Growers, LLC (Bill Michaels, Les Sittler, Doug Zamelis) – Interpretation, December 30, 2014 determination by Zoning Enforcement Officer Austin – 288 Goose Street (#98.00-1-30.00)

Chairman Crowell read aloud a May 5 letter (filed) from attorney Les Sittler to Chairman Crowell and Secretary Deane, asking that the Otsego Apple Growers application be adjourned to the June 16 meeting, and waiving the Board's time limit on making a decision. Crowell granted the request in a May 13 letter.

Crowell said two letters (filed) in support of the application were received after the April 21 public hearing: from Scott & Teresa Ubner (April 17) and Lin & Michael Molloy (April 21).

15.04 – Addison “Peter” Bissell (Martin Tillapaugh) – Area variance, existing art studio building within side-yard setback – 6515 State Highway 80 (#84.12-1-6.00)

Citing “attorney-client privilege,” Town Attorney Michelle Kennedy met with the ZBA members and Zoning Enforcement Officer outside the room from 7:07-7:37.

Addison “Peter” Bissell was present, as was attorney Martin Tillapaugh, representing the applicant. This is essentially the same application which came before the Board on January 20, 2015. Brothers Boyd and Addison Bissell own adjoining lots which have been used as a single property, more than 100 feet from but within 500 feet of Otsego Lake. There was a small building called an “art studio” on the property line. At some point, the building was either moved to, or razed and rebuilt on, Addison's side of the property line. The building is now only 9.5 feet from Addison's southern property line, thus needs a variance of 20.5 feet.

Chairman Crowell read aloud a May 12 letter from attorney Doug Zamelis, who said he represented two neighbors of the Bissells (tax map #84.12-1-8.00 & -14.00). Zamelis said he objected to the ZBA entertaining Addison's application. He said the application is incomplete, as it does not cite the section of the *Land Use Law* Bissell is seeking relief from. He said that Bissell would be increasing a non-conformity, and would need site plan review by the Planning Board.

Attorney Tillapaugh asked Chairman Crowell to amend the application, showing that Bissell is applying for an area variance for a side-yard setback, per section 2.02 of the *Land Use Law*. Tillapaugh said he realizes the project would require site plan review, and Zoning Enforcement Officer Austin noted that that can't be done until or unless

the variances are granted. Tillapaugh said the Bissells may do a lot line adjustment instead.

Tillapaugh said there was no notice of violation related to the variances sought on this building, thus the application is timely. He asked the Board to go forward with it.

Zamelis said the art studio was constructed after the October, 2014 court agreement, and showed a November 13, 2014 photo (from the County web-site; filed) of the property to verify that. He said the notice of violation was for *Land Use Law* section 4.04 (lakeshore protection), not 2.02. Zoning Enforcement Officer Austin said that 4.04 was the “big picture,” not the sole reason for the violation. Attorney Kennedy said that, per New York Town Law 267-b, Austin’s verbal determination should be sufficient. Zamelis disagreed.

John Tedesco moved that the Board should not entertain this application, due to various proper procedures being ignored. Chairman Crowell seconded the motion. Zoning Enforcement Officer Austin said it is unfortunate when someone starts a project before going through the proper process, but it is not uncommon for the ZBA to encounter such a situation, and this is the applicant’s only remedy. Crowell withdrew his second and the motion failed.

Tillapaugh said dismissing the application due to technicalities would be “elevating procedure over substance,” but said that he could ask Zoning Enforcement Officer Austin to issue a new notice of violation (NOV) citing the side-yard setback issue, then submit a new application next month. Zamelis said that would be acceptable.

Tillapaugh said that he was withdrawing Addison’s current application and would submit a new one at a later date. He asked Austin to issue a new NOV.

15.05 – Boyd Bissell (Martin Tillapaugh) – Area variance, existing deck within 500 feet of Otsego Lake – 6505 State Highway 80 (#84.12-1-7.00)

Citing “attorney-client privilege,” Town Attorney Michelle Kennedy met with the ZBA members and Zoning Enforcement Officer outside the room from 7:07-7:37.

Addison “Peter” Bissell was present, as was attorney Martin Tillapaugh, representing the applicant. This is essentially the same application which came before the Board on January 20, 2015.

Brothers Boyd and Addison Bissell own adjoining lots which have been used as a single property, more than 100 feet from but within 500 feet of Otsego Lake. There was a deck on Boyd’s property which was removed and replaced with a slightly larger (by about two feet) deck, with grading done on the land nearby. Austin issued a “stop-work” order on May 30, 2014, because the work was being done in violation of the Town’s *Land Use Law*. Because the deck is only 0.2 feet from the southeast property line, Boyd needs a variance of 29.8 feet before going to the Planning Board for site plan review. His January, 2015 application was deemed “untimely” because more than 60 days had elapsed since the notice of violation (NOV). Austin issued a new notice of violation dated April 15, 2015, and Bissell submitted a new ZBA application.

Chairman Crowell read aloud a May 12 letter from attorney Doug Zamelis, who said he represented two neighbors of the Bissells (tax map #84.12-1-8.00 & -14.00). Zamelis said he objected to the ZBA entertaining Boyd’s application. He said the April 15, 2015 NOV was practically identical to the May 30, 2014 one, and thus should not be treated as a newly-appealable action; he believes the application is still untimely due to the statute of limitations on administrative decisions made by the enforcement officer. Zamelis cited a 2007 New York State Court of Appeals case, *Matter of Palm Management Corp. v. Goldstein*. It involved the issuance of a second certificate of occupancy for the same property, and said, in part, “... the mere repetition, in words or substance, of an authorization... should not be treated as a newly appealable ‘order, requirement, decision, interpretation or determination’” because “Any other result would be unfair.”

Tillapaugh said he doesn’t think the Palm Management case is applicable to the Bissell case. Bissell is still in violation, has had three tickets issued, and has paid a fine. Two tickets were dismissed by an agreement made in open court in October, 2014, specifying that Bissell would try to rectify the situation by applying to the ZBA. He is trying to meet this part of the agreement.

Chairman Crowell noted that the original NOV occurred while the deck was under construction, while the second occurred after it was completed. Zamelis said he does not think that makes a difference, since the NOVs are substantially identical.

After discussion, John Tedesco moved that the ZBA dismiss this application as untimely, based on the 2007 New York State Court of Appeals decision. Chairman Crowell seconded the motion and it was approved, 4-0.

15.06 – Lisa Roberts – Area variances, expansion of existing residence on corner lot – 101 Cemetery Road (#113.00-1-27.00)

Applicant Lisa Roberts wants to expand an existing residence on a small corner lot. She submitted an application package, including a site plan, site map, photos, and a list of neighbors.

Because the lot has road frontage on both Cemetery Road and Allison Road, Zoning Enforcement Officer Austin said that both sides are subject to the 60-foot front-yard setback requirements. Roberts said she did not know the exact distances between the proposed expanded building and the property lines. Chairman Crowell said the Board would need those measurements before they could issue any variances.

Dean Robinson moved to deem the application complete, contingent on the aforementioned measurements being submitted to the Zoning Enforcement Officer by June 2, and to schedule a public hearing for June 16. Mike Pelcer seconded the motion and it was approved, 4-0.

With no further business, at 8:46 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Secretary