

Town of Otsego Zoning Board of Appeals
Minutes – June 16, 2015

PUBLIC HEARING

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

Chairman Greg Crowell opened the Roberts public hearing at 7:08 PM and invited members of the public to examine the site map. He then asked if anyone had comments or questions.

Nancy Chandler said she was just curious about the proposed project, and had no objections.

Walter Dusenbery said that he supports the proposed project. It represents an improvement in the property, and there is no other way to do it due to the small lot size. He said the current garage is further into the setback than the proposed expansion.

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 7:12 PM and roll call was taken by Secretary Bill Deane. All regular Board members were present: Crowell, Meg Kiernan (Vice-Chairman), Christopher Voulo, John Tedesco, and Michael Pelcer. Alternate members Nicholas Weir and Dean Robinson were absent (Robinson arrived later during the meeting). 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 May 19, 2015, e-mailed to the members. Tedesco moved to approve them as written. Pelcer seconded the motion and it was approved, 3-0, with Kiernan and Voulo abstaining because they were not at that meeting.

The only correspondence received since the last meeting was the May/June 2015 issue of *Talk of the Towns & Topics* (Volume 29, Issue 3); copies were distributed.

The Board moved on to applications.

APPLICATIONS

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. Measurements she submitted since the last meeting indicate that her proposed project would require a 14'5" variance on the front (south) side, and a 7'3" variance on the north side.

After brief review, John Tedesco moved to approve the variances as requested. With Chairman Crowell's input, Tedesco said that no undesirable change would be produced in the character of the neighborhood; that the benefit sought could not be achieved by any other feasible method; that the requested variances are not substantial; that the proposed variances will not have an adverse effect on the physical or environmental conditions in the neighborhood, but would in fact improve them; and that the difficulty is not self-created, as the existing building predates the *Land Use Law* and is already non-compliant.

Michael Pelcer seconded the motion and it was approved, 5-0.

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)

Applicant Bill Michaels was present, along with his family members and two attorneys, Les Sittler and Doug Zamelis.

Michaels said that he had given tours of the site to individual ZBA members. He said the current retail space covers 4,061 square feet, and the proposed addition would add 2,782 square feet, making 6,843. Michaels submitted a summary (filed) of various Town permits issued since 1987. He said the Town Zoning Enforcement Officers had consistently told him that, as long as he stayed within the existing building footprint, he would not require Planning or Zoning Board intervention.

Chairman Crowell read aloud a June 16 letter (filed) from Senator James Seward, supporting the application.

The application had been tabled during the April 21 meeting. Michael Pelcer moved to “take it off the table” so the Board could proceed on it. Christopher Voulo seconded the motion and it was approved, 5-0.

Chairman Crowell again said he feels that the pertinent sections of the *Land Use Law* are 1.04, which says “Non-conformities of lots, buildings, or uses of land or buildings may not be increased, expanded, or exchanged for other non-conformities,” and 1.05, which says “Pre-existing uses shall not be altered in such a way as to create a non-conformity or to increase the degree of non-conformity.” He said he has no problem with expanding the viewing gallery, stairways, etc., but the retail space is another matter.

Voulo cited another part of section 1.04, which says “Modifications, alterations and necessary repairs to an existing structure may be subject to building permit requirements but will not require Planning Board review.” He said that the previous Town permits set a precedent that the current project is allowable. Voulo said that defining an increase in non-conformity is a “gray area,” and the Town Board should clarify the law. He mentioned the Blue Mingo.

Meg Kiernan also cited the wording regarding modifications. She said that both sides of the issue can be argued. Kiernan noted that the Cider Mill predates most of the houses in the neighborhood. She also noted the smaller font size in the last sentence of Section 1.05.

John Tedesco said he agrees with Crowell, also citing Sections 1.04 and 1.05. He asked whether the proposed project would increase traffic and, if so, would that not constitute an increase in use?

Zoning Enforcement Officer Austin explained the rationale behind his December 30, 2014 decision. He said that the Cider Mill was grandfathered when the *Land Use Law* was implemented in 1987, allowing it to maintain and perpetuate its existing operation, but “typically you don’t allow expansion” under those circumstances.

Attorney Zamelis said that most Town laws that he deals with are much more precise than Otsego’s. He said that if a law is ambiguous, it should be construed in favor of the property owner and against the municipality.

Chairman Crowell acknowledged possible ambiguities, but said that he thinks the intent of the law is to discourage retail activity in a residential area.

Pelcer said that he thinks the proposed project is commendable, but agrees with Crowell and Tedesco that it is not allowable under the law.

At this point, Michaels submitted an alternate plan dated June 16, “Plan B,” which would not increase the retail space. Michaels explained the new plan. At the advice of Town Attorney Kennedy, Chairman Crowell invited the public to examine the revised plan and make comments. Speakers did not identify themselves and many were unintelligible. Rob Bohm said that this is another example of the Town discouraging business. Sheila Ross agreed. With no further comments, Crowell closed the floor.

Secretary Bill Deane reminded the Board that the application before them seeks an interpretation of Zoning Enforcement Officer Austin’s December 30, 2014 decision: “Following review of the Town of Otsego Land Use Law, and after consulting with the Town Attorney, my determination regarding the aforementioned project is that your client, Otsego Apple Growers,

LLC, may not proceed with their desired project prior to making an application to the ZBA for expansion of the non-conforming use with a use variance.” The public hearing notices cited interpretation of that decision, which had nothing to do with “Plan B.” Town Attorney Kennedy said she felt that, under the circumstances, the Board could interpret the law based on the revised plan.

At the advice of Attorney Kennedy, Chairman Crowell moved to declare the revised plan as a Type II action per State Environmental Quality Review Act (SEQRA) section 617.5(c)(28) and 617.5(c)(31). Kiernan seconded the motion and it was approved, 5-0.

Kiernan moved that the “Plan B” submitted is allowable under the *Land Use Law* as a modification, alteration, or necessary repair, and does not require a use variance. Chairman Crowell seconded the motion and it was approved, 5-0.

OTHER BUSINESS

Christopher Voulo suggested that the Board add the Pledge of Allegiance to their meeting agenda. The consensus of the Board was that this was a good idea. Secretary Bill Deane said he would add the Pledge to future agendas.

John Tedesco discussed the difficulty of comprehending the Bissell applications at the previous meeting. He said that the ZBA should be aware of Zoning Enforcement Officer Austin’s decisions prior to their becoming applications for interpretation. Austin distributed copies of his June 2 Zoning Officer report, and said that he could do that as a matter of routine in the future.

With no further business, at 8:28 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Secretary