

Town of Otsego Zoning Board of Appeals (ZBA)

Minutes – July 19, 2022

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

PUBLIC HEARING

22.08 – David Drenth (Barb Monroe) – Area variances, addition to residence within 100 feet of Canadarago Lake in RA2 district – 173 Marble Road (#52.08-1-27.02)

Chairman Greg Crowell opened the Drenth public hearing at 7:02 PM and asked if anyone from the public had comments or questions about the application. No one responded. 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 7:03 PM and led the Pledge of Allegiance.

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

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

The Board reviewed the minutes of June 21, 2022, e-mailed to the members. Chairman Crowell moved to approve the minutes as written. Tedesco seconded the motion and it was approved, 4-0.

Correspondence received since the last meeting was related to the Stolarczyk application, and read aloud by Chairman Crowell and Dewey:

- An undated letter from Neal McManus, who was Zoning/Codes Enforcement Officer in 1995, saying the August 9, 1995 district delineation regarding Goose Street was intentional and reasoned.
- A July 5 letter from David Bassler, who was Town Supervisor in 1995, saying much the same thing.
- An undated letter from Pam Deane, who has been Town Clerk since 1992, noting that *Land Use Law #1.04* specifies that “Any use not specifically permitted is prohibited,” and including a copy of the unanimously-approved September 8, 2021 resolution “that the Town Board of the Town of Otsego recognizes the Certified Zoning Map dated 8/9/1995 as the Official Town Zoning Map.”

The Board moved on to applications.

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APPLICATIONS

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

Clerk Bill Deane read aloud from the minutes of May 17 relevant to the Stolarczyk application. Chairman Crowell noted that the ZBA “decision” cited by neighbor Al Schaer during that meeting was not an official decision, as there was no Zoning Enforcement Officer action to rule on.

Chairman Crowell said he had received information from the Town's consulting attorney, Tom Fucillo. Representative Sarah Campbell asked if it was part of the record. Crowell said it was not, due to attorney-client privilege.

Chairman Crowell said he has been on the ZBA since 1995, and the Board has always gone by the 8/9/95 map. He feels it is legitimate, as attested by current and former Town officials. Crowell cited conflicting definitions of "agricultural animals" in *American Planners' Dictionary*, and of "farm animals" by New York Ag & Markets, and thinks the Town's *Land Use Law* should define livestock.

John Dewey said the letters from Town officials were helpful, and agrees with the intent of the 1995 map; however, the Town did not go through the proper steps to make it clear in the *Land Use Law* or file with the State.

Campbell reminded the Board that the current application is an appeal of the Zoning Enforcement Officer's March 23, 2022 cease-and-desist order and notice of violation.

Dewey noted that the Town and Zoning Enforcement Officer had informed the Stolarczyks that their land was wholly in the RA1 district, due to confusion about the correct Town map; and that "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 are permitted anywhere in the Town; there is nothing in the law which disallows hamlet-residential district residents from owning such animals. In light of this, Dewey moved to dismiss the Zoning Enforcement Officer's March 23, 2022 cease-and-desist order and notice of violation, but strongly encouraging the Stolarczyks to be good neighbors by voluntarily keeping their horses away from neighboring properties, and encouraging the Town to rewrite the law(s) and do the proper State filings to make the August 9, 1995 map official. John Tedesco seconded the motion and it was approved, 4-0.

Applicant Emily Stolarczyk asked what would happen if the Town rewrote the Law, clarifying that the Hamlet Residential district extends 250 feet from Goose Street. Chairman Crowell said she would be grandfathered.

22.08 – David Drenth (Barb Monroe) – Area variances, addition to residence within 100 feet of Canadarago Lake in RA2 district – 173 Marble Road (#52.08-1-27.02)

Clerk Bill Deane read aloud from the minutes of June 21 relevant to the Drenth application.

In response to questions, representative Barb Monroe said the addition would be no higher than the existing house, and consist of living space, not a bedroom. She said she was not sure where the well and septic system were located. Deane said the Planning Board would need to know that.

Chairman Crowell moved to approve the variance sought: a variance from *Land Use Law* 4.04, which prohibits construction within 100 feet of Canadarago Lake, specific to the project submitted. Crowell 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 the requested variance is moderate, not substantial; 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 is reasonable and will improve the property, weighing the potential benefit to the applicant vs. any potential detriments. John Tedesco seconded the motion and it was approved, 4-0.

Monroe asked that the application be put on the August 2 Planning Board agenda.

22.09 – Sarah Senchyshyn (Barb Monroe) – Area variance, subdivision of five-acre lot into two parcels in RA2 district – 174 Cook Road (#113.00-1-74.21)

Clerk Bill Deane read aloud from the minutes of June 21 relevant to the Sencyshyn application.

Representative Barb Monroe submitted a July 7, 2022 survey prepared by Rasmussen Land Surveyors. It showed the 5.44-acre parcel being split into two roughly-rectangular lots, measuring 2.87 and 2.57 acres, respectively. Each would have 198.5 feet of road frontage, and no setback variances would be needed for the existing house. Deane said the project would need two area variances, due to insufficient acreage in each of the two lots.

John Dewey moved to deem the application complete and schedule a public hearing for August 16. Mary Anne Whelan seconded the motion and it was approved, 4-0.

OTHER BUSINESS

Zoning Enforcement Officer Wylie Phillips discussed the situation he had mentioned at the last meeting, where a deck was built on Marble Road, within 100 feet of Canadarago Lake, without any permits. Phillips said he has determined it was a replacement-in-kind, therefore needs no ZBA variances, only site plan review.

Phillips said he is working with Town Supervisor Bauer to propose improvements to the *Land Use Law*, particularly Section 4.04. He invited ZBA members to e-mail them with suggestions. John Dewey and Chairman Crowell remarked that Planning Board members are not doing their jobs, insofar as visiting sites and considering the conformity of projects.

With no further business, at 8:10 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Clerk