

Town of Otsego Zoning Board of Appeals

Minutes – October 18, 2016

PUBLIC HEARINGS

16.05 – Harrison Hummel – Area variances, revision of existing structures to bring within boundary lines – 110-114 Marble Road Extension, Richfield Springs (#52.00-2-17.02)

Chairman Greg Crowell opened the Hummel public hearing at 7:01. He had prepared a sign-in sheet for those wishing to make comments or ask questions. Crowell asked the public to keep the tone civil, and to focus on the *Land Use Law* as it relates to the application.

Michelle Fassett, an attorney representing the Canadarago Acres Homeowners' Association (CAHA), handed out copies of a 2004 New York State Court of Appeals decision [2 N.Y. 3d 609] which she said was relevant to the Hummel application. She said the application does not meet any of the criteria listed in *Land Use Law* Section 9.03. Fassett said that Hummel had gone beyond what is permitted by previous variances he has been granted. She asked that the Zoning Board of Appeals (ZBA) follow the law and deny the variances.

Tammy Graves of 2005 County Highway 22 used an easel to display photos of the Hummel property and neighboring properties. She said a Department of Environmental permit is required for construction there, due to a wetlands buffer area. Graves said the Hummel property is one of 22 parcels in the CAHA, created in 1987. She also cited the criteria listed in *Land Use Law* Section 9.03.

Joe Corbett of 113 Marble Road Extension, President of the CAHA, passed around photos showing his view before and after Hummel's development. Using a site map, he showed other places where the shed could be located. Corbett cited the 2009 variance Hummel was granted, and noted that the property is listed on the tax rolls as vacant land. He asked the ZBA to make Hummel follow the rules.

Brent Smith of 133 Marble Road asked for clarification of which parcel the variances are being sought for, since four parcels were listed on the application. The applicant and Board agreed that the only lot affected is tax map #52.00-2-17.02. Chairman Crowell read aloud a letter (filed) signed by Smith and Corbett, saying that they do not consent to any application concerning their jointly-owned parcel, #52.00-2-15.00. Smith said that the variance sought is substantial, and would essentially give Hummel three dwellings on one lot, violating the *Land Use Law*. Attorney Michelle Kennedy said that that issue would be addressed by the Planning Board, if the variances were granted. Smith also addressed Section 9.03.

Bruce Mang of 143 Marble Road said that the others had well-addressed the issues. Mang said that 50% of Hummel's property had been developed.

Daniel Cohen, attorney for the applicant, said that a section of the law citing "practical difficulties" (as opposed to the convenience of the property-owner) had been removed. He passed out copies of a New York State treatise which states that the Board, in considering variance requests, must weigh the benefit to the applicant vs. the detriment to the health, safety, and welfare of the neighborhood. Cohen said that no one had demonstrated significant detriment to the neighborhood, and invited Board members to view the property to see for themselves. He agreed that the variances sought are substantial and self-created, but disagreed that it failed on the other three criteria of Section 9.03. Michelle Fassett rebutted Cohen's arguments.

Applicant Harrison Hummel said that he respects his neighbors, does not want to aggravate them, and has tried to accommodate them. He takes responsibility for mistakes made, and wants to make things right. Hummel explained why he did not choose other possible locations of the shed.

Chairman Crowell noted that a public hearing notice addressed to Raymond Tonns had been returned to sender. With no further comments or questions, Crowell closed the public hearing.

16.08 – Barbara (Rich) Polgar – Area variances, replacement of shed/sauna within 100 feet of Otsego Lake – 6584 State Highway 80 (#84.08-1-30.00)

Chairman Greg Crowell opened the Polgar public hearing at 8:12, and asked if anyone from the public had comments or questions. No one responded. Crowell closed the hearing, and noted that a public hearing notice addressed to Leatherstocking Association had been returned to sender.

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 8:14 PM and led the Pledge of Allegiance.

Roll call was taken by Secretary Bill Deane. Board members present were Crowell, Tony Scalici (Vice-Chairman), Christopher Voulo, and Dean Robinson. With John Tedesco and first alternate member Michael Pelcer absent, second alternate member Bruce Miller joined the meeting table. Town Attorney Michelle Kennedy and Zoning Enforcement Officer Barb Monroe were also present.

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

The Board reviewed the minutes of September 20, e-mailed to the members. Voulo moved to approve them as written. Robinson seconded the motion and it was approved, 5-0.

The only correspondence received since the last meeting was a letter from attorney Doug Zamelis, which Chairman Crowell said would be addressed during the Bissell application. The Board moved on to applications.

APPLICATIONS

16.08 – Barbara (Rich) Polgar – Area variances, replacement of shed/sauna within 100 feet of Otsego Lake – 6584 State Highway 80 (#84.08-1-30.00)

The Harrison Hummel application was listed first on the agenda, but the applicant, representative, and neighbors left after the public hearing. Chairman Crowell looked for them inside and outside the building, but found no one. Tony Scalici moved to skip to the Polgar application. Christopher Voulo seconded the motion and it was approved, 5-0.

Bill Deane read aloud from the September 20 minutes relevant to the Polgar application. Chairman Crowell went through the criteria listed in Section 9.03 of the *Land Use Law*; he felt that only "e" (whether it was self-created) really produced a "yes" answer.

The Board asked representative Rich Polgar questions about the project. Polgar said that he wants a bigger building to give him more and safer storage. He said no trees would be removed. Polgar noted that there were other sheds in the neighborhood, and that no one from the public had complained.

Dean Robinson moved to approve the variances sought: a 27-foot variance to meet the rear-yard setback requirement on the east (Lake) side, along with a variance from *Land Use Law* Section 4.04, which prohibits new construction in the lakeshore protection area. Robinson said that no undesirable change would be produced in the character of the neighborhood; that there is no other feasible way to achieve the desired effect; that the variance sought is substantial, but minimal in comparison with the existing shed; that no adverse effect or impact would be produced on the physical or environmental conditions in the neighborhood; and that, while the desire for a larger shed is self-created, the destruction of the existing shed was not. Tony Scalici added that the project produces an improvement in appearance and storage, producing an overall positive impact.

Christopher Voulo seconded the motion and it was approved, 5-0. Secretary Bill Deane advised Polgar that he would have to go to the Planning Board for site plan review.

16.06 – Dennis & Elaine Connor – Area variance, expansion of existing deck within 100 feet of Canadarago Lake – 206 Bibik Road (#52.11-1-30.02)

Once again, no one was present on behalf of this application, nor was any new information received. The application will be removed from the agenda until further notice.

16.07 – Matthew & Linda Lionetti – Area variance, minor subdivision in RA2 District – 768 County Highway 26 (#114.00-1-46.01)

Zoning Enforcement Officer Monroe said that the applicants asked that this application be tabled until November.

16.09 – Addison Bissell (Robert Panasci) – Use variance, principle buildings per lot – 6515 State Highway 80 (#84.12-1-6.00)

Applicant Addison Bissell was present, along with attorney Robert Panasci (representation letter filed). Panasci discussed the situation which previously came before the ZBA in the spring of 2015. He said the Boyd Bissell situation had been resolved, but the Addison Bissell one had not. Panasci acknowledged that things had been done without the proper permits, and he and Bissell were here as the result of litigation on the matter. He said they were requesting a use variance for the second principle building (“art studio”) on the lot, which is not an extension of the bed & breakfast. Panasci asked that a public hearing be scheduled.

Panasci read aloud and submitted an April 15, 2015 violation notice from previous Zoning Enforcement Officer Tavis Austin. Panasci said that if they were not allowed to proceed based on this, they would apply for a building permit the next day.

Chairman Crowell allowed attorney Doug Zamelis to speak. Zamelis said he represents the Roy and Margaritis families, neighbors of the property. He said that he maintains that the application is untimely, as it should have been filed within 60 days of an official (i.e., the ZEO’s) action. There is no exception to this rule, even when litigation is involved. Zamelis said that the art studio building was newly built, not moved, 9’6” from

the property line in 2013. The previous area variance application was withdrawn on May 19, 2015, the same date that Boyd Bissell's application was deemed untimely. Zamelis said that if the ZBA decides to entertain the current application anyway, it should consider that the application is nowhere near complete and that the situation is self-created, which precludes granting of a use variance.

Attorney Kennedy distributed copies of a three-page handout, summarizing New York State statutes. She believes the application is timely based on these, and that to determine otherwise would be to deny the applicant due process – quoting Martin Tillapaugh, “elevating procedure over substance.” Kennedy feels that the application should be allowed as a professional courtesy, and advised the ZBA to hear it.

Zamelis disagreed, saying that Bissell had an opportunity for due process. Zamelis said that the 1984 statute that Kennedy cited had limited value due to a subsequent recodification. He said that State laws supersede Town laws. Panasci disagreed with Zamelis.

After discussion, Dean Robinson moved to proceed with the application based on Attorney Kennedy's advice. Christopher Voulo seconded the motion and it was approved, 5-0. Zamelis objected for the record.

Attorney Kennedy said that the ZBA would have to perform State Environmental Quality Review (SEQR). She said she would initiate coordinated review, and distributed copies of a proposed resolution to declare lead agency. The Board noted two places where “Planning Board” was printed instead of “Zoning Board of Appeals.” Kennedy said she would prepare a corrected resolution.

After discussion, Chairman Crowell moved to approve the resolution as amended. Tony Scalici seconded the motion and it was approved, 5-0. The consensus was to proceed with SEQR in December, giving other agencies time to respond to the resolution (they have 30 days to do so, which would be beyond the November 15 meeting date). Panasci agreed to waive the “62-day clock,” which requires the Board to make a decision within that timeframe.

The Board itemized what would be needed to deem the application complete and schedule a public hearing, citing *Land Use Law* Section 9.03 (3). Included would be a survey/site plan showing the location of the entire property, including the new building, and documentary evidence as to why their hardship is unique.

Bissell and Panasci will return for the November meeting.

16.10 – Cooperstown Country Club (Tim Horvath, Red Point Builders) – Area variances, expansion of building within 100 feet of Otsego Lake – 5748 State Highway 80 (#115.00-1-11.00)

Attorney Kennedy said that this application had been withdrawn.

16.05 – Harrison Hummel – Area variances, revision of existing structures to bring within boundary lines – 110-114 Marble Road Extension, Richfield Springs (#52.00-2-17.02)

Applicant Harrison Hummel and representative Daniel Cohen left after the public hearing, and did not return. The consensus of the Board was to proceed without them. Bill Deane read aloud from the August 16 minutes relevant to the application. The Board discussed the application.

Christopher Voulo, noting that he had been to the site several times, moved to deny the variances sought: a 28-foot variance on the southwest side of the property (covering both building additions), and a 35-foot variance

on the southeast (Marble Road Extension) side. With input from Chairman Crowell and Tony Scalici, Voulo said that the variances sought are not in keeping with the character of the neighborhood and would produce a detriment to nearby properties, as itemized by neighbors during the public hearing (e.g., excessive amount of property coverage, interference with views of the Lake, magnitude of the build-out is out of character on the Lake); that, based on his view of the site and site map, the benefit sought could be achieved in other ways requiring lesser or no variances; that the variance sought is substantial, as admitted by the representative, representing a 58% variance on the southeast side and a 93% variance on the southwest side; that the project would have an adverse effect or impact on the physical or environmental conditions in the neighborhood, producing a total of approximately half of the property covered by impermeable surfaces (roofs, patios) in close proximity to Canadarago Lake; and that, as admitted by the representative, the alleged difficulty is self-created (the applicant previously got a variance for a three-car garage, but opted to use that for living space instead). Overall, the detriment to the neighborhood far outweighs the benefit to the applicant.

Dean Robinson seconded the motion and it was approved, 5-0.

OTHER BUSINESS

Barb Monroe distributed copies of her Zoning Enforcement Officer report, saying there was “nothing much new.” With no further business, at 10:15 Chairman Crowell adjourned the meeting.

Respectfully submitted,
Bill Deane, Secretary