

**MINUTES
TOWN OF ULYSSES
ZONING BOARD OF APPEALS
03/05/14**

Approved 4/16/14

PRESENT: Chairman George Tselekis, Board Members-Andy Hillman, Bob Howarth, Carl Mann, Environmental Planner Darby Kiley, Town Attorney Mariette Geldenhuys.

Excused: Andy Glasner

Applicant: Steve Gordon, Susan Roenke, Richard Roenke, Marie Roenke, Steve Clapp

Public: Tom Myers, Krys Cail, Kate Seaman

Mr. Tselekis called the meeting to order at 7:00 pm. He noted the members present.

He stated the first item on the agenda is a Continuation from February 19, 2014 - **Town Law Section 280-a(1) exceptions for Applicants Margaret Rumsey Trust and Gordon/Wolffe Family Trust for property located at 1569 Taughannock Blvd**, Town of Ulysses, Tax Parcel Number 18.-1-5.2, and Applicant Ishka Alpern for property located adjacent to 1569 Taughannock Blvd, Town of Ulysses, Tax Parcel Number 18.-1-5.1.

Ms. Geldenhuys stated she reviewed this case and determined this Board does not have the authority to approve this. The Town should take action on this as described in Town Law Section 280-a (4) and establish an open development area. She asked the applicant for any questions or comments.

Mr. Gordon stated he understood and respects what this Board has ruled. He would work with Ms. Kiley for the next steps.

Mr. Hillman MADE the MOTION, Mr. Mann SECONDED the MOTION as follows:

Whereas, Town of Ulysses Tax Parcel Numbers 18.-1-5.1 and 18.-1-5.2 are legally existing lots created in 1976 prior to the adoption of Town subdivision regulations; and

Whereas, the parcels do not have road frontage on a state, county, or town highway; however, the parcels have a right of way, shared in common with others, for ingress from and egress to Taughannock Boulevard via a private road located on adjacent property; and

Whereas, according to New York State Town Law §280-a (1), “no permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure” is shown on the official map or plan of a town, or is an existing state, county or town highway, or is shown on a subdivision plat approved by the Planning Board; and

Whereas, “access” pursuant to Town Law §280-a(5) means that the lot directly abuts on such street or highway and has sufficient frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and that a frontage of fifteen feet is presumptively sufficient for that purpose; and

Whereas, New York case law interpreting Town Law §280-a states that: (1) the strip of land providing access to the property must be owned in fee by the party seeking the building permit to meet the access requirement, and access via an easement or right of way over land owned by another party does not satisfy the requirements of Section 280-a(1); (2) the Board of Zoning Appeals does not have the authority to grant an exception or variance pursuant to Town Law §280-a(3) where access to the parcel is via an easement or right of way; and (3) a building permit can only be issued upon the Town Board’s passage of a resolution establishing an open development area pursuant to Town Law §280-a(4), where building permits can be granted for lots where access is provided by right of way or easement;

Now, therefore, be it

Resolved that the Town of Ulysses Board of Zoning Appeals does not have the authority to grant an exception from the requirements of Town Law §280-a(1) pursuant to Town Law §280(3), or an area variance pursuant to that section, because access to the above-referenced parcels is via a right-of way across land owned by another party; and be it further

Resolved that the Town of Ulysses Board of Zoning Appeals refers the applicants’ requests to the Town of Ulysses Town Board to consider establishment of an open development area per Town Law Section 280-a(4), wherein building permits may be issued for the erection of structures to which access is given by right of way or easement.

The vote was taken as follows:

Mr. Hillman AYE
Mr. Howarth AYE
Mr. Mann AYE
Mr. Tselekis AYE

The vote was UNANIMOUS, MOTION APPROVED.

Mr. Tselekis stated the next item is a continuation from December 18, 2013: **Appeal of Susan and Richard Roenke for area variance(s) under Article XX Section 20.8** of the Town of Ulysses Zoning Law. This is for the purpose of the keeping of sheep, where the number of sheep does not meet the maximum number permitted by the Standards for Animals in Residential Areas. The property is located at 2586 Agard Rd, Town of Ulysses; Tax Parcel Number is 19.-1-3.35. He noted the applicants were in the room and asked them to give a brief description of the project as there are new members present.

Mrs. Roenke stated they have since received a letter from Mr. Aarnio, Soil and Water Conservation District, who was onsite to inspect their farming practices. It was determined that in regard to numbers of animals allowed it should be 120. They currently have 70 and would like to increase this number to 100. This is based on using animal units vs. animals per acre. Mr. Aarnio has not been able to return onsite but did get this letter to them.

Mr. Tselekis asked Ms. Kiley to refresh as to what the Town allows.

Ms. Kiley stated it would be 2 per acre which for 8 acres they have available would be 16.

Mr. Tselekis stated according to the experts 120 could be allowed onsite. They have 70; the County Ag District overlaps this area. They do not have any firm guidance on how this would affect this area.

Ms. Kiley stated the Ag and Markets had informed her they will review the property after the BZA makes a determination.

Mr. Roenke stated the start of this problem was when the sheep got out onto the neighbor's property. They filed complaints which started this process. They have worked with the Cornell who stated they should be allowed to have more than the 16.

Mr. Howarth stated he is a new member and does not have all of the details but he is sympathetic to this case. He works at Cornell and does not believe they would have a viewpoint. He worked on the Chesapeake Bay nutrient project and they would not take a legal position.

Mr. Mann asked if they had provided a contract with the Grassroots Festival to use their Agard Road property.

Ms. Kiley and Mrs. Roenke provided a copy of the agreement.

Mrs. Roenke stated according to Mr. Aarnio they do not need to use the Grassroots property because they have sufficient area on their own property.

Mr. Tselekis stated he is concerned about this being run as a viable farm vs. pets or hobbies. The neighbors have complained about the animals, the odors and the lack of containment last summer.

Mr. Roenke stated he had approached the neighbors that had complained; they agreed as long as the animals were contained he was okay.

Mr. Tselekis stated he still has concerns as he was onsite and there were definite issues from the neighbor as well as he noted odors.

Mr. Roenke stated he had approached another neighbor who offered to have the sheep graze on his property.

Mr. Mann stated he still has an issue with the lack of a written agreement requested in October 2013. The letter indicates they have use of the property until June 27, 2014. There is no indication when or if they can go back; they only have 8 acres what happens after that time period. He wants to see a contract.

Mr. Tselekis stated that if approved, the Roenke's receive a variance for 100 animals, if denied it would go to NYS Ag and Markets or to the Town Board to change zoning to allow for more animals per acre.

Mr. Mann MADE the MOTION, Mr. Hillman SECONDED the MOTION to table this until the next meeting; a written contract from Grassroots organization to be provided.

Mr. Tselekis stated he would prefer they deny the application.

Mr. Mann withdrew his motion.

Mr. Tselekis MADE the MOTION, Mr. Mann SECONDED the MOTION as follows:

Petitioners, Susan and Richard Roenke, 2586 Agard Road (Tax Parcel Number 19.-1-3.35), seek the following area variance from Town of Ulysses Zoning Law §20.8:

Allow up to 120 adult sheep on the property where only 16 are allowed.

The BZA reviewed the record and weighed the benefit to the Applicants against the detriment to the health, safety and welfare of the neighborhood if the area variance is granted by considering the following five statutory factors. Benefits sought by applicants are to allow for up to 120 adult sheep for agricultural operation:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

The property has changed the neighborhood from residential to farming atmosphere, neighbors complained about sheep getting out of fencing, with the density of sheep so close to the neighbors, the operation could be offensive and reduce the value of the neighboring properties.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

No, the applicant is utilizing additional rented land for grazing and they need the area variance to keep the sheep on their land.

3. Whether the requested area variance is substantial.

Yes, the variance is substantial from the Zoning Law standards, which might be considered onerous for sheep operations, however, the exception from 16 allowed by the zoning to 120, which is a substantial variance.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Yes, the neighbors have complained about sheep getting out of fencing and odors from manure.

5. Whether the alleged difficulty was self-created.

The numbers listed in the Zoning Law are very low for a viable livestock operation. The difficulty is self-created. The operation was started after the applicants moved into the house.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes that the variance is too substantial, the number of sheep could have an adverse effect on the neighborhood, the benefits to the applicant are outweighed by the detriment to the health, safety and welfare of the neighborhood.

For the reasons set forth above, and upon the evidence, law and facts, it is the opinion of the BZA that the application for area variance is denied.

VOTE:

Mr. Hillman	AYE
Mr. Howarth	AYE
Mr. Mann	AYE
Mr. Tselekis	AYE

The motion is passed, the application is denied.

Mr. Tselekis stated the next item on the agenda is a **Public Hearing to review an application from Steve Clapp for an interpretation of the Zoning Officer's decision and/or area variance(s) under Article VIII, Section 8.6 of the Town of Ulysses Zoning Law.**

The property includes an existing single-family residence (a principal building) and an elder cottage, which is an accessory structure. The applicant would like the elder cottage to be allowed as a second single-family residence, however, in the R2-Moderate-Density Residence District, only one principal building is permitted on a lot. The lot is split between two zoning districts, and the Zoning Officer determined that the regulations of the R2-Moderate-Density Residence District should prevail. The applicant is requesting a review of this decision.

If the Board of Zoning Appeals affirms the Zoning Officer determination, the applicant wishes to subdivide the lot, however, area variances from the lot area and yard requirements (including front and rear setbacks and front lot line width) of the Article VIII, Section 8.6 of the Town of Ulysses Zoning Law will be needed. The property is located at 3078 Dubois Rd, Town of Ulysses, Tax Parcel Number 32.-2-12.2.

Ms. Kiley stated she had sent Mr. Clapp written notification of the R1 vs. R2; Town Zoning stated Elder Cottage removed or back to former use when no longer needed.

Mr. Tselekis asked Mr. Clapp to present his project.

Mr. Clapp stated in 2006 he was living in this residence with his father and niece. His wife-to-be moved in and the situation became crowded. They resolved this by converting the garage on the property to a livable space. The pad of the garage is the footprint of the living space. He came to Alex [Rachun, Code Enforcement Officer] at that time and it was determined this would be the easiest way for him to build. He was advised of the temporary nature but thought he could get a variance at any time. The elder cottage was the most expeditious way of building at that time. It has been built out to be a really nice living unit. He and his wife married and have since moved closer to town. He is trying to sell this home and the ambiguity of this building for zoning has been problematic for buyers. They are only allowed one principal building for this zone. They do have shared water and shared sewer services on this lot. It was communicated to them that if divided this lot could not have shared services.

Mr. Tselekis stated they had received 4 letters from the public for this review. There are 3 letters of support, 1 letter of support with caution of drainage issues on Krys Cail and Tom Myers' property. He read the letters into the record. He asked for comments or questions from the public.

Ms. Cail stated the applicant went to all of the uphill neighbors but not the downhill neighbors about this change. There is no hardship for the applicant; the problem is he cannot sell because he is asking too high of a price. She supports these cottages; she was on the Planning Board when this was discussed and put into zoning. The elder cottage is located near the culvert they currently have drainage issues with. They have had washouts of this area which are costly to repair. The elder cottage drainage goes into this area. She does not think he should be able to cash out property at the highest rate-this is not a hardship. A hardship is continually replacing culverts for proper drainage. They

currently maintain a 2 ½ acre garden area. Any increased drainage would have a deleterious impact on this garden. The water table for this area is high, they have had flooding in the house; at one point they were awarded a FEMA award. They have springs located on these properties. If they follow the zoning this will take care of the problem. The elder cottage was temporary; they no longer have the need and it needs to be removed. She stated she has doubts if anyone were to rent this it would remain the same size. This is not a hardship for the applicant.

Mr. Clapp stated the runoff from this area has not increased due to the elder cottage. The garage was always there and they did not increase the footprint. He is not making a profit on this sale; he invested \$280,000 and spent \$60,000 to renovate the garage. They did not increase any drainage. There was an area enclosed by railroad ties; they covered this with large stone for a patio area. He mows in the back and has never experienced any springs; the mower has not gotten bogged down. There are berry bushes he mows around. The house is currently 600 square feet.

Mr. Tselekis asked for other comments.

Ms. Kate Seaman stated she is the real estate agent; the pricing is according to market analysis. She does not feel it is overpriced; it has been on the market 300 days-the potential buyers concerned with what they can use the building for. She has done full analysis to back up the asking price.

Mr. Myers stated they have had problems from runoff for years. High rains in the spring create problems for this culvert that are expensive to fix. Zoning is in place for specific reasons; the zoning is clear, if the elder leaves the former use must be restored.

Ms Cail stated they have recently dealt with an elder moving in with them. Due to needs this person is residing at Clare Bridge. The purpose of elder cottages is to not have to be put into a \$5000.00/month home. Trying to recoup their cost is not part of the plan. Again, there is no hardship to the applicant; no variance should be granted.

Mr. Tselekis asked if the Board had comments or questions.

Mr. Hillman stated he has reviewed the demographics; he can appreciate more situations where elder cottage will be needed. He understands why the property may benefit by changing; however, he finds the downhill issues impact and can find no compelling reason to grant the variance.

Mr. Tselekis stated the first item to review is the Code Enforcement Officer's decision that this is in the R2 District. If a parcel is in two zones; the more restrictive zone is applicable. They need to confirm or reverse this decision.

Ms. Geldenhuys confirmed if a parcel is in two zones; the more restrictive zone is applicable.

Mr. Howarth MADE the MOTION; Mr. Mann SECONDED the MOTION to confirm this parcel is in a R2 District; confirming the Code Enforcement Officer's decision.

The vote was UNANIMOUS, DECISION CONFIRMED.

Mr. Tselekis stated the procedure is to review the **variance for a subdivision**. He read the application into the records as follows. Petitioner, Stephen Clapp, 3078 Dubois Road (Tax Parcel Number 32.-2-12.2), seeks the following area variances from Town of Ulysses Zoning Law §8.6: [*BZANumbers are for Survey1/survey 2*]:

Minimum Lot Width for Parcel B (131.29/155.62 feet instead of the required 160 feet);

Minimum Lot Depth for Parcel A (128.1/105.87 feet instead of the required 200 feet);

Front Yard Setback for Parcel A (which is an existing nonconforming structure) and for Parcel B (16.7/22.0 feet instead of the required 50 feet);

Rear Yard Setback for Parcel A (27.0/22.0 feet instead of the required 35 feet).

He asked for any comments.

Mr. Clapp stated the folks downstream are concerned about runoff. There has not been an increase. He also stated another downstream neighbor did write in support of this project. This would apply to the benefit of applicant vs. detriment of neighbor. He does not feel there is any detriment to the neighbor.

Ms. Cail stated 600 square feet is acceptable size of the cottage. Nevertheless, she could see a new buyer wanting to increase the living space in the cottage.

Mr. Mann asked if they would be approving the subdivision.

Ms. Geldenhuys stated they would approve the variance; the Planning Board would review/approve the subdivision.

Mr. Tselekis asked for additional questions or comments.

Mr. Mann asked if there any other way to accomplish this, e.g. use variance.

Ms. Geldenhuys stated use variances are difficult due to proving economic hardship.

Mr. Tselekis stated the zoning is specific the elder cottage be restored to prior state. Essentially, removal of the bath and kitchen.

Mr. Mann asked if the remove the kitchen is it habitable.

Ms. Kiley stated if the kitchen is removed it would be returned to prior state.

Mr. Howarth asked if the flag lot for the elder cottage parcel would require a variance.

Mr. Tselekis reviewed the information on setbacks. It was noted the setbacks were not outrageous and the lots remaining reasonable. He asked for a motion or review of how the members were leaning. He noted the variances are not substantial.

Mr. Howarth stated having a hard time deciding how to approve; it is not undersized but concerned about the drainage issue. He also noted there are not significant differences in the setbacks.

Mr. Mann stated he has issues in breaking this off. A potential buyer could purchase and want a 3 bedroom vs. 1 bedroom. This changes the character of the neighborhood, though it is economically desirable to the property owner.

Mr. Clapp asked if nonconforming lot; could they build at 2/3 bedroom home.

Mr. Kiley confirmed they could. If the elder cottage is gone and the application for subdivision is approved, they could build. She also noted there would be no density difference as 1 acre lots are allowed in this area; no change to the character of the neighborhood.

Ms. Cail stated she went through a similar situation 2 ½ years ago in this room. Another neighbor presented a variance that was not large enough. They came, concerned with drainage issues at that time. The variance was approved. The variance included mitigating to not drain onto the property. They did this with no problem; then they added a garage that increased drainage onto their property. Bigger issue is ingress and egress; the driveway for the elder cottage would go over this culvert. They have been stewards of 24 acres; tipping point is getting reached by having all of their neighbors dump water on us. If the zoning is enforced this will not happen. Their neighbors are uphill with tiles, drains and garages. Part of these lots has bedrock close to the surface. Their lot is the most downhill of the Dubois addresses.

Mr. Myers stated they have installed 2 culverts over the past few years due to washouts. If this is allowed the amount of drainage into the creek would increase; this would increase potential wash out of the culvert.

Ms. Cail stated they have considering deeding the lane to the Town. This would make it a Town Road and the Town's property.

Mr. Tselekis reviewed the variance; he noted they would have to mitigate any increased drainage issues, mitigate future build out of the elder cottage, changes to the footprint would require review or approval. He asked for a motion to approve or not grant the variance.

Mr. Howard stated he is very concerned with the driveway on the elder cottage parcel.

Mr. Hillman stated he has concerns about establishing the flag lot, potential for building the flag portion of the lot.

Mr. Tseleki MADE the MOTION, Mr. Mann SECONDED the motion as follows: Petitioner, Stephen Clapp, 3078 Dubois Road (Tax Parcel Number 32.-2-12.2), seeks the following area variances from Town of Ulysses Zoning Law §8.6:

Minimum Lot Width for Parcel B (155.62 feet instead of the required 160 feet);
Minimum Lot Depth for Parcel A (105.87 feet instead of the required 200 feet);
Front Yard Setback for Parcel A (which is an existing nonconforming structure) and for Parcel B (22.0 feet instead of the required 50 feet);
Rear Yard Setback for Parcel A (22.0 feet instead of the required 35 feet).

The BZA reviewed the record and weighed the benefit to the Applicants against the detriment to the health, safety and welfare of the neighborhood if the area variances are granted by considering the following five statutory factors. Benefits sought by applicants are to subdivide the parcel in order to create two parcels on which each will have a principal building/single-family residence:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

Not likely, the house and cottage are existing structures.

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

No, any option for subdividing the property would create two lots that cannot meet all of the lot area and yard requirements.

3. Whether the requested area variances are substantial.

Of the four area variances requested, the Front Yard Setback of Parcel B is substantial, the Lot Depth variance of Parcel A is substantial, but only for a small area of the lot, and the lot depth increases. The Minimum Lot Width of Parcel B and Rear Yard Setback of Parcel A are not substantial.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

No, both residential structures are existing, and no additional construction or land disturbance are planned at this time.

5. Whether the alleged difficulty was self-created.

Yes, the applicant was aware of the zoning requirements when the elder cottage was constructed.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, even though at least two of the area variances are substantial, and the alleged difficulty is self-created, the buildings are existing, and the benefits to the applicant referred to above if the area variances are granted are not outweighed by the detriment to the health, safety and welfare of the neighborhood. Any driveway that is added must be permeable and any change in footprint in the elder cottage building should come to the Board for a variance before it is allowed.

For the reasons set forth above, and upon the evidence, law and facts, it is the opinion of the BZA that the application for area variances granted and the subdivision is subject to approval by the Town of Ulysses Planning Board.

VOTE:

Mr. Hillman	NAY
Mr. Howarth	NAY
Mr. Mann	NAY
Mr. Tselekis	AYE

MOTION DEFEATED, VARIANCE DENIED.

Discussion before the vote: Mr. Howarth is concerned about the driveway, and Mr. Hillman was concerned that the pole of the flag lot has a creek running down it and putting in a driveway would be difficult.

Mr. Tselekis stated they have minutes of 12/18/13 to approve.

Mr. Mann MADE the MOTION, Mr. Tselekis SECONDED the MOTION.

The VOTE was UNANIMOUS, MINUTES APPROVED.

Ms. Kiley stated there is training on ethics, municipal procedures on March 20, 2014.

Mr. Tselekis adjourned the meeting at 9:05 pm.

Respectfully submitted,

Robin Carlisle Peck
Administrative Assistant