

TOWN OF ULYSSES  
BOARD OF ZONING APPEALS  
8/20/2014

***APPROVED 9/10/14***

**Present:** Chairperson George Tselekis, Bob Howarth, David Means, Andy Hillman (entered meeting at 7:04pm), Environmental Planner Darby Kiley,

**Public present:** LaVerne Gatch, Edward Gatch, David Reynolds, Melissa Gatch, James Gatch, Ed Mekeel, Pete Houghton, Jonathan Cullen, Don Smith, Jenny Smith, Rob Lewin, Melissa Lewin, Ty Allen, Frank Santelli

**PUBLIC HEARING: Appeal of James and Melissa Gatch for area variance(s) under Article V Section 5.7 of the Town of Ulysses Zoning Law. This is for the purpose of a two-lot subdivision, where one of the lots would not meet lot area requirements of the A1-Agricultural District. The proposed new lot would have 216 +/- feet of width at the front lot line, where 400 feet is required, and 1.681 +/- acres of lot area, where 2 acres is required. The property is located west of Jacksonville Rd and north of Mekeel Rd, Town of Ulysses, Tax Parcel Number is 24.-2-8.3.**

Mr. Tselekis asked the applicant to make a statement.

Mr. Jamie Gatch explained that the land he is requesting a variance for will be for his daughter to build a house. He explained why the particular lot they are requesting the variance for is only option from the land he owns. He owns a piece of property with significant frontage on Jacksonville Road, but Mr. Gatch stated that area is too wet to be a financially feasible location for a residence. This particular lot has easy access to electricity and municipal water. He stated that a qualified professional dug three feet down and found standing water. Mr. Gatch also explained that yet another section of property he owns is not suitable for his daughter based on future plans that he and his wife will build a home there.

The applicant showed the parcel configuration and a recent lot purchase adjacent to the property. He explained that for tax purposes, he consolidated the Parcels B1 and B2 as shown on the survey map. Ms. Kiley clarified that the applicant would like to create Parcel A out of Parcel B1.

Mr. Means asked the applicant about getting municipal water from Jacksonville Rd. Mr. Gatch responded that the pressure difference at that location makes municipal water not feasible. Applicant added that if municipal water was an available and feasible option, they would definitely take advantage of it. For now the plan is to drill a well. Mr. Means asked the applicant about the quality of water in drilled wells in that area. The applicant and his family have lived in the area for many years and can attest to good water quality.

Mr. Tselekis asked if the audience had any comments.

Mr. Edward Gatch stated that he is very much in favor of this variance; he lives approximately

200 yards from the property in question. Mr. E. Gatch said that the well water is good quality. Mr. E. Gatch asked the board to consider the fact that Mr. J. Gatch is not separating property to sell it, but for family reasons. He explained the right-of-way situation with farmed land on the adjacent property and why this is relevant to where the future proposed driveway would be. Mr. E. Gatch stated that the Gatch family residences have enhanced the community through good maintenance and therefore taxed accordingly.

Mr. Tselekis asked if the BZA if they had any questions.

Mr. Hillman said that the location the applicant claims is wet appears to be quite dry. The applicant explained that Mark Dresser dug a three foot hole and found standing water, and that Jacksonville has a history of being a wet area. Mr. Gatch asked if fixing the ditch is being considered. Applicant stated that his would prefer for his daughter to build along Jacksonville Rd, but the land is very wet and would mean an additional \$30,000 worth of excavating and drainage. The applicant stated that he currently uses the property for hunting and recreation, and foresees only two houses being built on this property.

Mr. Tselekis confirmed that neighbors have been notified and there was no written feedback. Mr. Tselekis stated that the BZA weighs the benefit of applicant weighed against detriment to community.

Mr. Means agreed that this is the best spot on the lot for a residence to be built.

Mr. Tselekis stated that this is a reasonable request and in general he tends to want to approve the variance. Reasons for that being: that a man would want to live next to his daughter, and that the proposed plan does not affect character of neighborhood. Mr. Tselekis stated that he does not see any negative effects. Mr. Tselekis noted that the variance on road frontage is substantial.

The board discussed the implications on allowing this variance and how it sets precedence for future variances.

Mr. J. Gatch questioned why this particular area is zoned for agriculture when it is in such close proximity to the hamlet of Jacksonville. He stated that he does not believe it is appropriately zoned.

Mr. Howarth stated that he is concerned that three houses could be built on the property. He stated that the Jacksonville Road side would have a legal lot regarding frontage but that the overall property in question only has adequate frontage for two homes. He is concerned about the metaphoric slippery slope of allowing frontage variances. Mr. Howarth asked if the applicant would consider donating a portion of the land along the Jacksonville Road side to a conservation organization. The applicant responded that he would not because of the limitations it provides for future use and resell value.

The board members discussed conditions they could include on this variance.

Ms. Kiley clarified that variances are about the land and not the people requesting the variance.

The applicant said that he would want the option in the future to sell property along Jacksonville Road.

Mr. Tselekis explained that if this variance is granted, any future subdivisions will be reviewed by the Planning Board. Mr. Tselekis stated that he believes the applicants request for variance is reasonable and that any variance request that is unreasonable is far off into the future.

It was discussed that if variance is granted, and in the future two houses could be built along Mekeel Road, and then if land along Jacksonville Road was subdivided, the applicant would need to request a variance for the lot created along Mekeel Rd.

Mr. Howarth stated that if he was to vote favorably on a variance it would need to be conditioned on future subdivisions.

Mr. Tselekis stated that he feels that zoning law provides a lot of protection regarding development of the Jacksonville Road land. Mr. Tselekis reviewed the variance and his findings along with stating that the Board should be encouraging family oriented development as the applicant is describing.

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

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 setback variance is granted by considering the following five statutory factors. Benefits sought by applicants are **create a lot that is limited dimensionally because of an existing driveway and garage:**

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.

**No. There is no evidence that the land subdivision will produce an undesirable change in the character of the neighborhood or a detriment to nearby 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.

**An existing driveway limits the options along Mekeel Rd and a wet area along Jacksonville Rd limits the future building location options.**

3. Whether the requested area variance is substantial.

**As a percentage 216 feet versus 400 feet, the variance is substantial; however, the difference between the lot area request, 1.681 acres versus 2 acres, is not substantial. The variance is not substantial as far as the impacts to the environment or character of the neighborhood.**

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

**It is unlikely that the variance will have an adverse impact on the physical or environmental conditions of the neighborhood.**

5. Whether the alleged difficulty was self-created.

**The difficulty is self-created because the entire property is large enough to create a lot to meet the zoning requirements.**

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, **even though the width at the front lot line variance is substantial as a percentage, the lot area variance is not substantial, 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.**

**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 is granted.**

*Discussion*

Mr. Howarth disagreed on several points regarding the findings. Under Number 2, he did not believe that the board has to grant variance for an undersized lot, as he believes there are other options, and under Number 3, he believes that the variance is indeed substantial.

Mr. Hillman disagreed on several points regarding the findings. Under Number 2, there are indeed other methods to building a home besides the request of the applicant. He agreed that there is not an adverse effect or environmental detriment. Mr. Hillman stated that this is a self-created problem and that there other ways to do this.

VOTE:

Mr. Hillman NAY  
Mr. Howarth NAY  
Mr. Means AYE  
Mr. Tselekis AYE

MOTION does not pass.

Mr. Howarth MADE the MOTION as follows,

In general, the BZA is in favor of this variance if legal counsel can confirm the stipulations regarding possible future sale and subsequent development of Jacksonville portion of property is within the zoning regulations (no variance required) at the time of the sale.

Mr. Tselekis MADE the MOTION to table the variance for the next meeting, Mr. Means SECONDED the MOTION:

The vote was UNANIMOUSLY in favor.

Result: variance request will be considered at the next meeting after legal consult.

BZA members informally agreed to take a short break at 8:24pm.

Return from break occurred at 8:31pm.

**PUBLIC HEARING: Appeal of Rob and Melissa Lewin for area variance(s) under Article IX Section 9.6 of the Town of Ulysses Zoning Law. This is for the purpose of the construction of a new house, which will replace two existing houses, where the new construction would not meet lot area requirements of the LS-Lakeshore District. The proposed house would be located 24 feet from the highway right-of-way and 44 feet from the Mean High Water Elevation, where 50 feet is required for both. The lot coverage would be 13% where 5% is required. The properties are located at 1325 and 1327 Taughannock Blvd, Town of Ulysses, Tax Parcel Numbers 28.-1-15 and 28.-1-16.**

Mr. Lewin provided the current conditions, background regarding the couples' history with the area, plans for the site, general home design, and the couples' commitment to being environmental responsibility.

Mr. Tselekis read an email correspondence from Jean Houghton in which she stated her support for the proposal.

Peter Houghton addressed the board and states that he is a NYS licensed engineer. Mr. Houghton stated that 8 out of the 9 criteria are not met and that the zoning law that was adopted makes a large amount of existing houses non-compliant. Additionally, Mr. Houghton said that the stream in question on the property in question is a permanent stream according to the Tompkins County Health Department.

Ms. Kiley referred to the USGS topographic map and confirms that the stream in question is identified as a seasonal stream according to the USGS, which is what zoning law uses to determine stream setbacks. Ms. Kiley clarified that certain criteria that Mr. Houghton mentioned are not application for existing lots.

Mr. Houghton stated that he is in general favor of the variance but that the zoning laws create many non-conforming lots and the BZA will have a very significant role when it comes to lakefront variances. Ms. Kiley stated that most of the lot size requirements did not change much from previous zoning.

Mr. Tselekis clarified to the board that the concern with this particular variance is the setback from the lake (i.e. the mean high water average), the setback from the road, and the percentage of lot coverage with the proposed building.

It was stated that the Health Department and the USGS might define streams in different ways

and that the implications of those definitions are used differently depending on the situation.

Ms. Kiley confirmed that the Planning Board would oversee a site plan review if it is determined that the proposed development is in the slope overlay area.

Jonathan Cullen stated that the plans look like a good improvement. Don Smith stated that the proposal is an improvement; the existing septic system is failing, and the plan shows that the residence will be beautifully situated on the land. Jenny Smith agreed with these statements.

Kate Seamon, who is a realtor for the property, made positive comment and voiced concern regarding the possibilities for the property in question if the variance is not granted.

Mr. Tselekis reviewed details regarding variance requests, as well as reviewing the improvements (regarding zoning law) made by the site plan to its current conditions.

Mr. Means stated concern regarding the plan for the home, specifically its placement and size.

Ty Allen, who is the designer for the residence, spoke to Mr. Means' concern and stated that the design is meant to maximize views of the lake while decreasing perception of the house's mass, as well as being mindful of the existing style along the lake frontage, and finally increasing outdoor space. Mr. Allen stated that his company's approach to construction and design is respectful to environment.

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

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 setback variance is granted by considering the following five statutory factors. Benefits sought by applicants are to **remove two existing residences and accessory buildings, combine the two parcels, and construct a new residence, where the existing lots are smaller than the minimum lot size requirements making it difficult to meet the setback and lot coverage requirements**:

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.

**No. There is no evidence that the replacement of two residences with one residence will produce an undesirable change in the neighborhood character or cause a detriment to nearby 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.

**The allowable building area is limited by the size of the existing lots.**

3. Whether the requested area variance is substantial.

**The highway right-of-way setback variance, 24 feet vs 50 feet, is substantial. The lakeshore setback, 44 feet vs 50 feet, is not substantial. The lot coverage, 13% vs 5%, is substantial. However, in each of these cases, the existing structures also exceed the minimum requirements.**

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

**It is unlikely that the variance will have an adverse impact on the physical or environmental conditions of the neighborhood.**

5. Whether the alleged difficulty was self-created.

**The difficulty is self-created because the applicant could use the existing nonconforming structures.**

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, **even though highway right-of-way variance and lot coverage variance are substantial as a percentage, lakeshore setback variance is not substantial, and the applicant would be removing multiple buildings, 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.**

**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 is granted.**

VOTE:

Hillman	A YE
Howarth	A YE
Means	A YE
Tselekis	A YE

Review and Approval of Meeting Minutes: There were no minutes to approve.

The board discussed the meeting date in order to accommodate variance that came in that day along with Gatch variance request. The next meeting will be on September 10, 2014.

### **Adjourn**

Mr. Means MADE the MOTION to adjourn, Mr. Hillman SECONDED the MOTION.

The vote was UNANIMOUSLY in favor.

Meeting adjourned at 9:12pm.