

TOWN OF ULYSSES
BOARD OF ZONING APPEALS
Wednesday, September 10, 2014

Approved: 10/01/2014

Present: Chairperson George Tselekis, BZA Members: Bob Howarth, Andy Hillman, Andy Glasner, David Means, Town Environmental Planner Darby Kiley

Public present: Tom Overbaugh, Robert Oswald, Michelle Bamberger, James Gatch, Amanda Robertson, Tim Gatch, Debbie Gatch, Edward Gatch, Nick Robertson, Melissa Gatch, Dell Champion

PUBLIC HEARING: Appeal of Thomas and Kathleen Overbaugh for area variance(s) under Article XXIV Section 24.9 of the Town of Ulysses Zoning Law. This is for the purpose of constructing an addition to an existing accessory building, where the height would be approximately twenty-four (24) feet and twenty (20) feet is the height limit for accessory buildings. The property is located in the A1- Agricultural District at 6061 Waterburg Rd, Town of Ulysses, Tax Parcel Number is 22.-4-15.1.

Mr. Tselekis asked the applicant to provide information regarding the application and building plan. Applicant Tom Overbaugh stated that the plan is to extend the existing building by 80 feet and to keep the same height, width, and roof pitch.

Mr. Tselekis asked if any members of the public would like to make any comments. There were no comments.

Mr. Howarth asked if neighbors have been notified.

Ms. Kiley stated that they neighbors had been notified and that there were no comments.

Mr. Tselekis asked if the board had any questions.

Mr. Means asked if the building was built before zoning.

Mr. Overbaugh stated that the building was originally constructed for his wife to keep horses; it was built as an agricultural-related building, since that time they no longer keep horses so it is now put to alternative uses.

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

For the purpose of an addition to an existing 24 +/- foot tall accessory building, where 20 feet is the maximum height for an accessory structure.

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 height variance is granted by

considering the following five statutory factors. Benefits sought by applicants are to build an addition to an existing accessory building and maintain the same height of 24 +/- feet:

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 addition will produce an undesirable change in the neighborhood character or cause a detriment to nearby properties. The addition will match the height of the existing building and fit in with the landscape.

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 addition could meet the accessory building height requirement but then it would not match the height of the existing building.

3. Whether the requested area variance is substantial.

An accessory building height of 24 +/- feet versus 20 feet is 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.

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 is choosing to match the building height.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, even though there are alternatives to the building height and the difficulty is self-created, the benefits to the applicant referred to above if the area variance is 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 variance is granted.

Glasner	AYE
Hillman	AYE
Howarth	AYE
Means	AYE
Tselekis	AYE

Result: Height variance granted.

PUBLIC HEARING: Appeal of Robert Oswald and Michelle Bamberger for area variance(s) under Article VIII Section 8.6 and Article XXIV Section 24.9 of the Town of Ulysses Zoning Law. This is for the purpose of installing a ground-mount solar array approximately five (5) feet from the side property line, where twelve (12) feet is the required side yard setback for accessory structures in the R2-Moderate Density Residence District. The property is located at 1225 Hinging Post Rd, Town of Ulysses, Tax Parcel Number is 33.-3-4.9.

Mr. Tselekis asked the applicant to provide information regarding the variance application.

Applicant Robert Oswald stated that they would like to install a ground mount solar array. They have already taken down quite a few trees and are still very close to the minimal sun exposure required for receiving the tax benefit. Placing the solar array closer to the property line will maximize the sun exposure. The property line in question borders a NYSEG easement, and is maintained by NYSEG. The neighbors who own this property have a residence that is not near the property line and is on the other side of the approximate 40-50 feet easement. Mr. Oswald showed the board pictures of the property via an electronic device. Mr. Oswald stated that significant shading would be avoided if array is placed in the proposed position.

Mr. Glasner asked the applicant how many trees would still need to be taken down.

The applicant could not provide a definite answer as the particulars of the situation arise as the solar array is put in place.

Mr. Means asked if the installer had any concerns regarding the proposed placement. Mr. Oswald said that the specific placement was at the installer's suggestion, so no.

Mr. Glasner asked how permanent the solar array was. Mr. Oswald stated that the array is set in 6 feet of concrete.

Mr. Tselekis asked if neighbors had been notified.

Ms. Kiley confirmed that the neighbors had been notified and that there were no comments received.

Mr. Means stated that the array placement seemed logical and was not in the neighbor's line of vision.

Mr. Glasner asked the board if this would set precedence for encroachments of accessory buildings.

Mr. Tselekis stated that neighbors are not affected and that the proposed placement of the array would save a 100 year old tree and therefore does not set a straightforward precedence.

Mr. Howarth stated that it should be suggested to the Town Board that zoning for solar panels needs to be more defined.

Mr. Glasner stated that the document states that this is a low solar array which has a different impact on a neighborhood than an accessory building.

Ms. Kiley stated that because solar arrays require a building permit it needs to meet the setback requirements.

Mr. Glasner stated that he did not think this array would cause any disruptions.

Mr. Means asked the applicant about the size of array.

Mr. Oswald stated that the array would be 30 feet wide and 20 feet on a slant, it is a 7.2 kW array, and he estimated that it would be about 8-10 feet off the ground.

Mr. Means suggested that specifications in size might be something to include in zoning law.

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

For the purpose of the installation of a ground-mount solar array located five feet from the side yard line, where 12 feet is required for an accessory structure.

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 install a ground-mount solar array closer to the property line in order to limit shading or additional tree removal:

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.

Because this is for a solar array and not an accessory building, there is no evidence that it will produce an undesirable change in the neighborhood character or cause a detriment to nearby properties. The property is bordered by a NYSEG easement and the neighboring house is approximately 200 feet from the proposed solar array location.

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 applicant would need to cut down additional trees, the specific number is unclear, in order to limit shading on the solar array.

3. Whether the requested area variance is substantial.

By percentage 5 feet versus 12 feet is substantial, however, the impact of a solar array adjacent to a power line easement is minimal.

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. If the applicant cut down trees to limit shading, that could have an adverse environmental impact.

5. Whether the alleged difficulty was self-created.

The difficulty is self-created because the applicant is choosing to install the solar array.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, even though side yard setback variance is substantial, and the applicant could remove additional trees to limit shading, the benefits to the applicant referred to above if the area variance is 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 variance is granted.

Glasner	AYE
Hillman	AYE
Howarth	AYE
Means	AYE
Tselekis	AYE

Result: The setback variance is granted.

CONTINUATION: 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.

As Mr. Glasner was not present at the last BZA meeting, Mr. Tselekis asked the applicant to provide a review of the variance application.

Mr. Gatch stated that he purchased property two years ago. Mr. Gatch showed an aerial photo of the property. Mr. Gatch presented a letter from Mark Dresser, who dug a 3 foot hole at the piece of the property that is on Jacksonville Road, and found standing water. Due to the extra expense of drainage, the applicant stated that it is not feasible to build on that part of the property but

rather on the Meekel Road side with less road frontage. He recognized that the Jacksonville Road side in many ways is a more desirable building site, but points out that it is a dangerous bus stop location. Prior owner, of approximately 40 years, Dell Champion stated that the current location of the pond used to be a swamp area.

The applicant pointed out a similar variance granted to Ted Murray in 2010 for a parcel on Jacksonville Rd near Iradell Rd. Mr. Tselekis stated that this past variance is comparable.

Mr. Gatch questioned the zoning district for this plot of land and pointed out that the surrounding area is hamlet district; a district in which this variance would not be needed because the building plan would fit within the zoning regulations.

The board and applicant discussed the comprehensive plan, which suggests that this particular piece of property is partially in the hamlet district on the Future Land Use Plan.

Mr. Gatch asked that the board consider his property an anomaly being that it is so close to the hamlet district.

Mr. Tselekis asked the public for comments.

Tim Gatch, a neighbor, stated that he sees nothing but positive implications with the proposed new lot. He stated that the town should be encouraging young couples with responsible development plans. He reiterated the proximity to the hamlet district.

Dell Champion seconded Mr. T. Gatch's comments.

Edward Gatch stated that the Gatch family has improved the Jacksonville area and asked the board to consider the longtime loyalty the family has to Jacksonville.

Mr. Tselekis asked for comments and questions from the board.

Mr. Glasner asked for clarification on the specifics of the variance.

The applicant briefly described the history and explained that the property could have been divided to make legal lots but they would have to be flag lots in the swamp-like area and would also break up the property in an undesirable way. The applicant explained that the proposed plan would also account for the possibility that if his daughter would have to sell the house in future, it would not break up or disrupt his future property plans.

Mr. Glasner asked if this property was hamlet district, would it be a fully compliant lot?

The general consensus was yes, it would be a compliant lot if it was located in the hamlet district.

Mr. Means stated that due to the fact that the comprehensive plan suggests that this would be in the hamlet district in the future he is in favor. He also stated that this situation is different than breaking up a piece of good agriculture land.

Mr. Howarth stated that he is concerned about the precedent set. He said that when interviewed with Town Board for the board position he had stated that he was a fairly strict constructionist. When the Town Board passed current zoning about nine years ago they spent over a year debating and held two public hearings. Mr. Howarth said that zoning was discussed again during the creation of the comprehensive plan. Mr. Howarth also served on the committee that created the agriculture protection plan and does not think the board should second guess the zoning laws. Mr. Howarth stated that he thinks there are alternative plans other than the proposed variance and understands that it is not the applicant's desire; however, Mr. Howarth thinks the alternatives are viable.

Applicant James Gatch stated that he believes that due to the particular property Mr. Howarth owns, he is not able to be objective in this variance ruling.

Mr. Tselekis stated that as chairman he does not see a conflict of interest with this particular variance and Mr. Howarth. He clarified that all board members own property within the Town.

Based on discussion and board consensus, several changes were made to the positive motion of the variance. The changes are represented in the below.

Mr. Glasner MADE the MOTION as amended, Mr. Means SECONDED the MOTION as follows:

For the purpose of a two-lot subdivision, one of the lots 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 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 create a lot that is limited dimensionally for both lot area and frontage:

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, taking into account the Hamlet District, which has smaller frontage and area requirements, is adjacent on three sides. This is a unique circumstance. The property is earmarked for possible hamlet zoning in the 2009 Comprehensive Plan.

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. Any similar benefit would cost approximately \$30,000 for drainage and be financially unfeasible.

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 compared to the adjacent hamlet district and 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 that meets all of 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.

Glasner	AYE
Hillman	AYE
Howarth	AYE
Means	AYE
Tselekis	AYE

Result: The area variances are granted.

Review and Approval of Meeting Minutes (8/20/14)

Mr. Howarth MADE the MOTION to approve the minutes, Mr. Hillman SECONDED the MOTION as follows:

Glasner	Abstained
Hillman	AYE

Howarth AYE
Means AYE
Tselekis AYE

Result: the minutes for 8/20/2014 are approved.

Mr. Glasner MADE the MOTION to adjourn, Mr. Howarth SECONDED the MOTION

Adjourn at: 7:55pm

Respectfully submitted by Michelle E. Wright on: 9/15/2014