

**TOWN OF ULYSSES
BOARD OF ZONING APPEALS
Wednesday 12/17/2014
7:00 p.m.**

Approved: 4/15/15

Present: Chairperson George Tselekis, BZA Members: Bob Howarth, David Means, Carl Mann, Andy Hillman and Cheryl Thompson, Town Attorney Mariette Geldenhuys, Town Environmental Planner Darby Kiley.

Public Present: Gene Aarnio of Tompkins County Soil and Water Conservation District, John Wertis, Debbie Teeter of Cornell Cooperative Extension, Tatiana Stanton, Sue and Richard Roenke, Marie Roenke, Lin Davidson of the Tompkins County Farm Bureau, Greg Reynolds, Mike and Jules Hojnowski, Janice Plante and Rod Getchell, Carol Srnka, Tori Srnka, Carlton Smith, Ernie Bayles, James H. Watson Jr., Louise Watson, Peter Hoyt, Rob Manley.

Public Hearing: Appeal of Carol Srnka for area variance(s) under Article V Section 5.7 Lot Area and Yard Requirements 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 width at the front lot line requirement of the A1-Agricultural District. The proposed new lot would have 288 +/- feet of width at the front lot line, where 400 feet is required. The property is located at 6352 Iradell Rd, Town of Ulysses, Tax Parcel Number is 35.-2-19.

Ms. Srnka gave a brief overview of her proposed project.

Mr. Tselekis read a letter received from a property owner who lives across the street from the Srnka residence. The property owner, Jack Keenan, wrote that he took no issue with the requested variances and asked that they be approved.

Mr. Howarth noted that a tremendous amount of debate took place in 2005 about the importance of 400 feet of frontage. He expressed his general support of the minimum requirement.

Mr. Hillman MADE the MOTION to grant the variance and Mr. Mann 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 create a lot that does not meet the width at the front lot line requirement because of an existing farm lane on the west and a farm field on the east:

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.

There are possible alternatives for the property boundaries, however the proposed lines would not impact the existing farm access and farm fields.

3. Whether the requested area variance is substantial.

As a percentage 288 feet versus 400 feet, the variance could be considered substantial; however, 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 and the difficulty is self-created, the benefits to the applicant outweigh 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.

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

Result: Variance granted

Public Hearing: Appeal of James H. and Louise Watson for area variance(s) under Article IX Lakeshore District, Section 9.6 Lot Area and Yard Requirements of the Town of Ulysses Zoning Law. This is for the construction of a garage on an existing nonconforming lot with a single-family residence. The proposed garage, an accessory building, would require several variances: the required side yard setback is 12 feet and the garage would be 5 feet from the side

yard line; the required rear yard setback is 40 feet and the garage would be 35 feet from the rear yard line; the required stream setback in a Unique Natural Area of the Lakeshore District is 75 feet and the garage would be 50 feet from the stream. An addition to the residence would require a stream setback variance, where the addition would be 15 feet from the stream and 25 feet is required. The new construction would require a variance from the lot coverage requirements, where the total lot coverage would be 15.5% and 5% is allowed. The property is located at 1179 Taughannock Blvd, Town of Ulysses, Tax Parcel Number is 30.-3-15.

Mr. Bayles, the architect of the Watson project, gave an overview of the proposed garage construction and the variances needed to proceed.

The Board of Zoning Appeals received two correspondences for this particular project. Mark Newman of 1177 Taughannock Blvd wrote that he and his wife had reviewed both the project application and narrative and had no objections to the construction. Another neighbor, Christopher and Lindsey Anderson of 1175 and 1171 Taughannock Blvd, wrote: "We have reviewed the ZBA application for the above property along with the narrative, proposed improvements plan and topography. We fully support them and would like our support entered into the record and conveyed to the ZBA at the hearing."

Mr. Getchell addressed the Board and said both he and Ms. Plante, who reside at 1183 Taughannock Blvd, offer their full support.

Board members then engaged Mr. Bayles in a conversation about drainage, because of the location of the proposed garage at the bottom of a steep slope, and its size of 48 feet by 24 feet.

Mr. Bayles said it is likely the project will add a catch basin to handle water diversion. Stormwater would be channeled down to a nearby stream, but it is unclear at this point how they will do that. He has not broached the subject with engineers yet.

Ms. Thompson asked why the garage had to be 48 feet long.

Mr. Watson said the planned garage would also serve as his wood shop as well as offer storage for equipment like a snowplow.

Ms. Kiley noted that drainage will be included as part of site plan review.

Ms. Thompson asked if the size of the garage could be reduced.

Mr. Watson said he and his family are planning to live at the Taughannock Boulevard residence year-round and plan to age in place. He reiterated that the large garage is necessary for his wood-working hobby and snow-removal equipment.

Mr. Howarth noted that 24-by-24 or 24-by-30 is typically the size of a two-car garage. He also stated that he is concerned about building in Unique Natural Areas, given the debate that went into changing zoning laws, specifically UNAs.

Mr. Watson said he understood his concern, but he can hardly do anything without bumping into nearby UNAs. The project, as designed, takes advantage of a common driveway. He is trying to fit the project in as best he can.

Mr. Tselekis MADE the MOTION to accept minor changes to the resolution, and Mr. Mann 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 and lot coverage variances are granted by considering the following five statutory factors. Benefits sought by applicants are to construct a garage on the flattest area of the lot but the location does not meet the yard or stream setback requirements and to construct an addition on the existing house:

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.

There is no evidence that the proposed garage or addition 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.

In order to build a garage anywhere the property, variances would likely be needed. The property has steep slopes and proposed location is the flattest area for new construction. Any addition to the house would likely require variances.

3. Whether the requested area variance is substantial.

For the garage, the side yard setback variance, 5 feet versus 12 feet is substantial, the rear yard setback variance, 35 feet versus 40 feet is not substantial, the stream setback in a UNA variance, 50 feet versus 75 feet, is substantial. For the addition to the house, the stream setback variance, 15 feet versus 25 feet, is substantial, however the addition is a roofed deck. The lot coverage variance, 15.5% versus 5% is substantial; however, the existing lot is less than half an acre.

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

The construction of the garage will need to consider the steep slopes, and if constructed appropriately, it is unlikely that the proposed projects 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 property is usable with the existing residence,

and the owners are choosing to add a garage and house addition.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, even though the side yard and stream setback variances for the garage are substantial, the stream setback for the addition is substantial, and the difficulty is self-created, the benefits to the applicant outweigh 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 request for area variances is granted.

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

Result: Variance granted

Public Hearing: Appeal of Susan and Richard Roenke for area variance(s) under Article XX Section 20.8 Standards for Animals in Residential Areas of the Town of Ulysses Zoning Law. This appeal is for the purpose of the keeping of sheep, where the number of sheep does not meet the maximum number permitted by the Zoning Law Standards for Animals in Residential Areas. The Board of Zoning Appeals denied the area variance on March 5, 2014, and the determination was reviewed by NYS Department of Agriculture and Markets. Based on that review, the BZA voted to rehear the variance request. The property is located at 2586 Agard Rd, Town of Ulysses; Tax Parcel Number is 19.-1-3.35.

Mrs. Roenke told the Board of Zoning Appeals that her daughter Marie has been raising Jacob sheep for 10 years now. Marie is currently a Cornell University student studying animal science.

Ms. Kiley handed out an updated letter from Grassroots organizers, who have given the Roenke's permission to graze their sheep on the Agard Road camping site from August 2014 to June 27, 2015. She also issued a letter from Gene Aarnio of Tompkins County Soil and Water Conservation District (SWCD), who inspected the Roenke property in December 2013 and provided the rationale for the Roenke's to raise up to 120 sheep there.

Mr. Aarnio explained the inspection process. SWCD first completes a field visit, determines how many animals are currently housed there and assesses pre-existing facilities. They then use a spreadsheet developed by the Natural Resources Conservation Service (NRCS) that determines how many animals can be suitably grazing on the land. Aarnio explained that NRCS bases the permitted number of animals on animal units, where a full-sized, mature farm animal, like a horse, accounts for a single animal unit. Calculating that the average weight of a mature Jacob sheep is anywhere from 70 to 80 pounds, Soil and Water determined that 11 sheep equal 1 animal unit and thus 120 mature sheep could fit on the Roenke property.

Mr. Howarth said one of the issues is waste.

Mr. Aarnio said the Roenke's are composting manure properly, turning it once a week. The minimum, established by NRCS, is once every one to four weeks. The Roenke's are also moving the piles. After five or six months, the manure is taken off-site and used in landscaping. When he was inspecting the property in December, Mr. Aarnio said he never noticed any odor, the manure was not easily visible and there was no evidence of water run-off. The only problem he did note was an access road on the Roenke property that was chewed up and had puddled water. It could carry water through that area. He suggested a drainage line.

Mr. Tselekis then read several correspondences received in regard to the Roenke appeal. The Tompkins County Ag and Farmland Protection Board wrote that the Town had unreasonably restrictive Ag laws. Board members had reviewed the BZA's draft minutes and determined that the BZA appears to have placed unreasonable constraints on the Roenke's. The Protection Board recommended the Town consider zoning changes to make laws more supportive of agriculture.

The Tompkins County Farm Bureau wrote that they support farming operations, and the Town should be proud to have a young farmer in its community. The Farm Bureau asked the Town to support Marie Roenke in her sheep-raising venture.

Chaw Chang of the Tompkins County Ag and Farmland Protection Board wrote:

"I am writing in re: of the appeal of Susan and Richard Roenke. My name is Chaw Chang from Stick and Stone Farm 1605 Trumansburg Rd. I am a farmer in the town of Ulysses and I served on the Ag and Farmland Protection Committee. We completed an Agriculture and Farmland Protection Plan that was adopted on Feb 26, 2013 by the town board. This plan is to be used to guide the town in matters re: ag and farmland protection, including zoning law. I would like to submit pg 33. of that plan that states the following:

4 A. Local 'Right-to-Farm' Law (H)

The Town should have a Right-to-Farm clause for any zoning district where agricultural is a permitted use. Appropriate rules should be considered for residential areas. Additionally, the Town could consider posting signs at all key community gateways that indicate this is a Right-to-Farm community. Finally, the term "sound agricultural practice" is defined by the standards of the New York State Department of Agriculture and Markets, and the Town could consider requiring greater scrutiny of design and site planning where environmental impact is a concern. One approach may be to require site plan review, and develop appropriate design and management criteria, for confined animal feedlot operations as defined by the US EPA or New York State DEC, as these may potentially have adverse effects on air and/or water quality.

I strongly recommend that the BZA approve the appeal of Susan and Richard Roenke based on the contents of this plan here. Despite the fact that they live in a Rural residential district, the Ag and Farmland Protection Plan recommends that the town have a Right to Farm clause for ANY zoning district where agriculture is a permitted use. I

believe that the density of livestock they are requesting for is well within the bounds of a Right to Farm. Please consider approving this appeal to support the town's plan.”

Laura Wysong of 2675 Agard Road wrote:

“As I wrote before, my husband and I like the Roenkes' farming operation. We like having sheep and other animals on Agard Road and in the neighborhood. That's one of the joys of living in the country for us! Of course, it's always important to practice common sense and follow safety measures around farm animals and equipment. If we don't take risks from our side, then I don't think the presence of the animals should pose any health or safety risk to the public. That's my humble opinion, as a neighbor who likes to take walks up and down Agard Road.”

Taking comments from the audience, the BZA heard from Mr. Wertis, who said he is a livestock farmer, specifically goats. He suggested specific changes to the Town zoning law in regard to permitted animals, agreed that adequate fencing is a requirement and that manure bedding should be composted. Lastly, he thought the Town of Ulysses should stay out of micromanaging farming operations.

Mr. Hojnowski said he loves residing in an area that appreciates farm-animal raising. The state knows the appropriate ways to raise animals and requested the BZA follow the state guidelines in this manner and not Town zoning.

Mr. Reynolds told the Board that the Tompkins County Farm Bureau supports farms and farmers in general, especially young farmers. They should not be shaken down at every turn. There is so much to focus on as a farmer, and the last thing a farmer needs at the end of the day is a violation letter from their own government.

Mr. Manley of 2556 Agard Road said the sheep have gotten out in the past, and he's discussed it with the applicants. He has no problem with the sheep being there.

At this time, Bob Somers of NYS Department of Agriculture and Markets (Ag and Markets) spoke via conference call and summarized a letter sent by Ag and Markets to the Town in October 2014. During Ag and Markets' review, they looked at a lot of the same information as SWCD. In 2004, Ag and Markets reviewed the Town's law and identified animal numbers as unreasonably restrictive. They agreed with Mr. Aarnio that there should be up to 120 mature sheep on the property. Additionally, they found the established setback of 200 feet from neighboring property owners as unreasonably restrictive. In regard to manure, Ag and Markets determined that the Roenke's had taken appropriate steps by being cooperative with SWCD and NRCS. Further, they feel it is important for the Roenke's to go through the Town's variance process so that there is a future document the Town can use as an enforcement mechanism.

Mr. Howarth commented on the January 2004 letter from Ag and Markets to the then-Town Supervisor Doug Austic. The letter requested a formal review and pointed out several things in which the town should be concerned. The Town Board worked closely with Ag and Markets and made all the requested changes. When the Town Board passed zoning in 2005, it did so

unanimously. Two of the five Board members were full-time farmers. Mr. Howarth said he would like to defend the right of the town to have some say in the matter. He agreed that not distinguishing between a horse and sheep within Town zoning is a bad idea. There needs to be separate guidelines based on the kinds of animals.

Mr. Somers said the comments provided by Ag and Markets are done so informally, and that the department does not follow up to find out which comments are accepted by the given municipality. That's because there isn't enforcement under the law, unless zoning code is being applied to farming operations.

Mr. Reynolds asked Mr. Somers what Ag and Markets' position was in regard to authority over Town zoning. Some BZA members seem to have a difference of opinion on the subject.

Mr. Somers said local governments cannot develop rules and laws that unreasonably regulate farm operations, unless they can show that the farm threatens public health and safety. That's a tall order. Ag and Markets does not defend the farmer; it defends state law. It engages the municipality and hopefully discusses why they feel a certain aspect of the farm operation may be threatening to health and safety. If they can't show that threat, the department would conclude the review by stating the law unreasonably regulates farms in the Ag District. Then, the commissioner has the option to order the municipality to comply with Ag and Markets law. If there's no resolution, the commissioner can issue an order. That is done very rarely because, most times, Ag and Markets can find a resolution. The Town then has 20 days to comply or take an article 78 against the State and sue the department in Albany.

Mr. Means asked if the Roenke's needed to use the Grassroots property on top of their home farm property. The sheep are his main concern. He did not like how the sheep were left in the elements on the Grassroots property, in six inches of snow, with frozen water. If the sheep were all on the home farm, it would be easier to tend to them.

Ms. Stanton said that sheep have a lower mortality rate during winter grazing. The cold keeps parasite levels down. Though it may look cruel, winter-grazing is one of the best ways to keep sheep. Nutrition under the snow is more nutritious.

Mr. Aarnio stated the minimum required distance from compost piles: 75 feet from streams, about 20 to 40 feet from boundary line and roughly 300 to 400 feet from water wells.

Ms. Kiley asked how far the Roenke's compost pile is from the neighbor's property line.

Mr. Manley said it is far beyond the requirement.

Mr. Howarth said the potential contamination of wells and streams is a concern.

Ms. Geldenhuys suggested the BZA modify its draft resolution to reference NRCS standards in regard to manure storage, composting and grazing.

Board members discussed further modifications of the draft resolution.

Mr. Tselekis MADE the MOTION to grant the variances and 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 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 is in the Town's R1-Rural Residence District, where Agriculture is a Permitted (As-Of-Right) Use with properties approximately 200-400 feet apart along the road frontage; however, the area is also in the State certified Agricultural District with farm fields to the east of the more residential section of Agard Rd near Jacksonville Rd. It is in some sense agricultural in part.

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 land for grazing; however there are times when the entire flock is on the property at 2586 Agard Rd, and an area variance is needed 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. A Grazing Technician from the Tompkins County Soil and Water Conservation District inspected the property and reviewed operations and determined that 120 mature sheep/goats could safely rotationally graze on the 8.5 acres dedicated to grazing.

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

The neighbors have complained about sheep getting out of fencing and odors from manure, intending to mitigate with effective fencing.

5. Whether the alleged difficulty was self-created.

The numbers listed in the Zoning Law are very low for a viable livestock operation. However, the difficulty is self-created, because 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 substantial, and past practices have had an adverse effect on the neighborhood, however, the benefits to the applicant outweigh the detriment to the health, safety and welfare of the neighborhood, subject to the following conditions:
 - a. No more than 120 mature sheep/goats may graze on the approximately 8.5 acre property at 2586 Agard Rd;
 - b. The fencing needs to be adequate to keep the sheep and other farm animals enclosed, both at 2586 Agard Rd and at the Grassroots property on Agard Rd, west of Jacksonville Rd; and
 - c. Manure storage/composting and grazing should be in accordance with NRCS Standards.

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.

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

Result: Variance granted

Meeting Minutes Review (11/19/14): Mr. Howarth suggested select changes to the 11/19/14 minutes.

Meeting adjourned at 9:06 p.m.

Respectfully submitted by Louis DiPietro on 1/3/2015.