

**TOWN OF ULYSSES
BOARD OF ZONING APPEALS
MINUTES
Wednesday, 08/19/2015
7:00 p.m.**

Approved: 10/21/15

Present: Chairperson George Tselekis; BZA Members: Andy Hillman, Bob Howarth, David Means, Steve Morreale, and board alternate Cheryl Thompson; **Town Environmental Planner** Darby Kiley.

Public Present: Lee Scott, Ken Kearl, and Ted and Leslie Webster.

Call to Order: 6:58 p.m.

Public Hearing: Appeal by Lee Scott for area variances under Article VII Section 7.6 Lot Area and Yard Requirements of the Town of Ulysses Zoning Law. This is for the purpose of a two-lot subdivision of an existing, irregularly shaped lot, where neither lot would meet the 250 foot lot depth requirement of the R1-Rural Residence District. Lot depth is defined as the least distance measured perpendicular from the front lot line to the rear lot line of a parcel. Parcel 1 would have a minimum lot depth of approximately 195 feet, and because the lot is triangular, Parcel 2 would have a minimum lot depth of approximately 13 feet and have a maximum lot depth of approximately 225 ft. The property is located at 8050 Falls Rd, Town of Ulysses, Tax Parcel Number is 13.-5-13.

Explaining his proposal, Mr. Scott said his lot at 8050 Falls Rd. is approximately six acres, which is partly encircled by a hill that is roughly 50 feet above the level of Mr. Scott's lawn. Roughly one half of the parcel is completely overgrown with trees. He said Bruce Austic, a farmer tending nearby land, reported no harvest in the past seven years because of deer pressure. He reportedly told Mr. Scott that a single-family house would be a wise use of Mr. Scott's undeveloped land. Someone has expressed interest in constructing a single-family home on Mr. Scott's property, so long as the home is positioned in a way that aligns with local zoning and can accommodate a garage. Mr. Scott said the two parcels would be separated by the existing row of trees. However, neither lot would be conforming, even with the six total acres. Mr. Scott said his home was built in 1860, and railroad tracks were installed behind the parcel a few years later. New York State currently owns the unused railroad bed, he said.

Ms. Kiley reported receiving no correspondences for this project.

Responding to a question from Mr. Means concerning the quality of his water well, Mr. Scott said it pumps 40 gallons per minute. He anticipates no issue with getting water to the subdivided parcel.

Mr. Means said it seemed logical to divide the two properties at the existing tree line even though, as Mr. Tselekis noted, the line is crooked.

BZA members and Ms. Kiley briefly discussed the definition of minimum depth. It was noted that both parcels would be well over the road-frontage requirement, a favorable aspect acknowledged by Mr. Morreale and Mr. Howarth. Ms. Kiley said the new property owner could fit a garage on the narrow part of the subdivided parcel and still comply with setback requirements.

Mr. Means MADE the MOTION to grant the variances, and Mr. Hillman SECONDED the MOTION as follows:

The BZA reviewed the record and weighed the benefits to the Applicant against the detriment to the health, safety and welfare of the neighborhood if the variances are granted by considering the following five statutory factors. Benefit sought by applicant is to subdivide the property where there is insufficient minimum lot depth for both lots:

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. There is an existing house on one lot. The lot width and area for both lots exceed the minimum requirements for the R1 District.

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 existing parcel has insufficient lot depth because of the shape of the parcel. There is no way to increase the lot depth because of location of Falls Rd and the old railroad bed.

3. Whether the requested area variance is substantial.

While the area variances are substantial, because the lot depth is measured as the least distance measured perpendicular from the front lot line to the rear lot line, most triangular shaped lots have insufficient lot depth. Parcel 1 has a maximum depth close to 250 feet, and Parcel 2 would have a maximum depth of approximately 225 feet.

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 variances will have an adverse impact on the physical or environmental conditions of the neighborhood.

5. Whether the alleged difficulty was self-created.

The difficulty might be considered self-created because, although the parcels are being created now, the pre-existing lot was non-conforming to begin with.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, **even though the variance is substantial, the subdivision will not create an undesirable change to the neighborhood; therefore the benefits to the applicants 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. Means and Mr. Hillman agreed to accept a friendly amendment from Mr. Howarth, who proposed changing the language of Question 5 to reflect that the difficulty could be considered self-created.

The vote was as follows:

Mr. Tselekis AYE
Mr. Hillman AYE
Mr. Howarth AYE
Mr. Means AYE
Mr. Morreale AYE

Result: Variances granted

Mr. Scott left the meeting at 7:19 p.m.

Continuation: Appeal by Kenneth and Patricia Kearl for area variance(s) under Article IX Section 9.6 of the Town of Ulysses Zoning Law. This is for the purpose of constructing two new accessory buildings, where the distance for both buildings from the lakeshore would be 15 +/- feet, and 40 feet is the required setback for accessory buildings. The property is located in the LS-Lakeshore District at 1513 Taughannock Blvd, Town of Ulysses, Tax Parcel Number is 18.-1-19.8.

Mr. Kearl told the Board he received Town permission to build a house and additional structures on his lakeshore site. A house design has been created. The original site plan was made roughly 11 years ago. He had initially planned for an 8-by-8 foot sauna and an 8-by-18 foot storage building on the north side of a planned patio, but after reading the board's minutes from July, he would like to propose a slightly different variation in which both buildings would be consolidated into a single 10-by-18 foot building. He believes the single building offers a simpler visual for the beach front and satisfies his requirements for beachfront storage.

Ms. Kiley received the following written correspondence that arrived the day after last month's public hearing.

I am the adjacent property owner to the south of the property owned by Kenneth and Patricia Kearl in the Town of Ulysses. While I believe strongly in the spirit of the set back provisions of the Town of Ulysses Zoning Law I would have no objection should the Board of Zoning Appeals determine that a variance is merited and appropriate in this

case, provided only that our current views of Cayuga Lake to the north are not compromised in any way.

Dawn Kimberly
Owner

Ms. Webster of 1509 Taughannock Blvd. said she and her husband, Ted, wrote a letter to each member of the Board of Zoning Appeals concerning Mr. Kearnl's project. She circulated photos from the 1993 flood that showed lake levels above her dock. The couple is concerned that a future flood could dislodge proposed accessory structures at Mr. Kearnl's property.

Mr. Kearnl said he plans to build his accessory structures at an elevation of 385.5 feet above sea level, which is two feet above Cayuga Lake's mean high water level of 383.5 feet. Also, he intends to fasten the storage building to the concrete pad, and would consider adding metal L brackets for additional security. He recognized that there has been some flooding in the past, but could not say to what extent. Flooding has not covered his beachfront area, he said.

Mr. Howarth circulated data from the New York State Canal Corporation that shows Cayuga Lake's water levels, including a near-flood level just last month. According to the Canal Corp, flood damage occurs at the 385-foot level. The 100-year flood level for the lake is 387.6 feet. Any structure built below the 100-year flood level is considered by the federal government to be in the flood plain and at risk, he said. Referencing the data, Mr. Howarth found two significant flooding events, in 1972 and 1993. Part of the reason for lakeshore setbacks, he said, is to minimize the likelihood of flood waters reaching properties and sweeping away debris. On the basis of flooding, Mr. Howarth said he has a problem with Mr. Kearnl's proposal.

Ms. Kiley said, because the proposed structure is a shed, it may be treated differently under building code. Mr. Howarth said the proposed structure is problematic because it would be located within the floodplain.

Mrs. Webster added that the lakeshore would look a lot different aesthetically. No property owner has any structure that close to the lake, though, in response, Mr. Tseleki noted that there are many various buildings located along the lake and some that are somewhat close.

Mr. Howarth told the Board he recently paddled roughly three miles along the shoreline near Mr. Kearnl's lakeshore property. By his count, approximately one-third of homes have accessory buildings, and most are small and are located at, or beyond, the 40-foot lakeshore setback requirement. Along his three-mile paddle, he counted 7 or 8 accessory structures and three homes within the 40-foot setback. Those three homes showed signs of damage, likely from flooding, he said. Aesthetically, the Kearnl proposal would be a change to the lakeshore, and the flood risk is real and major.

Mr. Hillman said there is evidence to support the fact that 100-year flood events are occurring more frequently, and it is reasonable to expect more significant floods are in the future. Also, neighboring homes on the lakeshore do not have any similar buildings like the one Mr. Kearnl has proposed. It will have a negative impact on the neighborhood, he said.

Mr. Means said he agreed, though the existing rock face prevents Mr. Kearl from locating the structure further back on the lakefront. The alternative is to relocate the structure off the lakeshore and nearer to the house.

Mr. Kearl reiterated his plans to build at the 385.5 elevation mark. Add the additional 6-inch thickness of the concrete pad base, and that places the building at or around 386 feet, he said. The 30-foot rock cliff on the property prevents him from moving the building further back off the lakeshore. With the planned patio area, he needs a place to store furniture in the wintertime rather than leaving it out year-round, which would not be a pretty sight. He expressed his desire to make the property more usable and enjoy activity nearer to the beachfront.

No matter how far back on the lakeshore Mr. Kearl places the building, Mr. Hillman noted, he will still be within the 40-foot setback and within the floodplain. Plus, the structure's location will change the character of the neighborhood. That is three negative aspects of the project, he said. In response, Mr. Kearl said the proposed structure is a storage shed and sauna, not a house.

Mr. Morreale said aesthetics are a consideration, as is the letter from Dawn Kimberly, who supports the project so long as views are not compromised. The Websters also say the building could be aesthetically undesirable. Mr. Tselekis stressed that neighbor opinions are to help inform the Board on a decision and not serve as the basis for one. Mr. Morreale continued, saying that there are other major concerns – the structure would be located roughly 15 feet from the lakeshore, which is a considerable encroachment; topography is constraining, plus there are environmental concerns, particularly the hardening of the shoreline. What other design alternatives exist? he asked.

A conversation ensued on the two concrete pads proposed for the Kearl property. Mr. Howarth said it seemed that one-third of the beach area would be covered by concrete, to which Mr. Kearl agreed. Mr. Morreale again stressed the cumulative effects of shoreline hardening, saying he would be surprised if Mr. Kearl's plan for two concrete pads did not have any environmental effect on nearby vegetation and wildlife.

Mr. Tselekis asked if any docks in the vicinity were built above the 100-year flood level. If many other lakeshore structures are within the 100-year flood level, it does not make sense to prevent Mr. Kearl from similarly developing his property. Recounting his three-mile paddle along the lakeshore near the Kearl site, Mr. Howarth said he counted about seven or eight structures of reasonable size within 40 feet of the lake.

Mr. Morreale felt the setback issue was self-created, since Mr. Kearl has opted to build near the lakeshore. However, Ms. Kiley noted topography must be taken into consideration when determining self-creation. In regard to the Kearl site, the setback issue is self-created because Mr. Kearl intends to build within the lakeshore setback, but there is a cliff face. It is not an even playing field.

Mr. Tselekis said many lakeshore properties have retaining walls. If the Board were to deny the variances, members should recognize that they have approved similar variances in the past.

Some approved structures were located closer to the lake than Mr. Kearl's proposal. There should be a clear reason for denying Mr. Kearl his request.

Mr. Howarth said a structure this large, this close to the shore, is far from normal. He agreed with Mr. Morreale over concerns with hardening the shoreline, and reiterated that the structure should not be located within the 100-year floodplain. If the structure is damaged in a flood, pieces could end up in the lake. Whatever is stored in the shed – possibly gasoline or oil – could also end up in the lake, posing significant environmental concerns.

Mr. Kearl felt it unfair that the Board would grant variances for others but would deny him variances because of the issue of the 100-year floodplain. Mr. Hillman said current trends and climate change give reason to expect more frequent floods. Mr. Howarth noted that the Town's Lakeshore Zoning Laws are relatively new. Many structures were built under old Zoning laws, before the Zoning was updated. Mr. Means added that he felt Town Zoning may need to be updated again to better reflect a changing climate and increased flood frequency.

Mr. Morreale pointed to the Town's current Zoning law and said the Board is not acting arbitrarily. Mr. Kearl's proposal presents a change to the landscape and the neighborhood. How much does the Board have to be faithful to past decisions? he asked. Each case is independent from others.

Mr. Howarth MADE the MOTION to move the discussion into executive session. However, Mr. Tselekis preferred to continue the conversation in open session. The motion failed for lack of a second.

Mr. Howarth said the Board is not changing the rules but paying attention to them. The proposal is a large building inside a 100-year floodplain. He agreed with Mr. Hillman, that the frequency of floods would only increase in the coming years. The Board is responding appropriately.

Mr. Kearl felt it unfair that the Board would require him to comply with the 100-year floodplain when it has not been a consideration with past proposals. His accessory structure would be bolted down and reinforced. If Mr. Howarth spotted what he thought to be flood damage to other lakeshore buildings, how does that apply to his proposal? Mr. Kearl asked. Mr. Howarth said the buildings in question were on foundations and were likely damaged because they are located within the floodplain. Mr. Kearl does not have evidence to say otherwise. Mr. Kearl said it was hypothetical to assume more floods in the future. Mr. Howarth then mentioned recent research by the Intergovernmental Panel on Climate Change, which predicts that the northeastern United States will experience increasing variances in weather, droughts and floods over the next 30 years. He stated that he is a trained scientist in the field, and flooding in Cayuga Lake will become more prevalent in the future. Mr. Howarth's concerns are with hardening of the shoreline, the likelihood of flood damage and whatever harm comes from it. In his year and half on the Board, he has approved one variance on the lakeshore because the applicant submitted plans from a structural engineer. He would like to see similar plans from a structural engineer regarding the Kearl proposal to convince him there is no such risk. A smaller building would be better in terms of aesthetics and less hardening of the shoreline. He said he is sympathetic to the

need of an accessory structure to store materials. But perhaps the cliff face makes it impossible to accommodate the dual sauna and storage shed on the lakeshore.

Mr. Kearl asked what would be a reasonable size, perhaps 10 by 16 feet? Mr. Tselekis asked the Board about Mr. Kearl's options. Would any building located above the 100-year floodplain satisfy the Board?

Mr. Howarth thought so. But the term 100-year floodplain is a misnomer. There is a 1 percent probability of a significant flood per year. Over 30 years, the likelihood jumps to roughly 26 percent. There have been two such floods in Cayuga Lake. He said the 40-foot setback makes a lot of sense, even though 40 feet is really not a huge distance.

Mr. Hillman called the variance request substantial, believing that there would be an undesirable change to the neighborhood. Secondly, the benefit to the applicant could be achieved by some other method, and the Board has already pointed out the adverse environmental effects. Looking over the proposed resolution, Mr. Hillman noted the project fails to meet all five criteria to justify approving the variance requests.

A brief conversation ensued regarding the orientation of the building relative to the lakeshore, whether it could be turned in a way to meet the setback requirement and elevated outside of the 100-year floodplain. Mr. Howarth said he was not sure the concrete pad would hold up in the floodzone. If there were a convincing proposal by a competent engineer, he would consider it. However, he does not have such a proposal. He agreed with Mr. Hillman, that the difficulty is self-created. A solution would be to build the structure atop the cliff, near the house.

Mr. Kearl said his beach is wider than most along the lake, a comment Mr. Howarth called heresay. Mr. Howarth MADE the MOTION to have Mr. Kearl's comment struck from the record, and Mr. Morreale SECONDED the MOTION.

Mr. Morreale asked why Mr. Kearl's comment was pertinent to the conversation. Mr. Kearl responded, claiming that Mr. Howarth had made the statement it was a narrow beach.

Mr. Howarth WITHDREW the MOTION.

Mr. Kearl asked if it would be acceptable if he altered his design to build the structure at the 387.6 mark, put a concrete pad in, and build the sauna and shed atop the pad. Mr. Means said the project would have to be engineered. The idea of a thick concrete pad with a bottom portion within the floodplain sounds worrisome, Mr. Howarth added. Bulldozing to achieve a certain height and including 12-inch pylons is an alternative, Mr. Kearl offered.

Asked by Mr. Tselekis if he would vote against an updated proposal submitted by a structural engineer, Mr. Howarth said he felt uncomfortable answering such a hypothetical.

After a brief discussion regarding the make-up of the sea wall, Mr. Kearl said he was still trying to understand what the Board now considers acceptable. Help me understand what I need to do for the Board to vote yes, he said.

Mr. Hillman again stated the issues with the current proposal. The benefit can be sought by another method: by relocating the building above the cliff and back 40 feet. He did not see how changing parts of the immediate design would solve any of the issues discussed thus far.

Mr. Morreale agreed, and added that he did not understand why the sauna could not be located up nearer to the house. Mr. Howarth said he was sympathetic to Mr. Kearl's request for clear guidance. However, it is not the Board's job to say precisely how the building should be designed.

Mr. Kearl noted that his closest neighbors have no issue with his proposal. He is looking to add a storage building, and a 30-foot rock face prevents him from locating the building further away from the lakeshore. He personally is not going to haul a picnic table and other patio furniture up to a storage shed near his home. His request is not unreasonable. He said he is concerned the Board has approved variances for others in the past, and for a variety of reasons, the Board is treating him unfairly.

In response, Mr. Howarth acknowledged Mr. Tselekis's previous comments that the Board is not to base its decision on what the neighbors think. Opinions from neighbors are to be part of evidence considered during deliberations. Cayuga Lake is open for everyone to enjoy. As someone paddling on the lake, Mr. Howarth said he represents part of that community.

Mr. Hillman MADE the MOTION to deny the variance requests, and Mr. Howarth SECONDED the MOTION as follows:

The BZA reviewed the record and weighed the benefits to the Applicant against the detriment to the health, safety and welfare of the neighborhood if the setback variances are granted by considering the following five statutory factors. Benefits sought by applicants are to **build two accessory buildings located 15 feet instead of the required 40 feet from the lakeshore:**

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.

Yes. It would be undesirable. At this time, there are no other structures in the neighborhood this large and this close to the lake.

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.

Yes, the applicant could build above the cliff, and other methods have been discussed here.

3. Whether the requested area variance is substantial.

Yes, the lakeshore setback of 15 feet versus 40 feet is substantial.

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 structures will be lower than the 100-year flood line and the Lakeshore will be hardened, having adverse impact on physical conditions.

5. Whether the alleged difficulty was self-created.

The difficulty is self-created because the applicant is choosing to build the new structures below the cliff.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, **the variance is substantial, the difficulty is self-created, it will create an undesirable change to the neighborhood, and will have an impact on the environmental and physical conditions of the neighborhood.**

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

The vote was as follows:

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

Result: Variances denied.

Meeting Minutes Review (7/15/2015)

Mr. Howarth MADE the MOTION to accept the July 15, 2015 meeting minutes, and Mr. Means SECONDED the MOTION. The minutes were unanimously accepted.

Mr. Morreale MADE the MOTION to adjourn the meeting, and Mr. Hillman SECONDED the MOTION. The motion was unanimously approved.

Meeting adjourned at 8:23 p.m.

Respectfully submitted by Louis A. DiPietro on August 28, 2015.