

**TOWN OF ULYSSES
BOARD OF ZONING APPEALS
MEETING MINUTES
Tuesday, 1/20/2016
7:00 p.m.**

Approved: March 16, 2016

Present: Chairman George Tselekis, and Board Members Andy Hillman, Bob Howarth, David Means, and Cheryl Thompson; Environmental Planner Darby Kiley.

Excused: Steve Morreale

Public Present: Edwin Smith, and Juston and Chelsea Smith.

Call to Order: 7:01 p.m.

PUBLIC HEARING: Appeal by Edwin Smith for area variance(s) under Section 212-29 Lot Area and Yard Requirements of the Town of Ulysses Zoning Law. This is for the purpose of a two-lot subdivision, where one parcel would have 160 feet of width at the front lot line and 400 feet is required in the A1-Agricultural District. The intent of the land subdivision is to create an approximately 2.32 acre parcel in the wooded portion of the property, and the front lot width variance would allow the agricultural field to remain intact. The property is located at 4032 Waterburg Rd, Town of Ulysses, Tax Parcel Number is 23.-3-10.

Ms. Smith told the BZA that she and Juston Smith are newly married and hope to build a home. The lot to be developed is overgrown and wooded, is 2.32 acres and has 160 feet width of frontage. Unfortunately, there is no other option for the Smiths than to seek a variance since the northern property is owned and the southern property, owned by Edwin Smith, Juston's father, is currently under lease with Pine Ridge Farms. The land to the south has been farmed for more than a decade, and the applicants want to avoid developing the farmland and prefer building a house on the wooded lot. This past summer, the couple cleared out overgrown brush on the property, leaving as many trees as possible, and determined where a roughly 1,400-square foot house could be built. The proposed house would be more than 1,000 feet from the Perry City and Waterburg roads intersection, and the home's driveway would not pose any safety issues for them when pulling in or out. Currently, the wooded lot is used for hunting and was gifted to the couple by Edwin Smith in hopes of subdividing it and building a home.

Ms. Kiley reported receiving no correspondences from neighbors.

Mr. Means asked how far back from the road the proposed home would be. Edwin Smith said that has not been determined yet. They cannot go too far back since a swamp is located toward the back of the property. They also need to do a dig test. Juston Smith cited the Rogers home – a neighboring house – and said the Smith house would probably be just as far back as that.

Mr. Howarth said he did not want to seem unaccommodating but the Town Board spent significant time determining the 400-foot frontage requirement figure. The front-line requirement was recommended at 500 feet in the Town Comprehensive Plan, and the Town Board held two public hearings at the time, voting unanimously for 400 feet of frontage. The Town Board wanted to retain the rural look of the Town and preserve farmland. He noted the proposal makes use of a wooded parcel and attempts to preserve farmland, but the request is a slippery slope. If the BZA were to approve the variance, there would be no way to ensure that nearby land would remain as farmland, he said. Mr. Howarth said he would be happier if the applicants could incorporate some of the farmland into the wooded lot but retain it for agricultural use. Edwin Smith said he would lose some of his acreage to get the wooded lot to meet the 400-foot requirement.

Juston Smith said retaining the ag land is of the utmost importance. If it was not, the Smiths would not be requesting a variance. Mr. and Ms. Smith both said the family has a long history of owning and maintaining land for farming and has no intention of breaking tradition.

Mr. Tselekis said a Town Steering Committee and consultants are currently discussing changes to the Zoning to better preserve ag land. Also, he said, in March 2014, the BZA completed ethics training with Town Attorney Mariette Goldenhuys, who circulated a handout advising the Board, among other things, that it is their task to consider the subdivision request as proposed and not possible future uses.

In response, Mr. Howarth said the BZA is being asked to make a substantial diversion from Town Zoning and believes deliberations should be based on current Zoning law and Town documents, including the Comprehensive Plan, the Ag and Farmland Protection Plan from 2014, and public hearing minutes.

Mr. Hillman felt the Smiths could meet the 400-foot frontage requirement by simply incorporating enough of the farm land. The land would remain in agriculture, and the land lease could still be maintained, he said.

Edwin Smith said there would then need to be two different leases, one of which for only 2 acres. Plus, Juston and Chelsea do not want the additional ag field.

Ms. Thompson asked the Smiths if they have enough room for septic and a water well, to which the Smiths replied yes.

Mr. Tselekis called the variance request substantial. That said, the point of the Comprehensive Plan is to retain the rural character of the Town, and extending the wooded-lot parcel by another couple of acres into the ag field could make it more unlikely the ag land would remain for farming use in the future. Unless you add a stipulation into a contract, Mr. Howarth said in response. Mr. Tselekis advised the Board to keep in mind that this is a young family seeking to move to the Town. It is a noble purpose to try to encourage and accommodate them as much as possible.

Ms. Thompson said she thought the variance request was reasonable at first glance but noted that by subdividing the wooded lot as proposed, the adjacent farmland could be sold and developed, possibly accommodating two additional homes. Mr. Howarth said he disagreed with Mr. Tselekis – it is critical for the BZA to consider how the proposed subdivision could affect future land use.

Mr. Means said he favors the applicant's plans in principle. They have good intentions, respect farming and understand the importance of preserving ag lands.

Ms. Kiley noted that because Edwin Smith's property has road frontage on two sides, there are many possible arrangements to subdivide the land off. There could be flag lots, she said.

Ms. Thompson said she likes the plan and the location looks like a good place for a family. She is leaning toward approving the variance. Mr. Hillman called the variance request substantial, saying the proposed frontage is not even half the requirement.

Mr. Howarth felt the issues were pretty clear: the BZA must weigh the significance of the variance versus the current zoning. Ms. Thompson asked if a provision could be added, possibly to the variance resolution, that puts in writing that the farmland is to be preserved. Mr. Howarth called the suggestion ideal but could be awkward, since there are two landowners from the same family.

Ms. Kiley thought the request was beyond what the BZA can do, saying Ms. Thompson's suggestion usually involves a conservation easement, which could take years to finalize. It would be a long, legal process, she said.

Mr. Tselekis recalled making a similar request regarding another subdivision in which two houses could have potentially fit on a single lot. He had suggested the BZA make a stipulation limiting the lot to a single house, but the Town Attorney said such a stipulation is very difficult to do, and the request could be lost over time. Ultimately, the Town Attorney did not like the idea, he said. Added Ms. Kiley, conservation easements have to be checked each year, and the Town does not have any mechanism in place to do that. Mr. Howarth felt an inspection would not be all that difficult, but Ms. Kiley said beginning the process is not a road the Town wants to be on without careful consideration. Mr. Tselekis said worrying about development on a future lot is not within the BZA's purview, partly since he believes the BZA is not allowed to take it under consideration.

Responding to Ms. Thompson's question about the difficulty of drawing up a split land lease, Edwin Smith said it is not difficult, but the Stephensons would have to write up two different agreements for each of the properties.

A brief discussion of ag assessments ensued, followed by continuing deliberations regarding the variance request. Mr. Means said he would be hard-pressed to vote for the variance if the subdivision cut into farmland, but it does not. Ms. Smith said the couple's main goal is to avoid developing the ag land, and they have no future plans to subdivide in the future.

Edwin Smith questioned what the process would be if the proposed subdivision were not located in the ag district. Is the BZA's trepidation in approving the variance request a matter of location or preserving the farmland? In classifying districts in Zoning, Mr. Howarth said in response, the Town seeks to preserve the Town's rural character and farmland. Four hundred feet of frontage is a lot of land, Edwin Smith said. Ms. Smith told BZA members the house will be used as equity, and building on the proposed lot makes the most financial sense for them.

Ms. Thompson MADE the MOTION to approve the variance request, and Mr. Means 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 variance is granted by considering the five statutory factors. Benefit sought by applicant is to subdivide the property and create a lot with less than the required width so that the agricultural field remains intact:

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 subdivision and subsequent house construction in the wooded area of the parcel will produce an undesirable change in the character of the neighborhood. The remaining parcel includes an agricultural field that would be negatively impacted as described in point 2 if the residential lot included the entire 400 feet of road frontage.

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

The applicant could meet the lot width requirement, but by doing so, upwards of 3 acres would be separated from the main ag parcel and therefore may be less likely to remain in agricultural use.

3. Whether the requested area variance is substantial.

The variance for the lot width 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.

With or without the variance, the applicant could build an additional house on the property. With the variance, the newly created lot would be wholly in a wooded part of the parcel and would not encroach on the agricultural field. It is the BZA's understanding that this would make it easier to keep the field in agricultural use in the future. It is not likely 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 requesting to create a lot where the lot width requirement could be met by adding farmland to the proposed parcel.

6. Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows, there are other methods to meet the zoning requirements, the variance is substantial, and difficulty is self-created, however the variance will not create an undesirable change in the neighborhood, nor would it negatively impact the physical or environmental conditions of the neighborhood. By granting the variance, the applicant would be able to create a lot that does not negatively impact the viability or value of the agricultural land; therefore 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 appeal for an area variance be granted.

Prior to voting on the resolution, two amendments were offered and accepted by the Board, including changes in wording in points 1 and 2.

The vote was as follows:

Mr. Tselekis AYE
Mr. Hillman AYE
Mr. Howarth AYE
Mr. Means AYE
Ms. Thompson AYE

Result: Variance approved.

Meeting Minutes Review (12/16/2015)

Mr. Howarth MADE the MOTION to accept the December 16, 2015 meeting minutes, and Mr. Means SECONDED the MOTION. The motion carried, 4-0, with Mr. Hillman abstaining from the vote.

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

Meeting adjourned at 8:01 p.m.

Respectfully submitted by Louis A. DiPietro II on January 28, 2016.