

**TOWN OF ULYSSES  
BOARD OF ZONING APPEALS  
FINAL MINUTES  
Wednesday, September 18, 2019**

**Approved:** October 30, 2019

**Present:** Board Chair Bob Howarth, and members Andy Hillman, Steve Morreale, David Tyler, Cheryl Thompson, and board alternate Thomas Butler; Town Planner John Zepko; Town Board Liaison Richard Goldman

**Public in Attendance:** Donald Murray, Sue Poelvoorde, Mary Hunt Bradley, Ralph Cole, Richie and Pat Moran, Peter Demjanec, Dale Johnson, Andy Sciarabba, Kristin Savard, David Williams, Bernice Hayward, Brandi Bessemer, Wendy Marsh, and May Xun.

**Call to Order:** 7 p.m.

The Board opted to delay review of meeting minutes until later in the meeting.

**Public Hearing** - Appeal by Cayuga Addiction Recovery Services for an area variance from Section 212-40 I. (Lot Coverage Requirement of the R1 zone), of the Town of Ulysses Zoning Law, for the purpose of increasing the allowable lot coverage from 5% to 26.32%, at the property located at 6621 Route 227, Town of Ulysses, Tax Map # 22.-2-4.

Since the previous BZA meeting, the Town Planning Board has declared themselves lead agency for SEQR, has completed its SEQR review and issued a negative declaration. Mr. Zepko said CARS has received approval of its septic system from the DEC, is beginning its stormwater pollution plan and has submitted a dark-sky compliant lighting plan.

The Town received two more letters from the public regarding the CARS project.

There were no comments offered during the public comment period.

Mr. Hillman said he wondered if the BZA should wait for the stormwater pollution plan before addressing the variance. The plan would help with deliberations, since the variance is significant, he said. If the variance is not granted, Ms. Marsh said, the project would be different and would require a different stormwater plan.

Conversation ensued regarding the stormwater plan. Ms. Savard said the current plan before the BZA will meet stormwater and State Pollution Discharge Elimination System (SPDES) regulations. Her company looked at 100-year storms to guide its plan for the site. Mr. Howarth asked how the plan would change if it were designed to 500-year or 1000-year storms, given the frequency of 100-year storms in the area. Ms. Savard said New York State changed its regulation variables to account for the frequency of 100-year storms. The State says we don't have to address 500-year storms, she said, but if her company did, Ms. Savard feels the plan wouldn't

change much. Mr. Morreale returned to the frequency of 100-year storms and environmental concerns, particularly with discharge into a nearby creek and increased impermeable surfaces.

Mr. Hillman asked if the applicant has considered permeable surfaces. Ms. Savard said the maintenance of such surfaces is expensive, and that this project did not merit permeable surfaces. Mr. Hillman questioned the suggestion of maintenance as cost prohibitive and said extra project elements like permeable surfaces are important for projects this big.

Mr. Howarth summarized the main issues the Board has expressed: water quality and quantity, surface hardening, environmental aesthetics and concerns from neighbors.

Ms. Thompson asked if the applicant had considered buying neighboring property in order to reduce the impact on total lot coverage, to which Ms. Marsh said such an option is not in the applicant's budget.

A restrictive covenant was discussed as an option. Mr. Morreale wondered if the BZA were to consider the property in its entirety – all 34 acres – could the Town put a restrictive covenant on the property to prevent total surface area from exceeding 5 percent? Ms. Marsh said she had had a conversation with the Town Attorney on the subject. The applicant would want to be sure that the document would explain what would happen if there were a change, like if a building needed to be rebuilt. Mr. Howarth said the BZA would need to talk with its Town Attorney before making any decisions.

The option for a restrictive covenant was viewed somewhat favorably by the Board, though Mr. Tyler said it wasn't an ideal option.

The conversation turned to neighbors' concerns. A letter to the Board expressed concerns with staffing at CARS. Mr. Zepko reminded Board members it's not up to the community to tell a private entity how to operate; the Board's purview is land use. Still, neighbors in attendance were given time to state their concerns.

Ms. Besemer lives across the street from CARS. The outreach that Ms. Marsh cited was little more than a letter at the Besemer's house on Monday. A representative also showed up to her husband's workplace, requesting to talk, Ms. Besemer added. There has been little outreach only recently, as expansion plans were proposed.

Ms. Poelvoorde echoed Ms. Besemer's comments. The BZA meetings have been the only outlet for neighbors to air their grievances. The new building has been billed as a womens-only facility, but is that the case? She needs clarity on that point. Ms. Marsh said the building will remain gender specific. Would the applicant accept as a stipulation of agreement that the facility would be gender specific? Mr. Howarth asked. Absolutely, Ms. Marsh said.

Mr. Murray, a resident of Boyd Hill Road and who worked in law enforcement, said some residents to CARS are there voluntarily and can walk out the door if they choose. Other residents are court-ordered. On occasion, neighbors see police cars around the facility. He wanted to know how many of the residents are court-ordered to be there. He also requested CARS and law

enforcement communicate with neighbors about what's happening when officers respond at CARS. Lastly, he said it is unlikely he would have purchased his current property had he known the then-farmhouse would become what it is now CARS. When we decide to sell, CARS may prove a detriment to property values, he said. In response, Ms. Hayward of CARS said the facility does house people court-ordered to be there. Anytime there is a concern, let me know, she said.

Ms. Besemer said there has to be some mechanism in place to handle people who leave the facility. One person left CARS and came to the Besemer residence while the family was hosting a birthday party.

Ms. Bradley said she's concerned about the building footprint, lack of permeable surfaces, the environmental impacts, and CARS's accountability and oversight.

Board members agreed they needed advice from Town Counsel regarding the covenant in order to proceed with the CARS proposal. The Board also stated its two conditions for the applicant: a revised stormwater pollution plan that factors in 500-year storms, and that the new facility would remain gender specific.

Mr. Hillman MADE the MOTION to table the public hearing, and Mr. Morreale SECONDED the MOTION. The motion was carried unanimously, 5-0.

**Public Hearing** – Appeal by Jeffrey Cole, for an area variance from Section 212-167 A. (Maximum height of an accessory structure), of the Town of Ulysses Zoning Law, for the purpose of constructing an accessory structure 26 feet in height where 20 feet is allowed. The property is located at 1320 Perry City Rd, Tax Map # 27.-3-17.14

The Town did not receive any correspondences to this proposal.

Mr. Cole said the 26 feet in height is to accommodate a commercial door. He tried to find a location for the barn that would not impede on neighbors' views. In making the case that the barn is not out of character, Mr. Cole cited a neighboring barn, whose owner had requested and been granted a height variance for his barn. The Cole barn roof's angle is meant to better accommodate solar panels, he said. BZA sited Mr. Cole's orientation of the building and distance from neighbors as mitigating the height variance.

Mr. Morreale said he drives by the neighbor's barn regularly and notes how tall it is. Ms. Thompson, too, noted that the neighbor's barn – approved for 24.5 feet in height – is big. If we grant a variance for 26-feet, she said she's concerned more applicants will approach the Board about height variances.

### **Resolution**

Mr. Morreale MADE the MOTION to consider the resolution, and Mr. Tyler SECONDED the MOTION as follows:

**Whereas**, the appeal by Jeffrey Cole is for an area variance from Section 212-167 A. (Maximum height of an accessory structure) of the Town of Ulysses Zoning Law at the property located at 1320 Perry City Rd, Tax Map # 27.-3-17.14; and

**Whereas**, the relief requested is for the purpose of constructing an accessory structure 26 feet in height where 20 feet is allowed; and

**Whereas**, the action is a Type II action under SEQR 617.5(c)(12) “construction, expansion, or placement of minor accessory/appurtenant structures, including garages, car ports...” and requires no further review; and

**Whereas**, by considering the five statutory factors, 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. The benefit sought by the applicant is to increase the allowable height of an accessory structure to 26 feet where 20 feet is allowed.

**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 variances.**

The neighborhood is agrarian in nature. It is unlikely that the increase in height of the accessory structure will result in an undesirable change in the character of the neighborhood.

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

The applicant’s intent is to store a recreational vehicle inside the structure. A variance is necessary to allow sufficient height clearances inside the structure and solar panels to the roof.

**3. Whether the requested area variances are substantial.**

The variance is substantial. The applicant is seeking a variance to increase the allowable height of an accessory structure from 20 feet to 26 feet. This represents an approximate increase in the maximum height of an accessory structure of 30%.

**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 project will result in significant adverse environmental impacts.

**5. Whether the alleged difficulty was self-created.**

The difficulty is self-created.

**NOW THEREFORE BE IT RESOLVED AS FOLLOWS,**

Considering all of the statutory factors set forth above, the Board of Zoning Appeals concludes as follows:

Increasing the allowable height of an accessory structure, including solar panels, from 20 feet to 26 feet to construct a garage will not have a negative impact on the character or environmental conditions of the neighborhood. The variance is substantial, and the difficulty is self-created. However, the benefits to the applicant outweigh the potential detriment to the health, safety and welfare of the neighborhood.

For the reasons set forth above, and upon the evidence, law and facts, the BZA hereby does grant the area variances requested by the applicant for the increase IN allowable height of an accessory structure from 20 feet to 26 feet.

Mr. Morreale accepted Ms. Thompson's friendly amendment.

Ayes: Howarth, Hillman, Morreale, Tyler, Thompson  
Nays: none

**Result:** Resolution passes

**Public Hearing** – Appeal by Patricia and Richard Moran, for an area variance from Section 212-54 F. (Side Setback Requirement of the LS zone), of the Town of Ulysses Zoning Law, for the purpose of permitting an addition 7.4 feet from the Northern property line where 15 feet is the required setback. The property is located at 1377 Taughannock Blvd, Tax Map # 28.-1-41

Mr. Zepko explained that the BZA had previously issued a variance for the applicant's tram, under the condition that an aesthetically pleasing fence be constructed at the lakefront to limit the neighbor's view of the tram. The applicant was slow in constructing the fence, and after a visit to the site, Mr. Zepko and the Town Code Enforcer discovered an addition to the Moran home. The Morans did not file for a building permit for the addition. Further, the addition encroaches into the sideyard setback. No correspondences were received in regard to this public hearing, he added.

Mr. Moran said the contractor who did the addition never told the Morans they needed a variance. Mr. Hillman found it hard to believe that the contractor, an experienced builder in the area, would say they didn't need a variance or even a building permit.

Ms. Xun, the neighbor, said that when the Morans asked for their permission to build a tram one foot from the property line, she and her husband voiced strong objections over obstructed views and negative impact to property value. The addition encroaches into the setback, and the tram is one foot from the property line – what's next, and where does it stop? Ms. Xun asked. The Morans have been unwilling to take neighbors' perspective into consideration, and that is troubling, she said. Ms. Xun does not feel the fence is aesthetically pleasing – the "finished" side of the fence faces the Moran property – and it was only after Ms. Xun complained that the fence was eventually installed. When we remodel, she continued, we design and redesign; there are inspections. It's a slow process. Do rules not apply to certain people? she asked.

Mr. Zepko advised the Board to view this situation as a request for a variance, not as a violation. Responding to a question from Mr. Goldman about fines, Mr. Zepko said for situations like this,

appearance tickets are issued, and the practice is compliance over penalty. Without a variance, the Morans would be forced to remove the addition.

After further discussion, the Board opted to table the hearing and schedule a site visit to the Morans' residence.

Mr. Hillman MADE the MOTION to table the hearing until next month and schedule a site visit as a Board. Mr. Morreale SECONDED the MOTION. The motion was unanimously carried.

**Meeting Minutes (8/21/2019)**

The Board postponed action on meeting minutes for August.

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

Meeting adjourned at 9:30 p.m.

Respectfully submitted by Louis A. DiPietro II on October 29, 2019.