TOWN OF LOCKPORT
ZONING BOARD OF APPEALS
November 24, 2009

PRESENT: Charles Dahlquist, Acting Chairman
Frank Loiars
Michael Bartus

ALSO PRESENT: Jason Thompson, Building Inspector
Jane Trombley, Secretary

ABSENT: Kevin Roth, Alternate
Tim Lederhaus, Chairman
Donald Jablonski

The November 24, 2009 Zoning Board of Appeals meeting was called to order by Acting Chairman Dahlquist, who then led the Pledge of Allegiance.

Chairman Dahlquist took attendance and tabled approval of the October 27, 2009 minutes as they have not been received.

CASE #1 **6603 Mulligan Road – SBL #81.04-3-14 – Howard & Hannelore Wheeler/Kenneth & Barbara Coutts** – Requesting area variance to construct a single family home on a lot with less than the required 100' frontage. Barbara Coutts presenting. Chairman Dahlquist opened the Public Hearing.

Member Loiars asked if Ms. Coutts has acquired the property. Ms. Coutts stated she is waiting for approval of the variance, but everything is all set. Member Loiars asked how large the proposed home will be. Ms. Coutts stated an 1834 sq. ft., one story ranch that is only about 46' wide and meets the minimum requirements to build there. Member Loiars asked if the two big trees will have to be removed and Ms. Coutts stated yes.

Chairman Dahlquist asked who the contractor is and Ms. Coutts stated her son is a contractor and they will be subcontracting out also.

Chairman Dahlquist asked for Public Comment. Hearing none, Chairman Dahlquist closed the Public Hearing.

MOTION made by Member Loiars, seconded by Member Bartus to approve an area variance under Town Law 267b for Kenneth & Barbara Coutts at 6603 Mulligan Road to construct a single family home on a lot with less than the required 100' frontage based upon the following findings:

1. the requested variance will not produce an undesirable change in the character of the neighborhood;

2. the benefit sought by the applicant cannot be achieved by any other feasible method;
3. the requested area variance is not substantial;
4. the proposed variance will not have an adverse effect on the environmental conditions in the neighborhood; and
5. the difficulty was not self created.

3 Ayes, 0 Nays, Carried.

CASE #2 5676 Beattie Avenue – SBL #123.14-2-28 – Faith Tabernacle Church – Requesting an area variance to replace an existing double-sided wooden sign. The existing sign is 6' from the property line and the required set back is 10'. Tim Dombrowski, Associate Pastor in charge of the project, presenting.

Chairman Dahlquist opened the Public Hearing.

Pastor Dombrowski stated they are purchasing the sign from Stewart Signs. The sign will have internal lights, not flash and placed in the same place as the existing sign.

Member Loiars asked if the sign can be moved back. Pastor Dombrowski stated no, the parking lot is behind there.

Member Bartus asked if the sign is the same size as the existing. Pastor Dombrowski stated practically, there is about 3" difference.

Member Loiars asked if vision will be obscured by the sign and Pastor Dombrowski stated no.

Chairman Dahlquist asked for Public Comment. Hearing none, Chairman Dahlquist closed the Public Hearing.

MOTION made by Member Loiars, seconded by Member Bartus to grant an area variance under Town Law 267b to Faith Tabernacle Church at 5676 Beattie Avenue to replace an existing sign with a sign with internal lights, not flashing, in the same location as the current sign based upon the following findings:

1. the requested variance will not create an undesirable change in the character of the neighborhood;
2. the benefit sought by the applicant cannot be achieved by any other feasible method;
3. the requested area variance is not substantial;
4. the proposed variance will not have an adverse effect on the environmental conditions in the neighborhood; and

5. the difficulty was not self created.

3 Ayes, 0 Nays, Carried.

CASE #3 **4040 Lake Avenue – SBL #81.04-1-21.2 – Della Mael/Gerald Tomaino –** Requesting an area variance to construct retail storage buildings 155' from the front property line. Tim Arlington of Apex Consulting presenting with Gerald Tomaino. Mr. Arlington stated they have moved the four buildings around on the lot to request the least possible setback, but the lot is only 311' deep. Mr. Arlington stated they will control the runoff to the creek to the west with underground collection and the ground at the back of the lot is 6' lower than the front of the lot, so the 10 to 11' high buildings won't seem that high. Mr. Arlington stated the garage will be taken down and 5 parking spaces, which is the required amount for this project, will be created. The house is 30 x 29', a story and a half, approximately 1200 sq. ft. building.

Member Dahlquist opened the Public Hearing.

Member Loiars asked if the house will have a flat roof and Mr. Arlington stated a small gable. Member Loiars asked if the neighbors had been notified. Mr. Arlington stated one neighbor is selling to them, there is a vacant lot to the north, Niagara Frontier Implement and the vet clinic to the south.

Chairman Dahlquist asked if there will be drainage gutters and Mr. Arlington stated yes, and all the driveway drainage will be collected in underground structures, none around the perimeter.

Member Loiars asked about signage. Mr. Arlington stated they will comply.

Chairman Dahlquist asked for Public Comment.

Stephen Schmitt of 4028 Lake Avenue stated his home is to the west of the property and that the drainage is not to the creek, it ends behind his home, the creek is about a mile away and the ground there is quite wet. Mr. Schmitt doesn't feel the zoning should be changed just to put something there. Mr. Arlington stated the drainage issue will be addressed and the underground storage will control the water.

Member Loiars asked if his property is in the wetland and Mr. Schmitt stated not a proclaimed wetland. Mr. Schmitt stated he maintains a pond with fish back there. Mr. Schmitt stated the 300' setback was decided on for a reason and it would keep this out of the public's eye.

Member Bartus asked if a fence would help Mr. Schmitt. Mr. Schmitt stated the buildings will still show above the fence. Mr. Tomaino stated he doesn't feel much will show from Lake Avenue.

Chairman Dahlquist asked if the building will be above grade. Mr. Arlington stated above building grade bout 8".

Member Loiars asked Mr. Schmitt if he plows or plants his property. Mr. Schmitt stated it is all lawn and his home is about 100' from the road.

Mr. Schmitt stated his brother owns property behind him off Route 104 which usually has about 1 1/2' of water that he tries to drain off.

Member Bartus asked how high the building will be and Mr. Arlington stated about 8 to 9' high and you will see about 4' of the buildings from the road.

Mr. Arlington stated that there will be a 6" outlet pipe to carry the water to a catch basin that will release as much water as possible into the ground.

Member Loiars asked Mr. Schmitt if the building wasn't there if his property would be inundated with water and Mr. Schmitt stated it's higher than his property there.

Member Loiars asked Mr. Schmitt if he anticipates building out back and Mr. Schmitt stated not necessarily, there are a lot of trees in back and the pond is about 12' deep. Member Loiars asked if the pond overflows and Mr. Schmitt stated no, there is a berm and it is stocked with fish and is located about 10' from the back of his property.

Paul Siejak of 6259 Hamm Road suggested the Town Engineer should review the drainage plan before a decision is reached.

Mike Tomaino, Mr. Tomaino's son stated retail storage units are the only ones that need a 300' setback and anything else on this lot would have the same issues. Member Loiars stated not necessarily.

MOTION made by Member Bartus, seconded by Member Loiars to table 4040 Lake Avenue until the January 26, 2010 meeting to have more definite information on the drainage issues. The Public Hearing remains open.
3 Ayes, 0 Nays, Carried.

CASE #4 **7195 Plank Road – SBL #153.00-2-14 – Rapids Volunteer Fire Company –** Requesting area variance to erect 130' communications tower in an agricultural/residential zone. Barry Kobrin, Rapids Fire Chief, presenting. Chief Kobrin stated the tower will be 130' high, aluminum, galvanized and no guy wires. Chief Kobrin stated the tower will be erected on a 10 x 10 concrete base.

Chairman Dahlquist opened the Public Hearing.

Member Loiars asked what the communication tower is needed for. Chief Kobrin stated currently communications get dropped as the present towers are low band and everything is high band now.

Member Loiars asked if the tower falls, will it hit anything and Chief Kobrin stated no. Member Loiars asked if there will be a red light on the tower and Chief Kobrin stated yes, a white light is required during the day and a red light at night. Chief Kobrin stated Rapids Fire Company will notify the Air Base and Mercy Flight of the tower.

Member Bartus asked if the tower has to be 130'and Chief Kobrin stated yes, that's the shortest there is that is available.

Chairman Dahlquist asked for Public Comment, hearing none, he closed the Public Hearing.

MOTION made by Member Loiars, seconded by Member Bartus to grant an area variance under Town Law 267b, to Rapids Volunteer Fire Company to erect a 130' high communications tower in an Agricultural/Residential zone based upon the following findings:

1. the requested variance will not create an undesirable change in the character of the neighborhood;
2. the benefit sought cannot be achieved by any other feasible method;
3. the requested variance is not substantial;
4. the proposed variance will not have an adverse effect on the environmental conditions in the neighborhood; and
5. the difficulty was not self-created.

3 Ayes, 0 Nays, Carried.

CASE #5 **7272 Kinne Road – SBL #153.00-2-23 – Tammy Reger –** Requesting an area variance to erect a 16 x 96' greenhouse 11' from the side property line. Minimum required setback is 20'. Peter Retzel, husband of Tammy, presenting. Mr. Retzel stated they are limited as to where the greenhouse can be constructed because the

drainage ditch floods and on the other side there is a septic system and he may expand the home in the future. Mr. Retzel stated he didn't realize he needed a variance until the neighbor told him and it is already up with Christmas things in it.

Chairman Dahlquist opened the Public Hearing.

Member Loiars asked Mr. Retzel what he grows. Mr. Retzel stated right now there are Christmas wreaths in it and in the summer it will be annuals and perennials that his wife plans to take to the Farmer's Market.

Member Loiars asked if he had spoken to the neighbors. Mr. Retzel stated his wife had spoken to the neighbor's wife in the summer, and there didn't seem to be a problem at that time, and he has spoken to the building inspector and explained why he wanted it there and the building inspector understood.

Member Bartus asked how wide the lot is and Mr. Retzel stated 100'.

Member Loiars asked how tough it would be to move the greenhouse and Mr. Retzel stated virtually impossible.

Member Bartus asked how tall the greenhouse is and Mr. Retzel stated about 7 ½ to 8' tall.

Member Dahlquist asked for Public Comment.

James DeLePlante of 7268 Kinne Road stated he is the neighbor on the west side and he did not give Mr. Retzel permission to use his survey and that is against state law. Mr. Retzel stated it is the survey he was given when they purchased the property. Mr. DeLePlante stated Tammy and Pete have made improvements in the property such as having the house sided, done roofing and taken down some trees. Mr. DeLePlante showed photos of the property. Mr. DeLePlante stated Hugh Sinclair bought the property in 1962 and there were restrictions because of the narrow lot that only a single family home and garage could be on it. In 1966, Mr. Sinclair's son came to the zoning board and got permission to put a studio on the back of the home. Mr. DeLePlante stated he told Peter that he had to get permission to build the greenhouse and he didn't use a surveyor to place the greenhouse. Mr. DeLePlante stated on November 11th Mr. Retzel went ahead and built the greenhouse instead of waiting for the Zoning Board meeting. Mr. DeLePlante stated the deed for the property is for residential use only as there is not enough acreage to be a farm and when he saw the size of the greenhouse he expressed his concerns as the problem is there is not enough room and Mr. Retzel

also has two other sheds on his property. Mr. DeLePlante stated the studio that the Board granted permission for in 1966 has been turned into an apartment. Mr. DeLePlante stated he has lived there for 30 years and about 22 years ago he added onto his home to bring family in and is paying taxes for it.

Member Loiars asked if a fence would help. Mr. DeLePlante stated he is not considering that a solution and feels that would probably cause him to have more snow in his yard. Mr. DeLePlante stated there is also a pool in the backyard that is not shown on the survey.

Rosemary DeLePlante of 7268 Kinne Road stated Mr. Retzel's wife mentioned the greenhouse to her casually in the summer but she had no idea it would be this huge. Ms. DeLePlante stated there is now a sign out front advertising wreaths for sale and she believes there will be Christmas trees there also. Ms. DeLePlante states when her husband was away is when Mr. Retzel put it up and covered it with plastic. Ms. DeLePlante stated the structure is an eyesore, is not for personal use, feels it is a detriment to selling her house and she is not happy. Ms. DeLePlante stated if she sits on her deck, this is what she has to look at.

Mr. Retzel stated the structure was mostly up before the neighbor said anything and he had to put the plastic on as his wife came home with product that had to be protected.

James Griggs of 7290 Kinne Road stated he owns the property to the east and he has a problem with the aesthetics. Mr. Griggs presented a picture and stated Mr. Retzel cut down a tree.

Mr. Retzel stated he cut the tree down so there wouldn't be shade there and there won't be any traffic as people won't be coming there. Mr. Retzel stated he has put up greenhouses before and as long as there isn't a foundation, it is free standing, and he is in an agricultural district, no permit was needed.

Hearing no further comment, Chairman Dahlquist closed the Public Hearing.

MOTION made by Member Loiars, seconded by Member Bartus under Town Law 267b to deny an area variance to Tammy Reger at 7272 Kinne Road to erect a greenhouse less than 20' from the property line based upon the following findings:

1. the requested variance will create an undesirable change in the character of the neighborhood and be a detriment to nearby properties;
2. the benefit sought by the applicant can be achieved by another feasible method;

3. the requested area variance is substantial;
4. the proposed variance will have an adverse effect on the neighborhood; and
5. the difficulty was self-created.

3 Ayes, 0 Nays, Carried.

MOTION made by Member Bartus, seconded by Member Loiars to adjourn. 3 Ayes, 0 Nays, Carried.

BY ORDER OF THE TOWN OF LOCKPORT
ZONING BOARD OF APPEALS