

TOWN OF LOCKPORT  
ZONING BOARD OF APPEALS  
April 23, 2013

PRESENT: Kevin Roth  
Charles Dahlquist, Acting Chairman  
Kevin McCabe, Appointed Alternate  
Donald Jablonski  
Michael Bartus

ALSO PRESENT: Brian Belson, Senior Building Inspector  
Jane Trombley, Secretary  
Daniel Seaman, Town Attorney

ABSENT: Tim Lederhaus, Chairman

The April 23, 2013 Zoning Board of Appeals meeting was called to order at 7:00 pm by Member Dahlquist, who then led the Pledge of Allegiance.

**MOTION** made by Member Jablonski, seconded by Member Bartus to appoint Member Dahlquist Acting Chairman due to the absence of Chairman Lederhaus. 4 Ayes, 0 Nays, Carried.

Acting Chairman Dahlquist appointed Alternate McCabe a full voting member due to the absence of Chairman Lederhaus.

**CASE #1**     **5319 Enterprise Drive – SBL #108.00-1-34.211 – Yahoo Inc.** – Requesting an area variance to construct an administration building that exceeds the allowed 50’ height limit and a maintenance building that will be within 50’ of the front setback. Paul Bonaro, Director of the Yahoo data center and Orest Ciolko of Wendel Duchscherer, presenting. Mr. Bonaro stated Yahoo has recently purchased an additional 13 acres to the east side of Crowne Drive and part of Crowne Drive, that they want to construct three additional buildings on with an administration building in front of the center building. The administration building would be about 64’ high plus equipment. Member Jablonski stated the height would actually be about 80’ then, and Mr. Ciolko stated it could be. Mr. Ciolko stated the second fire pump house will fall within the 50’ setback off IDA Drive, similar to the one in Phase I. Mr. Ciolko stated the Administration Building is planned as a 5 story building that will be 64’ high plus screen wall and the top of the data center is 41’.

Member Jablonski stated it looks like Crowne Drive will cease to exist and Mr. Ciolko stated it already has.

Acting Chairman Dahlquist opened the Public Hearing.

Mr. Ciolko said the loading docks will be in the back and parking will be primarily to the north with about 150 parking spaces put in as the building is started and about 350 spaces later. Member Jablonski asked if that will be enough and Mr. Bonaro stated yes. Member Jablonski asked if there will be 24 hour traffic there. Mr. Bonaro said there should not be as everyone doesn't arrive and leave at the same time.

Acting Chairman Dahlquist asked if the substation will be about the same as the current one and Mr. Ciolko stated NYSEG takes care of that.

Attorney Seaman stated under SEQRA, the Town Zoning Board is the 1<sup>st</sup> reviewing agency and a generic environmental impact statement was developed in 1984 for the whole park with findings statements for individual projects. Attorney Seaman stated this project compares to them and he has reviewed it in detail. Attorney Seaman stated the Board may determine that no additional SEQRA action is required.

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

**MOTION** made by Member Roth, seconded by Member Jablonski that having reviewed the proposed Supplemental Findings Statement and after considering the Generic Environmental Impact Statement for the Town of Lockport Industrial Park, this Board finds:

1. The requirements of 6 N.Y.C.R.R. part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the action is one which avoids or minimizes adverse environmental impacts will be avoided or minimized by incorporating as conditions to the decision those mitigation measures which were identified as practicable.

5 Ayes, 0 Nays, Carried.

**MOTION** made by Member Jablonski, seconded by Member Bartus to grant an area variance to Yahoo, applicant having applied for variances as set forth in the application and this Board having taken into consideration the benefit to the Applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, and having considered the required criteria of Town Law 267 (b), this Board makes the following findings:

1. The requested variances will not produce an undesirable change in the neighborhood or be a detriment to nearby properties because the area is

industrial and the variance is compatible with other properties in the area, and the variance is keeping with a desirable industrial use in the Town Industrial Park.

2. The size of the parcel and the scope of the project prevent the use of other means to achieve the benefits sought.
3. The required variances are not substantial.
4. This Board can find no adverse effect upon physical or environmental conditions of the neighborhood because the project is an environmentally benign project.
5. The difficulty was not self-created but was caused by the sizing configuration of the available land.
6. The variances granted are the minimum variances necessary and will preserve and protect the character of the neighborhood and health and safety of the community.

Accordingly, the requested variances are granted.

5 Ayes, 0 Nays, Carried.

**CASE #2**     **7198 Brookside Drive – SBL #124.03-3-104 – John Schiavone.** Requesting an area variance to construct a 480 sq. ft. addition to the detached garage. Mr. Schiavone presenting. Mr. Schiavone stated he has an existing 30 x 40' pole barn type structure and he would like to add a 480 sq. ft addition to the existing structure to store cars.

Town Building Inspector Belson asked how large the home is. Mr. Schiavone stated about 3400 to 3500 sq. ft.

Attorney Seaman stated the application notes more property is being purchased. Mr. Schiavone stated it is not surveyed or finalized yet, and that he does not have a written contract yet.

Member Jablonski asked how many cars Mr. Schiavone would like to store. Mr. Schiavone stated about 6.

Member Roth asked how far back is the existing building from the back of the house. Mr. Schiavone stated about 40'.

Member Jablonski asked how much additional property Mr. Schiavone was purchasing. Mr. Schiavone stated pie shaped on the side and about 350' back by about 80' to a drainage ditch. Member McCabe asked if a variance will still be necessary with the additional property purchase and Mr. Schiavone stated he was told it was.

Member Jablonski asked if the garage will follow the existing building concept and have concrete floor and electric, just have to put up the frame and put in doors. Mr. Schiavone stated yes. Member Jablonski asked if an additional concrete drive will be put in. Mr. Schiavone stated it hasn't been determined yet, but if he does, it will probably be off Woodmore Court for easier access.

Mr. Schiavone was asked whether there were any other accessory buildings in the neighborhood that were as large as the proposed building. Mr. Schiavone said there were none.

Attorney Seaman noted this is a laid out subdivision, not a unique problem by the size of the lot and the actual purchase of additional property could make a difference, this is a substantial request and a new attorney will be taking over for this Board next month.

Mr. Schiavone stated he received a variance previously for the existing building and he feels the present variance is for less square footage than the original variance.

Acting Chairman Dahlquist opened the Public Hearing for comments. No Public Comments.

Acting Chairman Dahlquist asked if Mr. Schiavone has spoken to his neighbors. Mr. Schiavone stated yes and sent letters and heard nothing from them.

**MOTION** made by Member Jablonski, seconded by Member McCabe to keep the Public Hearing open and table this matter until the May 28, 2013 meeting. 3 Ayes, 2 Nays (Member Bartus and Member Roth), Carried.

**CASE #3** **5465 Upper Mountain Road – SBL #108.00-1-30 – Niagara County – Mt. View/David Communities, LLC.** Requesting a use variance to convert the existing (closed) nursing home to an assisted living facility. David Tosetto of 33 Carrollwood Court, Youngstown stated he is proposing a 150 bed assisted living facility in a R1 zone that since its inception has been zoned B1 and he is not changing the structure, but would add handicap accessibility but nothing else to the outside. Mr. Tosetto stated they will be replacing the boiler system, updating the electric, adding a new fire alarm system, updating bathrooms and a nurse call system. Some walls will be adjusted and be replaced, mostly though it will be used as it exists. The current auditorium will be made into a dining room and a move theater will be put in an existing room. Mr. Tosetto stated this is a 1930's structure that can be reused. The contractors have been through the structure and the project will add 2 million dollars to the payroll with a 40 to 60 person staff.

Mr. Tosetto stated this is a beautiful campus with structural integrity. Mr. Tosetto stated there will not be a lot of trucks going in and out for construction as they are using what is there.

Member Jablonski asked how many residents are planned for the building and Mr. Tosetto stated they will not exceed 150 and they will only be assisted living, no renal, acute care or out-patient services.

Attorney Seaman stated this is not a permitted use in an R1 district, which is why a use variance is needed.

A letter from Realty USA stating this site has been on the market for over 30 months with the present zoning and no offers have been received for the property, received as "Exhibit A".

Member Jablonski asked how large the property is and Mr. Tosetto stated about 8 acres, and the cost to demolish it would be about 5 million dollars, comparing it to one he did elsewhere. Mr. Tosetto stated that based on his experience as a developer of projects, he is of the opinion that with the necessity to demolish the existing building at a cost of about 5 million dollars, and the cost of development for single family residences, including infrastructure and streets, it would be impossible to realize a reasonable return from the property if it is used for R1 purposes (single family residences).

Attorney Seaman stated apartments couldn't be put in as that would be an R2 zoning. Mr. Tosetto stated this project just fits and he has done many other projects of this type and this one just fits.

Acting Chairman Dahlquist opened the Public Hearing.

Lisa Bird stated she is here on behalf of her father who has owned the property next door at 5459 Upper Mountain Road and is wondering about fencing and people walking around. Mr. Tosetto stated there won't be any fencing and people will be walking around. The people in the assisted living facility are people with things like arthritis that may need help with dressing or bathing, no one with dementia. Mr. Tosetto stated they will be encouraging them to walk around outside and they will be putting in some gardens, but no other physical changes outside except cleaning it up.

Member Jablonski asked if this will be private pay patients. Mr. Tosetto stated no, 80% Medicaid and this will help the residents that are in nursing homes that

don't really belong there and everyone will have their own bedroom, except for a couple of rooms that will be for married couples.

Member McCabe asked if there are other facilities around here like this one. Mr. Tosetto stated yes, including another one in Lockport.

Mrs. Singleton of Lockport asked how many acres are being purchased. Mr. Tosetto stated about 8. Mrs. Singleton stated 550 thousand dollars is a lot of money for 8 acres. Mr. Tosetto stated there is a big liability for asbestos removal and the electric has been off for approximately 7 years and there are exploded water pipes.

Member Roth asked if this has been zoned R1 forever. Attorney Seaman stated as far as we remember.

Hearing no further comments, Acting Chairman Dahlquist closed the Public Hearing.

**MOTION** made by Member Roth, seconded by Member Bartus to grant a use variance to David Communities, LLC to convert the existing nursing home at 5465 Upper Mountain Road into an assisted living facility as the zoning regulations cause undue hardship for the applicant based on evidence presented for each and every question. This is a Type II action under SEQRA.

1. The applicant cannot realize a reasonable return as demonstrated by competent financial evidence presented;
  2. The hardship is unique as it doesn't apply to a substantial portion of the district or neighborhood;
  3. The requested variance will not alter the essential character of the neighborhood as it puts a vacant building back into the community with a similar use to that which the building was used for many years.
  4. The hardship was not self-created and the requested variance is the minimum variance necessary to allow a reasonable return from the property.
- 5 Ayes, 0 Nays, Carried.

**CASE #4**      **6711 East High Street – SBL#109.04-1-1 – Howard Broussard.** Requesting an area variance to construct a 28 x 32' detached garage and a 10 x 20' storage building. Mr. Broussard stated his home is 1600 sq. ft and basically he would be putting 2 garage doors on a concrete slab.

Attorney Seaman asked whether there was an attached garage on his house. Mr. Broussard said there was not an attached garage. The requested building will be

the only garage on the property, so the old garage will be the only accessory building.

Member Jablonski asked how far back he will place the new garage. Mr. Broussard stated where the existing one is. He will move the existing 12 x 20' structure back about 150' to the northwest corner of the lot.

Member Jablonski asked if he plans on storing equipment or vehicles. Mr. Broussard stated he runs a business with stuff sitting around that he would like to put in it.

Acting Chairman Dahlquist asked if there will be water and heat. Mr. Broussard stated no, just a drain to wash down, and electric. Acting Chairman Dahlquist asked how many feet between the house and garage and Mr. Broussard stated 16' and his lot is pie shaped and 878' deep.

Acting Chairman Dahlquist opened the Public Hearing.

Paul Siejak stated he has known him for a long time and he is credible.

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

**MOTION** made by Member Bartus, seconded by Member Jablonski to grant an area variance to Howard Broussard at 6711 East High Street to construct a detached 28 x 32' garage based on Town Law 267 (b), as the requested variance:

1. Will not create an undesirable change in the character of the neighborhood or be a detriment to nearby properties;
2. The benefit sought by the applicant 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 physical or environmental conditions in the neighborhood; and
5. The difficulty was not self-created.

5 Ayes, 0 Nays, Carried.

Attorney Seaman stated he is retiring from the Town and thanked everyone for working with him. The Board thanked Attorney Seaman for all his help.

**MOTION** made by Member Jablonski, seconded by Member Bartus to adjourn. 5 Ayes, 0 Nays, Carried.

**BY ORDER OF THE TOWN OF LOCKPORT  
ZONING BOARD OF APPEALS**