

TOWN OF LOCKPORT
ZONING BOARD OF APPEALS
July 28, 2015

PRESENT: Kevin McCabe
Donald Jablonski
Elaine Sobieraski
Will Collins, Appointed Alternate
Tim Lederhaus, Chairman

ALSO PRESENT: Brian Belson, Senior Building Inspector
Jane Trombley, Secretary
Michael Norris, Town Attorney

ABSENT: Kevin Roth

The July 28, 2015 Zoning Board of Appeals meeting was called to order at 6:00 pm by Chairman Lederhaus, who then led the Pledge of Allegiance.

Chairman Lederhaus appointed Alternate Collins a full voting member due to the absence of Member Roth.

MOTION made by Member Jablonski, seconded by Member Sobieraski to approve the June 23, 2015 minutes. 5 Ayes, 0 Nays, Carried.

CASE #1 **1070 Day Road – 110.00-1-40 – James Timkey** – Requesting a use variance to construct a fast food restaurant as defined in the Town Code in an Agricultural Residential District and two area variances: a front set back of 40’ for the restaurant as 75’ is required and a rear set back of 40’ for the pole barn and covered seating area as 50’ is required. Shawn Hopkins, Attorney, presenting for Mr. Timkey, the owner of the subject lot and Mark & Lori Parsons who is under contract with Mr. Timkey to purchase said lot, who would like to develop the 1.25 acres for a seasonal drive-in restaurant, which will require the aforementioned use and area variances.

Mr. Hopkins stated it will be a 60 x 60’ single story structure that will be open from probably April 1st to November 1st, and will be located between a residential home to the south and a currently vacant restaurant to the north. Mr. Hopkins handed out a letter from Mark & Lori Parsons outlining their plan, received as “Exhibit A”. Mr. Hopkins stated there will be a summer fare menu and will need site plan approval for an outdoor seating area and in the future, will add covered outdoor seating and a pole barn for storage. Mr. Hopkins stated they have Tim Arlington of Apex Engineering present to discuss any design, site plan, environmental issues, drainage and set back requirements with the Board.

Mr. Hopkins stated the site is zoned Agricultural Residential (A/R) and was purchased by Mr. Timkey in 2009 at an in rem auction for \$11,000. Mr. Hopkins estimated Mr. Timkey's cost to him for the property including taxes is about \$15,000, and pointed out that he has provided paid school and county tax receipts for said lot totaling \$3,044.37 as part of the application.

Mr. Hopkins stated there is no other way to sell or use this property for the uses permitted in an A/R zone, except for a one family dwelling or in-home day care, as a:

1. Religious use – lot not large enough.
2. Health care – lot not large enough.
3. Public Park – already have an expansive one right across the street.
4. Agricultural – only 1.25 acres, not large enough to really plant on said lot to be profitable.
5. Cemetery – not practical.

As for a one family dwelling, Mr. Hopkins explained that there has been no interest by anyone to purchase it to build a single family home.

Member McCabe asked if Mr. Timkey had purchased the property in 2009 for speculation. Mr. Hopkins stated yes, but pointed out that circumstances have changed since the purchase since there really isn't any additional property that can be acquired for this lot as there are substantial wetlands in the adjacent large east lot that have grown larger. Mr. Hopkins also stated that the restaurant to the north has entered foreclosure since 2009 as well.

Mr. Hopkins stated Mr. & Mrs. Parsons had spent a considerable amount of time looking at the vacant restaurant, but with the cost of the property, the repairs needed, the set up and the foreclosure, it is not feasible.

Mr. Hopkins stated the hardship is unique to this property compared to other properties located in an A/R district as it is a small vacant parcel landlocked in that particular area.

Mr. Hopkins stated this project will not alter the character of the neighborhood as the proposed use is for a family use restaurant setting and the Parsons have a successful business track record. Though currently vacant and under foreclosure, there has already been a long standing restaurant right next door for many years and there is a vibrant park directly across the street. Mr. Hopkins believes that the proposed project will actually improve the neighborhood.

Mr. Hopkins stated this is not a self-created issue on the part of the owner based on the changing circumstances explained previously.

Mr. Hopkins stated they would also like an area variance of the required 75' front setback as the main restaurant would not blend in well with the parking layout and parking spot requirements and that the neighboring building is also not 75' back. Mr. Hopkins said a pole barn fits in better at the back of the property and he feels this weighs in favor of granting the variance as the property becomes under usable without them.

Mr. Hopkins stated this project is not an undesirable change in the character of the neighborhood and any potential alternatives are not feasible. Mr. Hopkins said the variance isn't substantial when looking at the results. Mr. Hopkins said any physical or environmental issues will be addressed with fully engineered plans.

Attorney Norris asked if there is any rent being collected off the property and Mr. Hopkins stated no. Attorney Norris asked what caring expenses Mr. Timkey has incurred. Mr. Hopkins stated taxes, minimal insurance and occasional clearing of the land. Attorney Norris asked if there are any liens on the property and Mr. Hopkins stated no.

Attorney Norris asked how long the property has been for sale and if it has been listed with a realtor. Mr. Hopkins stated it has been for sale since shortly after Mr. Timkey acquired it in 2009. Mr. Timkey has had "for sale by owner" signs on the property and also marketed it by word of mouth, with some inquiries for commercial use, but none for residential use. Mr. Hopkins stated that it has not been listed with a real estate company, but pointed out that on a vacant land listing without substantial value would likely require a commission of a flat fee of 20 – 25%, unlike a house transaction of a straight percentage ranging around 6 – 7%. Mr. Timkey felt it was impractical to list it with a real estate company based upon this financial factor.

Attorney Norris asked if there has been a certified appraisal's report obtained evaluating whether a reasonable return can be realized. Mr. Hopkins said no, but will do so if it is necessary.

Attorney Norris asked why Mr. Hopkins feels this is a unique situation for this particular parcel compared to other A/R properties and Mr. Hopkins stated he believes it is unique due to it being next to a vacant restaurant, having wetlands around it, and where the parcel is physically located.

Attorney Norris asked if the property has changed hands since the in rem. Mr. Hopkins stated no.

Member McCabe asked if Belliveau's has a use variance. Senior Building Inspector Belson stated no, the Belliveau restaurant parcel was rezoned in 1983 from RR by the Town Board to Business.

Mr. Hopkins pointed out that the Town's Zoning Map does not reflect this and added that this discovery of the parcel being located between a Business and A/R makes the hardship even more unique.

Mr. Hopkins also addressed why Mr. Timkey chose to seek a variance for this property compared to a full rezoning of this property and why this decision actually benefits the Town and adjoining neighbors. If the Zoning Board grants a use variance, it can place conditions and restrictions on what type of use can be allowed on a parcel. In this case, the Zoning Board has been presented with a site plan and renderings on what will actually be placed on this parcel and can restrict the variance to this specific project. If the Town Board considered a rezoning of the parcel from A/R to B2 and granted such a request, then once it is rezoned any permitted use under B2 would be permitted.

Chairman Lederhaus opened the Public Hearing.

David Mongiello of 5099 Day Road stated he is here to represent his dad who owns the property and presented a Notice and Demand petition, received as "Exhibit B" requesting no change in the zoning, not to allow high traffic in this residential area and gives unfair advantage, with 22 signatures that he stated he collected in an hour and a half. Mr. Mongiello stated the Board will open themselves up to a lawsuit as they are servants of the Town, if they don't listen to the people they represent. Mr. Mongiello felt that since two of the people on this Board are involved in the Republican Committee, there should be a change of venue due to a conflict with him and the Republican party.

Mr. Mongiello stated he purchased the adjacent property in 2006 and sold it to his dad last year, had put a bid on 1070 Day Road but was told that the property couldn't have utilities on it and questioned if he was lied to. Senior Building Inspector Belson stated a new water line has been run on the opposite side of the road that can be tapped into, there isn't any gas, but propane can be used, as well as a septic system. Mr. Mongiello stated he made multiple offers to Mr. Timkey hoping to have his business there and he believed the last was for \$13,000. Mr. Timkey was not present to verify Mr. Mongiello's claim.

Mr. Mongiello asked if his father can sell his property to Tim Horton's. Chairman Lederhaus told him it is a separate issue, but he could ask.

Mr. Mongiello stated this is a peaceful neighborhood and the pine trees are on his property line. Mr. Mongiello stated he has lived next to fast food places in the past, and there is increased traffic as well as doors slamming all the time, and is concerned as he plans to buy the property back from his dad in the future.

Mr. Hopkins stated the Parsons have looked into the foreclosure property and offered \$64,000, but there are many defects, it is in foreclosure and isn't feasible for them to purchase.

Mr. Mongiello doesn't feel this can be called a hardship.

Mr. Hopkins stated he doesn't feel the Zoning Board can be called servants of the Town as they are under the jurisdiction of New York State Law and feels he has presented a strong case for the variances. Mr. Hopkins stated they have hired Apex Engineering and have done due diligence and noted that no one else was here to oppose the project including the people on the petition.

Chairman Lederhaus stated we will leave the Public Hearing open. On behalf of the Board, Attorney Norris asked Mr. Hopkins to submit a Certified Appraisers Report for their review.

CASE #2 **6191 Crosby Road – 139.00-1-22.111 – Paul Mayers –** Requesting an area variance to construct a pond approximately 50' from the rear and both property lines as the Town Code requires that ponds shall not be closer than 100' to any property line. Mr. Mayers stated they will be building a home next year and is requesting a 50' setback instead of 100' as the septic system will be in the back and they will also be needing fill. Mr. Mayers stated he has joined the properties and his neighbors have ponds that are closer. Mr. Mayers stated that they have a topographical layout of the property from C & S that they worked off and there are wetlands to the south. Received topographical layout as "Exhibit C".

Chairman Lederhaus asked if the pond is closed and bermed. Mr. Mayers stated yes, and all wooded and he would like to have 50' on all three sides.

Mr. Jablonski asked if the pond is part of the property drainage and Mr. Mayers stated it does drain naturally there.

Chairman Lederhaus asked Mr. Mayers if he had spoken to any of the neighbors and Mr. Mayers stated no. Member Sobieraski stated she had spoken with the neighbors across the street and they had no objections.

Chairman Lederhaus opened the Public Hearing. Hearing no comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Jablonski, seconded by Member Collins to grant an area variance to Paul Mayers at 6191 Crosby Road to construct a pond with a 50' setback from each side and rear property line, weighing the balancing test in favor of the applicant, as:

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 substantial, but not a detriment;
 4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and
 5. The difficulty was not self-created.
- 5 Ayes, 0 Nays, Carried.

CASE #3 **5623 Niagara Street Extension – 108.01-2-30.22 - Kevin Pfohl** – requesting an area variance to construct a 40 x 64' accessory structure. Mr. Pfohl stated he has lived in his home since 2002 and it is a tri-level with a small basement and he has a 24' boat, 3 vehicles, a lawn mower and ATV that he needs to store.

Member McCabe asked if the accessory building will be larger than the home and Mr. Pfohl stated yes.

Chairman Lederhaus asked how tall the structure will be. Mr. Pfohl stated 14' walls with a peaked roof.

Member McCabe asked Mr. Pfohl if he has spoken to his neighbors. Mr. Pfohl stated yes, and they have no objections.

Chairman Lederhaus asked if there will be a concrete floor and Mr. Pfohl stated yes.

Member Jablonski asked if there will be power and heat. Mr. Pfohl stated no.

Member Collins asked if there will be gutters, Mr. Pfohl stated no, but an 18" overhang and pine trees line the property making the structure barely visible.

Chairman Lederhaus asked if this will cause excessive water on neighboring properties. Mr. Pfohl stated no. Chairman Lederhaus asked if water does go onto neighboring property, if he is willing to negate the issue. Mr. Pfohl stated yes.

Member McCabe asked if any work will be done in the accessory building. Mr. Pfohl stated no, only storage.

Member Lederhaus asked if Mr. Pfohl will be taking trees down and Mr. Pfohl said no.

Member Jablonski asked if there will be driveway access and Mr. Pfohl said not now.

Chairman Lederhaus opened the Public Hearing. Hearing no comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Jablonski, seconded by Member McCabe, to grant an area variance to Kevin Pfohl at 5623 Niagara Street Extension to construct a 40 x 64' accessory structure conditional on if there is a neighbor water-off problem, that Mr. Pfohl will negate it, weighing the balancing test in favor of the applicant, as:

1. The requested variance will not create an undesirable change in the character of the neighborhood due to the heavy wooded trees;
 2. The benefit sought by the applicant cannot be achieved by any other feasible method;
 3. The requested area variance is 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 self-created.
- 5 Ayes, 0 Nays, Carried.

CASE #4 4759 Cold Springs Road – 95.00-1-32.1 – Michael Anczok (Superior Lubricant.
4761 Cold Springs Road – 95.00-1-31 – Michael Anczok (Superior Lubricant)
– Requesting a use variance to run a metal fabrication, restoration, and coating business in a Local Business B1 Use District. Attorney David Farrugia presenting with the purchaser. Mr. Farrugia stated Mr. Anczok has owned the property since the early 1990's and it is located in a B1 district. Mr. Anczok has found a buyer, if they will be allowed to operate a metal preparation business including fabrication that will all be located within the 3 buildings with a limited number of employees, and no big trucks. Mr. Farrugia stated the property has been on the

market for several years and this will spruce up the area. Mr. Farrugia provided a history of the property for the past several decades and that it was a gas station and oil storage facility, including Gaude and Sunoco stations over the years. This parcel has been historically a business dealing with oil and gas. Mr. Anczok has conducted all of the proper environmental clean-ups with the DEC and Mr. Farrugia would be happy to provide the Board with reams of documentation in this regard if necessary.

Chairman Lederhaus asked if this will be one parcel and Mr. Farrugia stated yes, with no change to the buildings.

Member McCabe asked if there will be sandblasting and the purchaser stated, yes. Currently he sends out to Buffalo and Rochester and would like to do it himself. The purchaser stated he has been in this business for about 2 years and there wouldn't be any more flat tires thrown on this site or broken windows. He noted that the current parcel is in pretty rough shape and needs a good clean up.

Chairman Lederhaus asked what the hours of operation will be. The purchaser stated 7 until 5:30 and will be family operated, except for probably 2 employees. The purchaser stated he will fence the property when he has the money.

Member McCabe asked what happens to the waste. The purchaser stated it is sifted in a cabinet and goes to the landfill and air quality control and the DEC will be there and he has bought the correct equipment and has invested \$15,000 in dust collecting items. Chairman Lederhaus asked if the waste will be reused and the purchaser stated yes.

The purchaser stated he is looking to move his family here from Lancaster.

Attorney Norris asked Mr. Farrugia what he feels makes this request unique. Mr. Farrugia stated this parcel is uniquely located across from the canal, near a cemetery, surrounded in the back by the Country Club, a halfway house, and has a house across the street owned by the golf course. This is already a multi-use district encompassing many different uses and this particular parcel has been typically a commercial business dealing with gas and oil distribution. This proposed use would not change the character of the neighborhood in any way and actually would be an improvement over what is there now and will be good for everybody.

Attorney Norris asked if there is financial evidence by Mr. Anczok that he can't get a reasonable return on his investment. Mr. Farrugia stated the only other thing it would be feasible for would be office buildings and it has been for sale for close

to 20 years, first with a realtor, then on his own, even with the environmental cleanup, there hasn't been any interest.

Attorney Norris asked if they have gone to the County Planning Board yet and Mr. Farrugia stated no.

Attorney Norris asked if they could return next month to present competent financial evidence from a certified appraiser. Mr. Farrugia stated yes.

Chairman Lederhaus stated we will keep the Public Hearing open until next month.

MOTION made by Member Jablonski, seconded by Member Collins to accept tonight's decisions. 5 Ayes, 0 Nays, Carried.

The next Zoning Board of Appeals meeting will be August 25, 2015.

MOTION made by Member Sobieraski, seconded by Member Collins to adjourn. 5 Ayes, 0 Nays, Carried.

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