

TOWN OF LOCKPORT
ZONING BOARD OF APPEALS
August 25, 2015

PRESENT: Kevin McCabe
Donald Jablonski
Elaine Sobieraski
Tim Lederhaus, Chairman

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

ABSENT: Kevin Roth
Will Collins, Alternate

The August 25, 2015 Zoning Board of Appeals meeting was called to order at 6:00 pm by Chairman Lederhaus, who then led the Pledge of Allegiance.

MOTION made by Member Jablonski, seconded by Member Sobieraski to approve the July 28, 2015 minutes. 4 Ayes, 0 Nays, Carried.

CASE #1 5480 Saunders Settlement Road – 122.00-1-23.1 – Douglas & Donna Lee Bailey – Requesting a use and area variance to install a wind turbine. Mr. Bailey presenting. Attorney Norris discussed permitted uses in an Industrial Zone and stated a use variance will not be necessary, just the area variance for the height of the 158' turbine, where 50' is allowed in an Industrial Zone. Attorney Norris stated the Town Board is working on a proposed local law regarding wind generation systems, but that drafting and implementing it is a lengthy process which may take 6 months to a year. Attorney Norris believes wind turbines are permitted in industrial zones.

Mr. Bailey stated the 158' is below the FHA regulations for wind turbines and also shorter than cell towers. Mr. Bailey stated he has spoken with his neighbors and they are not opposed. Member McCabe asked why the Baileys had decided to put up the wind turbine at this time. Mr. Bailey stated the timing is due to NYSERDA offering a grant that expires at the end of this year.

Member McCabe questioned whether we should continue without the Town Board's action on wind conversion systems. Attorney Norris stated this is for relief of the current Town Code which has a 50' height restriction and they need relief for the 158' and explained the procedure. Chairman Lederhaus asked how high cell towers are. Thomas Fleckenstein of Niagara Wind and Solar stated they are allowed to go up to 225', but most stay under it. Mr. Fleckenstein said the tallest wind turbines are usually 175', and some are required to have a light.

Padma Kasthurirangan of Niagara Wind and Solar stated the blades will be about 15' long, which would make it about 30' across.

Member Jablonski asked where similar wind turbines are located. Ms. Kasthurirangan said the Arrowhead Vineyards in Cambria and there are also four in the Town of Somerset and Wilson has one that is 120' high.

Chairman Lederhaus asked how you know how high to go. Mr. Fleckenstein stated it depends on the needs; you are not allowed to produce more than 110% of what you can use.

Chairman Lederhaus asked how close the nearest neighbor will be to the turbine. Mr. Bailey stated about 700'.

Member McCabe asked if that is the requirement for the Town of Cambria. Ms. Kasthurirangan stated the ordinances are sometimes different for an Agricultural Zone than Industrial Zone. Typically the wind turbine size must be 1.5 from a property line.

Chairman Lederhaus asked about automatic shut-offs. Ms. Kasthurirangan stated that if the winds go over 18 meters per second, the monitors immediately slow down and stop for an hour, that is about 34 MPH. Mr. Fleckenstein stated all wind turbines are designed under TIA for wind speeds of 100 to 120 MPH.

Member Jablonski asked if the turbines are grounded in case of storms, and Mr. Fleckenstein stated yes.

Chairman Lederhaus asked if the electric is all underground. Ms. Kasthurirangan stated yes, in PVC conduit, per code.

Member McCabe asked why they decided to get a wind turbine. Mr. Bailey stated they don't live in an area with enough sun for solar and also it couldn't be metered back to the home. Mr. Fleckenstein stated the economics are also way better. Mr. Bailey stated the wind turbine will cost about \$100,000 with a 50% reimbursement from NYSERDA, otherwise this wouldn't be feasible.

Chairman Lederhaus opened the Public Hearing. Hearing no comments, Chairman Lederhaus closed the Public Hearing. Received the paperwork on the NYSERDA wind turbine as "Exhibit A" for this case.

MOTION made by Member McCabe, seconded by Member Sobieraski to read the resolution prepared by Attorney Norris. 4 Ayes, 0 Nays, Carried.

MOTION made by Member Jablonski, seconded by Member McCabe to approve the variance as set forth in the document prepared by Attorney Norris and attached hereto. 4 Ayes, 0 Nays, Carried.

CASE #2 **5744-5768 S. Transit Road – 123.13-1-19.2 – NYRPT, LLC** – Requesting an area variance to add three double-faced panels totaling 1' 7 ½" H x 14' W on existing free standing sign and to amend the area variance dated 1-26-99. Courtney Abramo from Benderson presenting. Ms. Abramo stated there is 189,000 square feet of retail space available, which is unique in that the strip as they face each other instead of Transit Road. Ms. Abramo stated there is 17,000 square feet vacant that is difficult to lease as it can't be seen from the main road. Ms. Abramo stated the retail space is in a heavy traffic commercial area and several different signs are necessary due to the number of businesses located in the plaza. Ms. Abramo stated the additional panels won't change the character of the neighborhood, there is no other feasible way to achieve the benefit, the variance is not substantial as they are just adding three panels to the existing sign, and she doesn't feel it is self-created.

Chairman Lederhaus noted that NYRPT had been here for a variance in 1999 and for additional amendments to said variance in the past. Ms. Abramo stated they still have 4 vacancies, but won't be asking for an additional variance for additional panels on this particular sign, as anything lower than these requested 3 panels would be too low for visibility. Ms. Abramo stated the current leases require them to not have smaller signs, but as tenants change, they can make the requirements for smaller signs in the lease. Ms. Abramo doesn't feel the variance would really have an impact as they are just adding to the bottom or an existing sign.

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

MOTION made by Member Jablonski, seconded by Member Sobieraski, to grant an area variance to add three double faced panels totaling 1' 7 ½ H x 14' W on the existing free standing sign and to amend the variance dated 1-26-99, as:

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 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 self-created, but with the turn over of business makes it necessary.

CASE #3 **1010 Davison Road – 123.04-2-43 – Timothy Mulvey** – Requesting an area variance to subdivide a vacant parcel into four 100’ x 250’ lots for B1 Business Use. **REMOVED**

CASE #4 **1070 Day Road – 110.00-1-40 – James Timkey – RETURNING** – Requesting a use variance to construct a fast food restaurant as defined in the Town Code in an Agricultural Residential (AR) District and two area variances. Sean Hopkins, Attorney, presenting. Mr. Hopkins stated he is here following up on several of the issues brought up at the Public Hearing. One of the issues was neighbors signing a petition that they didn’t want this project, but actually that was that they didn’t want the property rezoned. Mr. Hopkins noted that is why the applicants have sought a use variance compared to rezoning so that the ZBA could condition the variance to this project as presented solely.

Mr. Hopkins continued that Mark and Lori Parsons went around the neighborhood and received 48 signatures in support of this project and 24 signatures from other Town residents, for a total of 72 supportive signatures. Letter from the Parsons received as “Exhibit G”, packet of neighbors signatures received as “Exhibit H”, packet of Town resident signatures received as “Exhibit I”.

Mr. Hopkins stated another issue was inability of the parcel owner to realize a reasonable return – substantially shown by competent financial as presently zoned AR. Mr. Hopkins brought with him Donald Griebner of RPS, property tax specialists. Mr. Griebner stated he has been appraising for approximately 30 years and he has been asked to determine if under the current zoning, this property can realize a reasonable financial return. Mr. Griebner stated he looks at the highest and best use – using four factors of legally allowable, physically possible, financially feasible, and maximally productive; the value based upon comparison sales; and then examines the rate of return compared to the investment of the owner. Mr. Griebner submitted his report, received as “Exhibit J”.

Mr. Griebner stated the property is zoned AR, located on the east side of Day Road, a 1.09 acre vacant parcel with trees and shrubs. However, to the north of this vacant parcel is a dilapidated building, which is not desirable to live next to. Also there is a large park right across the street with a main driveway from the park lining up with this parcel, which means traffic, noise and lights, all negative impacts for a single family home, if one were to be built on this parcel.

The property is 219' across and 217' deep and not in a flood zone. However, Mr. Griebner stated the approximate cost of running utilities is over \$5,000 according to an Apex quote to connect to water and gas lines. Also, there is no sewer there, but septic is possible. These costs have been detriments in marketing this parcel for single family use. No written offers have been received since Mr. Timkey took ownership for single family use and Mr. Griebner feels the aforementioned issues are primary factors for no offers.

Mr. Griebner pointed out that a family dwelling, park, health facility, cemetery and home child care center with 6 children or less would be legally allowable uses in an AR District. Mr. Griebner then examined what is physically possible on the parcel and determined a home day care, small church or single family home would be the only physically possible uses due to its size. However, Mr. Griebner stated that in his opinion, these physical uses are financially not feasible or maximally productive due to the physically and negative locational factors previously explained and contained in his report. Therefore, he finds these physically possible uses highly speculative and very unlikely to be located on this parcel.

Mr. Griebner stated he next does a sales comparison approach and for that he outlined 7 parcels that are comparable, including a 1.4, a 1.3, and a 2.1 acre parcels. The median price per acre figures out to be about \$13,000 per acre. Today's market value on this parcel would come out to be \$14,170.

Mr. Hopkins stated at the previous meeting the neighbor to the south stated he had made an offer for \$15,000. This was a verbal offer that was never consecrated in writing as New York State requires for real estate contracts. Mr. Timkey has \$15,781 invested in the property including his cost, the taxes and some clean up that he has done. These actual costs exceed the current market value or the written offer of the Parsons.

Mr. Hopkins also stated the property has been on the market for 6 years with no written offers, and the previous owner had also marketed it.

Attorney Norris asked Mr. Griebner whether that in his professional opinion and based upon the financial evidence that he has presented, does he conclude that, based upon the present zoning classification, can the property owner receive a reasonable return on the property? Mr. Griebner answered, "No, he cannot."

Mr. Hopkins stated at the previous meeting, the adjoining property owner felt this should be moved to another Board by a change of venue, but the responsibility rests on this Board pursuant to State Law. Mr. Hopkins stated also that the row of

pine trees were brought up and it was confirmed that they are located on the adjoining parcel and will not be touched. If additional landscaping is required, they will do it. Senior Building Inspector Belson stated the gentleman at the previous meeting was not the property owner, his father is.

Chairman Lederhaus noted the Public Hearing is still open and asked for comments.

Hubert Burns of 7126 Old English Road stated he feels this project will be an asset to the Town of Lockport.

Melvin Darrell of 5314 Ernest Road stated he agrees with the other gentleman, this is a good project.

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

Attorney Norris stated that it is his recommendation for the Board to take home and review all the paperwork that was submitted this evening and to take additional time to thoroughly weigh all the evidence before them.

Member Sobieraski asked how long ago the \$15,000 verbal offer was made. Mr. Timkey stated in 2012 and it was contingent on Mr. Timkey holding the mortgage.

MOTION made by Member Sobieraski, seconded by Member Jablonski to table 1070 Day Road. 4 Ayes, 0 Nays, Carried.

CASE #5 **4759 Cold Springs Road – 95.00-1-32.1 – Michael Anczok (Superior Lubricant) - Returning**
4761 Cold Springs Road – 95.00-1-31 – Michael Anczok (Superior Lubricant) – Returning - Requesting a use variance to operate a metal fabrication, restoration and coating business. David Farrugia, Attorney, presenting. Mr. Farrugia stated this site was previously used for Sunoco, Ferguson Oil, Gaude Oil, since 1925. Howard P. Schultz of HPS & Associates, a state certified general real estate appraiser looked at the property and noted it would be very costly to convert the buildings to any of the B1 permitted uses. Mr. Shultz report received as “Exhibit F”. Mr. Farrugia stated everything will be properly set up.

Chairman Lederhaus noted the Public Hearing is still open. Hearing no comments, Chairman Lederhaus closed the Public Hearing.

MOTION made by Member Jablonski, seconded by Member Sobieraski to grant a use variance to put in a fabricating business at 4759 & 4761 Cold Springs Road as:

1. The applicant cannot realize a reasonable return on the property based upon competent financial evidence submitted by Mr. Schultz;
 2. The hardship is unique to this property;
 3. The requested variance will not alter the essential character of the neighborhood; and
 4. The hardship was not self-created.
- 4 Ayes, 0 Nays, Carried.

MOTION made by Member Sobieraski, seconded by Member McCabe to accept tonight's decisions. 4 Ayes, 0 Nays, Carried.

MOTION made by Member McCabe, seconded by Member Jablonski to adjourn. 4 Ayes, 0 Nays, Carried.

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