

**MINUTES OF THE REGULAR MEETING OF THE TOWN OF ELLICOTT  
ZONING BOARD OF APPEALS HELD AT THE ELLICOTT ADMINISTRATION  
BUILDING, 215 SOUTH WORK STREET, FALCONER, NY 14733  
ON SEPTEMBER 25, 2017 AT 7:00 P.M.**

**PRESENT:** Chairman Steve Hoglin, John Merchant, Ang Cimo, William Pentheny, Attorney William Wright, Code Enforcement Officer David Rowe and Secretary Valerie Pierce

**ABSENT:** Jean Holton and Ken Lyon

Chairman Hoglin opened the meeting at 7:00 PM and led in the Pledge of Allegiance. Secretary Pierce called the roll.

**Motion made by William Pentheny, seconded by John Merchant to approve the minutes of the August 30, 2017 meeting.**

**Carried.                   Ayes – 4                   Noes – 0                   Absent – 2**

**Attorney Wright swore in everyone that would be giving testimony before the Board this evening.**

**Chairman Hoglin reopened the public hearing for Bell Atlantic Mobile Systems of Allentown Inc., d/b/a Verizon Wireless for the renewal of their telecommunication tower on Idlewood and Orchard Roads.**

**Attorney Wright** said he had been in contact with their attorney who had been in three months ago. They said they were able to contact American Tower Company, which is the company that purchased this tower. They have contracted a company to go up and do the remediations work (restoring the road and the drainage). They have requested an adjournment for one more month. He told the Board that he saw no reason not to keep them on the agenda for one more month. The Board agreed to keep them on the agenda one more month.

**Chairman Hoglin reopened the public hearing for Michael Smith, 3363 Bonita Drive, Jamestown, NY for variances to construct a second floor addition.**

Code Enforcement Officer David Rowe told the Board that Mr. Smith had indicated that he was coming but he did not know how far he was driving or if he was driving from Pittsburgh. The Board moved this down on the agenda to give Mr. Smith time to appear.

**Mr. Hoglin reopened the public hearing for Tracy Lehnerd, 1844 Southwestern Dr., Lakewood, NY for a public hearing for the continuance**

**for the renewal of a special use permit to operate a beauty shop in her home.**

Ms. Lehnerd had called and said she would be late and asked to be moved down on the agenda.

**Chairman Hoglin opened the public hearing for Elizabeth Nord, 29 S Chicago Ave., W.E., Jamestown, NY for the renewal of her special use permit to operate a dance studio.**

**Ms. Nord** addressed the Board.

- she told the Board that she had taken down lettering which she has done
- she was asked to stagger some classes and schedule them so the traffic would be less which she did
- the number of classes and students stay about the same from year to year

Mr. Cimo asked if she still did the photography. She stated she does but most of that is off site. She does photography for her own students.

There were no neighbors present and the Town did not receive any correspondence concerning this application. Code Enforcement Officer Dave Rowe stated he had not received any complaints on this property or business.

Bill Pentheny told the Board that he lives right up the street and the parking since the last renewal has been much improved. Attorney Wright said that he agreed.

Attorney Wright stated the Board had made the determination that this met the criteria for a special use permit prior and that since Ms. Nord was back within the renewal period the Board has the opportunity to extend the two year renewal in excess of the two years. The Board agreed they had no problem in extending the renewal period to five years.

**Motion made by Steve Hoglin, seconded by John Merchant to renew the special use permit for Elizabeth Nord, 29 S Chicago Ave., Jamestown, NY for her dance studio for a period of five years.**

**Carried.**

**Ayes – 4**

**Noes – 0**

**Absent – 2**

**Chairman Hoglin opened the public hearing for New Creation Assembly of God for the renewal of a special use permit for a Church in a residential zone.**

**Pastor William Blair addressed the Board.**

- He explained that they were not aware they were suppose to renew this permit until they were contacted two years ago

- they had purchased the property from a Church (Jehovah Witness Church) in January of 2001- it was built in 1958
- they had renewed this permit in September of 2015
- there has been some change in the use of the building – their youth pastor left in March so they have been fielding that with volunteers – recently they went from two events to one weekly – there is an occasional overflow from their other Church such as bible studies or women’s ministries
- any variation has to do with staffing or conflicts with their other building

Dave stated that there were no issues with this property. There were no neighbors present and no correspondence received by the Town on this application.

Steve’s recommendation would be to extend this renewal to five years.

**Motion made by Steve Hoglin, seconded by John Merchant to renew the application for New Creation Assembly of God at 591 Hunt Rd., W.E., Jamestown, NY for their Church for five years.**

**Carried.                    Ayes – 4                    Noes – 0                    Absent – 2**

**Tracey Lehnerd had entered the meeting and Attorney Wright swore her in.**

**Mr. Hoglin reopened the public hearing for Tracy Lehnerd, 1844 Southwestern Dr., Lakewood, NY for the renewal of her special use permit to operate a beauty shop in her home.**

**Ms. Lehnerd addressed the Board.**

- she told the Board that she has been in business for 13 years
- there are no neighbors within 1000 feet of her
- she only has one person at a time – she is part-time
- she does have a small sign
- there have been no changes since she was here in September 2015
- she has no other employees

The Town received no correspondence concerning this application.

**Motion made by John Merchant, seconded by William Pentheny to renew the special use permit for Tracy Lehnerd, 1844 Southwestern Drive, Lakewood, NY for a beauty shop in her home for five years.**

**Carried.                    Ayes – 4                    Noes – 0                    Absent – 2**

**Chairman Hoglin opened the public hearing for Carl Lisciandro, 290 Hunt Rd., W.E., Jamestown, NY for a variance for a second garage.**

**Mr. Lisciandro addressed the Board.**

- he is asking for an additional garage – wants to add a 30' by 30' single story garage
- the new garage will be on a parcel that he purchased from Bethel Baptist Church
- he currently has a 2 ½ car garage – approximately 800 SF – 24' by 24' and 14' by 24'
- he will have electric service
- he needs extra storage and an additional car for his son

Attorney Wright told the Board because this garage would be on separate tax parcels there is an issue. This would be totally on a separate parcel and the code does not allowed a garage that is not related to a residence. Mr. Wright stated that the tax assessor can combine the two parcels into one without the requirement of new deeds. The Board has required the merger of tax parcels in the past.

The Board asked Mr. Lisciandro if he could get a survey of his property. Attorney Wright said that a survey should have been done when he purchased the additional lot from the Church to separate it from the Church's larger lot.

Mr. Wright said the Board can request additional information but they need to decide if they would consider this large of additional building with what he already has. They also need to consider the character of the property. He recommended that Mr. Lisciandro get the property surveyed and come back with the smallest building that would meet his purposes. It is the requirement of the Board to grant the minimum variance necessary to accomplish a purpose. John Merchant also asked if Mr. Lisciandro could have it staked out.

Attorney Wright reviewed section 267 B of the Town Law (that is the balancing test of the benefit to the applicant as weighted against the detriment of society in general). He reviewed the five criteria the Board has to take into consideration.

**Motion made by Steve Hoglin, seconded by John Merchant to table this application for Mr. Lisciandro pending documentation showing where the building would sit on the property, a survey of the property and information on the building construction.**

**Carried.**

**Ayes – 4**

**Noes – 0**

**Absent – 2**

Mr. Lisciandro could have the tax assessor combine the lots prior to the next meeting. Otherwise it would need to be a condition to the approval and the issuing of the building permit.

**Chairman Hoglin reopened the public hearing for Michael Smith, 3363 Bonita Drive, Jamestown, NY for variances to construct a second floor addition.**

**Attorney Wright swore in Mr. Smith.**

**Mr. Smith addressed the Board.**

- the last time Mr. Smith was in was in July
- he provided maintenance agreements from Tina Lindquist and Charles Pringle III that the Board had requested – he has not filed them because he was waiting for Board approval for the variances

Attorney Wright reviewed the agreements and thought that the distance in the agreement was incorrect. Mr. Smith could erect scaffolding on the five feet stated in the agreement but not put up a ladder.

Attorney Wright reviewed the section of code for the required area variances in 267 B of the Town Law. The Board has to determine if the variance was substantial. The alleged difficulty is self-created.

Dave had not received any questions concerning this application. Secretary Pierce stated that there was no correspondence to the Town concerning this application.

The Board would like Mr. Smith to bring in a copy of the land survey from Rodgers Land Surveying when he applies for his building permit.

**Attorney Wright said that on the east side the setbacks are between 3 feet and 4 feet 2 inches so the Board would be looking at a variance of 2 feet to 10 inches. On the west side it is 5 feet 2 inches and 4 feet so they would be looking at 0 to 1 foot.**

Steve asked if the neighboring properties were one or two stories. Mr. Smith said to the west it is two stories and that he thought to the east it was one story.

Attorney Wright stated that the required setback comes from section 146-11 of the Town of Ellicott Zoning and Planning Code which requires the building sidelines to be at least 5 feet from the property lines.

Mr. Smith said that they had discussed that there was 10 feet from structure to structure when he was here in July.

**Attorney Wright stated that this is exempt from SEQR.**

Bill Pentheny said that he would like to see some kind of fire-proof siding. Attorney Wright said the Board could set conditions on the approval but would

have to be much more specific because in it not in the code. He feels it would put a terrible burden on the applicant to say he has to put on some fire resistant materials as well as the code enforcement officer to enforce it. Dave said that in his opinion that since it is not in the code book it would not be a reasonable request based on the cost.

**Motion made by William Pentheny, seconded by John Merchant to approve the application for Michael Smith for the required variances as stated above for a second story addition at 3363 Bonita Drive, Jamestown, NY.**

**Carried.                      Ayes – 4                      Noes – 0                      Absent – 2**

**Dave Rowe asked the Board to consider an application from Kyle Schults concerning a second structure on property owned by him at 3484 Townline Road, Jamestown, NY.**

Dave told the Board that Amy had sent out notices to the neighbors but it had not got on the agenda.

Attorney Wright swore in Mr. Shults.

The Board needs to make a determination as to what the structure is. Dave is calling it a second residence and Mr. Shults is appealing his determination.

Dave gave the Board some background on this determination. He was looking for something else online and saw this property for sale with pictures. Based on the pictures he determined this was a second residence. Dave provided copies of the photos for the Board.

Mr. Shults told the Board:

- that he uses this for a tack room for his cows
- they do stay there during hunting season for a week or so
- there is no power to the building – there is a generator
- there is no running water
- they use a propane tank
- the building came on skids – built by the Amish – it can be picked up and moved at anytime
- he was in the middle of a move himself so he did move some of the stuff from his house to this structure temporality – he also was planning on selling this building so they did stage it for sale
- the building is 30' by 24' – it sits on 4 by 4's and cinder blocks
- his barn is about 500 yards off the road and does not have any amenities – this building is about half way between the barn and the road

Dave told the Board that a structure does not have to be permanent if there are people staying in it to have requirements.

Mr. Shults said that he has rented the structure in the front of 3484 Townline Road for years. They were planning on selling this second structure so it had been staged for the photos. He told the Board that he does not live there and does not feel that anyone could live there at the present time unless they put in a well and ran the power to the building.

Mr. Shults said that he has decided not to sell this building now.

Dave stated that if the Board deemed this not to be a residence but a hunting camp there would still be minimal requirements. If it is devoted to agricultural uses only it is exempt. He needs the Board to determine what the building actually is before he can determine how it needs to be addressed either with a permit or an exemption and what the requirements are going forward.

Attorney Wright said that the code allows in residential and in agricultural residential a dwelling. The only exemption to that if is in an agricultural residential you are allowed to have a second structure that is wholly devoted to agricultural or the housing of persons on the premises who are engaged in agricultural. A dwelling unit is defined as one or more rooms provided living facilities including equipment for provisions for cooking. It does not have any provisions for water, electricity or toilet facilities, just provisions for cooking.

Steve said that looking at the pictures he does not think it is a tack house. Even if it is on skids it appears to be for habitation.

Mr. Shults said that it is not a secondary home. He said you could not live there without water, electric or bathrooms. The floor is rubber. There is a wood burning stove. He said there is a microwave that is used to heat the bottles for the cows. There is heat. Everything is run with the generator.

**Paul Shanahan, 15 Maple St., Celoron, NY asked to speak. Attorney Wright swore him in.**

Mr. Shanahan told the Board that he was here to support Mr. Shults. He has been to this structure and stayed there during hunting season. He said he would like to help the Board determine what this structure is if he could. He said that he had served on Planning Board for many years so he was somewhat familiar with what they were doing tonight. He does not think that this could be described as anything other than a hunting camp/tack house. He has personally witnessed this because he has been present for some of the times Mr. Shults told the Board about concerning the care of the cows. The only electricity in the place is the portable generator, no plumbing and no bathroom. Whenever he has been present they have cooked outside. No one lives there and no one has ever lived there. He told the Board that he offered these comments based on personal experience.

Attorney Wright asked Dave under the building code if this in not a residence what would it be considered. Dave said that if someone stays there it has to meet the building requirements. Even if it is a hunting camp it has to meet some requirements. Mr. Wright asked what if it was a structure devoted only to agriculture. Dave stated it would be exempt.

**Motion made by William Pentheny, seconded by Ang Cimo that this structure is a dwelling.**

**Denied.                    Ayes – 3                    Noes – 1 (Merchant)                    Absent – 2**

John said that he knows that the pictures look that way but he feels that it is a hunting camp not a residence.

**Mr. Shults told the Board that he would use this structure for agricultural purposed only.** He has another camp in Sinclairville so they would not be using it for hunting. Her will remove everything out of this residence and take it to the other camp.

Dave asked Mr. Shults if he could check on the property when he gets it cleared out. Mr. Shults agreed.

Attorney Wright said that the Board does not need to take any action as long as this structure will be used for agricultural purposes only. Dave said that he thought the Board would need to address hunting camps in the zoning code at some point.

**Motion made by John Merchant, seconded by William Pentheny to adjourn the meeting at 8:48 PM.**

**Carried.                    Ayes – 4                    Noes – 0                    Absent – 2**

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Valerie Pierce, Secretary