

**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 OCTOBER 30, 2017 AT 7:00 P.M.**

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

**ABSENT:** 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 John Merchant, seconded by Angelo Cimo to approve the minutes of the September 25, 2017 meeting.**

**Carried.                   Ayes – 5                   Noes – 0                   Absent – 1**

**Attorney Duncanson 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 special use permit for a telecommunication tower on Idlewood and Orchard Roads.**

**Highway Superintendent Bob Pickett reported to the Zoning Board that the drainage issues had been resolved to the Town's satisfaction.**

**Attorney Shane Uber**, owner of a neighboring property asked what the issues were. Mr. Pickett told him that they had graded the road and added some trees.

Mr. Hoglin stated that the only other issue was the difference in the demolition bond. The amount of the demolition had been raised to \$90,000. Previously the bond had been for \$70,000. Dave Rowe said that he had a request from Verizon for a letter on Town letterhead to notify them they need to increase the amount of their bond to \$90,000. He will draft a letter, if this renewal is approved, that the renewal is contingent on them updating the demolition bond for \$90,000.

There was no correspondence received by the Town concerning this application.

John Merchant suggested to Mr. Uber that is he sees anything in the next two years such as drainage issues that he contact Mr. Rowe.

**Motion made by Steve Hoglin, seconded by John Merchant to approve the renewal for Bell Atlantic Mobile Systems of Allentown Inc., d/b/a Verizon Wireless for their special use permit for a telecommunications tower at Idlewood and Orchard Roads, Jamestown, NY contingent on them providing a demolition bond in the amount of \$90,000. This permit will be due for renewal in May of 2019.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 1**

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

Mr. Lisciandro provided a survey and a sketch of the house, garages and the proposed garage for the Board.

Discussion followed on the proposed garage:

- he currently has two garages – one is 24' by 24' and the other is 14' by 24'
- he wants to add an additional 30' by 30' garage on a parcel of land that he purchased from the Church on the joining property
- it will be a single story residential garage with siding and roofing that will match his house
- he has met the setbacks – the right-of-way is approximately 15 feet from the shoulder of the road and then the garage is another 30 feet beyond that
- Ang asked when he added to additional 14' by 24' garage – Mr. Lisciandro stated that it was about
- Steve asked if he would be cutting anything off behind him since the proposed garage is 15 feet from his other garage and 10 feet from the east property line – Mr. Lisciandro stated that he would not
- It is a low area and Mr. Lisciandro will probably have to bring in fill – or he might be able to move it over a couple of feet
- John asked if it was wet at all and had a concern that raising it up and having a 10 foot drop-off is there would be any water issues
- Jean asked if he was using any of the other garage space as living space – he stated that they were not
- there will be electric to the proposed garage that would come off the house

Mr. Lisciandro told the Board that this garage will be for an additional car for his son and a car that they store for the summer as well as his tractor with implements. Mr. Hoglin asked if this could be downsized at all. Because he needs space for 2 cars plus additional storage he feels he would need the additional 6 feet.

Chairman Hoglin asked Dave if this had been sent to County Planning for review. Dave said that he had not sent it to the County.

Attorney Duncanson asked if the Town had ever passed a local law dispensing with that requirement. No one knew if that had happened. Dave had printed out a list that stated what needed to go to County Planning. Attorney Duncanson told the Board that they could approve the variance contingent on hearing from County Planning. The County Planning usually considers residential applications as local concern. They have more input when it is a business and would affect traffic.

Mr. Lisciandro said that at this point he would not be able to begin until spring now so waiting for the letter is not a concern. The Board is also looking at the building itself so tabling and waiting until next month might be better. John asked if he would consider making the building 24' by 36' and utilizing the depth of the lot. He said he was also looking at the bank coming down 10 feet and did not think Mr. Lisciandro would be able to drive a vehicle around the garage. Mr. Lisciandro can decide on the building dimensions.

Attorney Duncanson asked Dave if this is an issue under Section 146-11 B of the Town Planning and Zoning Code which states no private garage shall be erected on the front ½ of any premises unless it forms an integral part of the dwelling erected thereon. If Mr. Lisciandro would put this in the back half it would not be an issue. Dave said under definitions of a private garage you are allowed up to a three car garage with an area not exceeding 1000SF. Mr. Lisciandro has eliminated all of the setback issues and the only issue now is that he is asking for additional garage that would require an area variance for the SF over the allowed.

Steve also said that the Board would have to consider the five criteria.

Steve stated that a 24' x 36' garage would reduce the variance by 36 SF. The variances that the Board needs to consider are one for a second garage and one for the additional square footage.

Jean asked if the Board should they should table this until they get the referral back from county planning. They could approve it contingent on the County Planning review. Attorney Duncanson explained to Mr. Lisciandro that it is NYS law that requires the Zoning Board when considering a variance or special use permit (that if the property is situated on a County highway) they have give notice to the County Planning Board. They will normally do not have any opinion and state that it is a matter of local concern.

Mr. Duncanson asked Mr. Lisciandro if he would reconsider going to a rectangular shape to reduce the front of the garage and come back and the Board can get the recommendation from County Planning Board.

Bill Pentheny suggested a door in the back to get his tractor out. Mr. Lisciandro said that the way the land drops he did not think that would be an option. Mr. Lisciandro said that the garage would have standard doors in front.

The Board suggested that Mr. Lisciandro start to fill so it can settle. Dave asked Mr. Lisciandro if he would fill this area if he could not build the garage. Mr. Lisciandro stated he would not. Dave did not think he should start filling because it would be an expense if he did not get approval. Attorney Duncanson stated that he should wait until the Board has voted on this application before he starts to fill. The Board should not take a position as to whether he should fill in advance of making a decision.

John also asked Mr. Lisciandro if he would look into combining the two lots.

**Motion made by Ang Cimo, seconded by Jean Holton to table this application for Mr. Lisciandro for a variance for a second garage.**

**Carried.            Ayes – 5                            Noes – 0                            Absent – 1**

**Chairman Hoglin opened the public hearing for Lisa Oakes, 3435 Old Fluvanna Rd., Jamestown, NY for the installation of a swimming pool within 50 feet of Chautauqua Lake and within 10 feet of the neighboring property.**

Dave explained to the Board that this all relates to the size of the concrete pad. The pool itself is compliant.

**Attorney Shane Uber**, representing Ms. Oakes presented the Board with a survey of the property. He also had a notarized affidavit from Paul Freund, a neighbor of Ms. Oakes stating he had no objections to this variance because he does not think it would compromise the character of the neighborhood and would not be detrimental to his property or other neighboring properties.

The pool has already been installed. The concrete has not been installed.

Dave gave the Board a brief history of this pool. Ms. Oakes purchased the property in 2015 and contacted him last year about putting in the pool. Where she originally was going to put the pool the restrictions made that impossible. She purchased additional property from the neighbor last year. The neighbor had a pool that was about twice this size but took it out years ago.

Dave also told the Board that there are inconsistencies in the code because it states that if you put a fence around your property it has to be 6 inches from the line but if you put a fence around your pool it has to be 10 feet from the property line stated in the Town of Ellicott Zoning and Planning code in Section 146-69 B (4). Ms. Oakes fence will be approximately one foot from the line.

Steve asked if the Town could even approve putting something closer than 50 feet from the Lake. He feels that the Town has been very careful not to put anything closer. Dave told the Board that there are properties within the Town of Ellicott that are closer to the lake, such as along Lake Street and Celoron, that are not 50 feet from the lake. Dave stated that of all the lakeside properties these ones along Fluvanna as the most compliant.

Dave told the Board that the fence has to be at least 4 feet high as dictated by NYS law. This is not an option because of the safety issue.

Attorney Duncanson asked Dave what the percentage of noncompliant with a variance. He wanted to know how great or minimal this variance would be. Dave said that the amount of Ms. Oakes lot that would be affected by the variance would be minimal. It was determined that it would be less than 15%.

Steve asked if this proposed variance needed a County Planning Board referral. Dave had a copy of the items that needed to be referred to the County Planning Board. Attorney Duncanson stated that this did not fall within any of the items listed. The County Planning Board has been interested in lake properties because of the permeability and runoff.

Chairman Hoglin asked Ms. Oakes if she planned on getting this done this year. She said that it would probably be spring because it was so late in the year. They have a temporary fence around the pool.

Secretary Pierce stated there had been no correspondence to the Town concerning this application.

Dave printed out an aerial photo for the Board from the GIS system so they could see the property and surrounding properties. It showed the silhouette of the pool that had been removed.

Ms. Oakes said that the concrete and fence would be approximately 29.65 feet from the lake.

Attorney Duncanson said it is the function of the Zoning Board to have some flexibility with what is in the code. Ms. Oakes has purchased more property to minimize the concrete area. This project will not affect the character of the neighborhood. There is an affidavit from the closest neighbor.

**Motion made by Jean Holton, seconded by Bill Pentheny to approve the variance for Lisa Oakes, 3435 Old Fluvanna Rd., Jamestown, NY for the variance to allow pool fence to be erected at it's closet point to the adjoining property within 1 foot and a variance for the concrete patio surrounding the pool being no more than 34 feet to the lake shore as depicted in the survey that the applicant provided.**

**Carried.            Ayes – 5            Noes – 0            Absent – 1**

**Motion made by Bill Pentheny, seconded by Jean Holton to adjourn the meeting at 8:10 PM.**

**Carried.            Ayes – 5            Noes – 0            Absent - 1**

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**Valerie Pierce, Secretary**