

**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 MARCH 27, 2017 AT 7:00 P.M.**

PRESENT: Chairman Steve Hoglin, John Merchant, Jean Holton, Ang Cimo, Phil Pratt, William Pentheny, Attorney William Wright, Code Enforcement Officer Dave 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 Phil Pratt, seconded by William Pentheny to approve the minutes of the February 27, 2017 meeting.

Carried. Ayes – 6 Noes – 0 Absent – 1

Attorney William Wright swore in everyone that would be giving testimony at this meeting.

Chairman Hoglin reopened the public hearing for Richard and Anthony Benedetto, 800 Fairmount Ave., Jamestown, NY for a variance to construct a 4000 SF – 6000 SF building and a set-back variance to construct a parking lot.

Code Enforcement Officer Dave Rowe told the Board that the applicant requested this application be tabled until they find out if the property is going to be rezoned. Attorney Wright told the Board since this was the third time the applicant asked for it to be tabled they could abort this application or table it.

Steve Hoglin made a motion, seconded by Jean Holton to table this application for one more month.

Carried. Ayes – 6 Noes – 0 Absent - 1

Chairman Hoglin reopened the public hearing for Timothy Ruch, 580 Fairmount Ave., Jamestown, NY for the renewal of a special use permit for a three unit apartment dwelling.

Mr. Ruch was not present.

Motion made by Jean Holton, seconded by John Merchant to table this application until the next meeting.

Carried. Ayes – 6 Noes – 0 Absent – 1

Attorney Wright suggested that a letter be sent to Mr. Ruch that states if he does not appear at the next meeting his special use permit will be revoked.

Chairman Hoglin reopened the public hearing for SBA Towers IX, LLC for a special use permit for a communication tower on property owned by Moonbrook Country Club on West Oak Hill Rd., Jamestown, NY.

Attorney Wright stated that he has had several communications with the attorney for SBA Towers over the last month and they have determined that they will need two area variances, one for the size of the fence and one for the set-back from the residences. They knew that they would not get the application in on time to be heard at this meeting so they asked that it be heard at the April meeting. They have applied. It has been tabled so it remains tabled.

There has been no further communications to the Town concerning this application.

Attorney Wright said that it was a practice that notices are sent to neighbors within 1000 feet for cell towers applications. Since the notices were sent to neighbors within 500 feet last time, he would recommend that they be sent to neighbors within 1000 feet for this new application.

Chairman Hoglin opened the public hearing for Bruce Gleason, 1848 Buffalo St. Ext., Jamestown, NY for a special use permit for a home occupation for an accounting/web design business.

Mr. Gleason addressed the Board:

- they have a 30' by 30' garage they have converted into an office space
- it is part a web design business and part an accounting business
- they have clients in the garage approximately three months out of the year – during the off season they might have one or two a week
- they have a horseshoe drive and ability to park in other areas – he spaces his clients out during tax time so there will not be any problem with parking
- the garage is detached
- Ang Cimo stated that he has been there and it is set back quite a ways from the road and there is plenty of room for parking
- the house is a little over 4000 SF
- they started the tax business in September but actually moved in December 2014 – they were not aware they needed a permit
- he has a business partner but no employees
- this property is zoned Ag-Residential

Attorney Wright reviewed section 146-5 (definitions) and 146-71 A of the Town of Ellicott Zoning and Planning Code.

Dave stated that he did not know that the business was in the detached garage.

Attorney Wright stated that this is an illegal business and there is no way to grant this under a home occupation. It is in a building that is detached from the home and it is larger than is permitted by the Town code and the NYS code.

Jean asked if the garage could be attached to the home. Mr. Gleason stated the garage is approximately 100 feet from the house.

Mr. Gleason said that there used to be an auto repair in the garage. Attorney Wright said that there is no "grandfathering" and the auto business might have been illegal anyway.

Mrs. Gleason said that they are usually only on their computers. They asked if they could consider just the space they actually use because it is in the garage but not all of the space is being used.

Attorney Wright asked if there was ever a permit to convert the garage. Mr. Gleason said that they have not changed anything. The garage doors are still there.

Attorney Wright said that because this business is not in their home it is an automatic disqualification for a home occupation.

Mr. Gleason asked what their options would be. Attorney Wright said they would have to move the business within the home and meet the strict requirement of the code for a home occupation.

Motion made by Steve Hoglin, seconded by William Pentheny to deny the application of Bruce Gleason, 1848 Buffalo St. Ext., Jamestown, NY as presented.

Carried. Ayes – 6 Noes – 0 Absent – 1

If the Gleasons decide to move the business into the home they can reapply.

Chairman Hoglin opened the public hearing for The Gerry Homes for the renewal of their special use permit for six (6) 10-12 unit skilled nursing and assisted living group homes, nine (9) single-family homes and twenty-two (22) duplex homes at 2000 Southwestern Dr., Jamestown, NY.

David Smeltzer, Executive Director for The Gerry Homes, addressed the Board:

- he told the Board that it was up to that many units or homes – they have not completely built out

- he provided a detail of improvements and a survey and plat of the lands for the Board
- he said they did improved the storm water retention when they renewed the permit the last time – there were concerns from Southwestern School – their engineer and also the Town engineer reviewed the plans and they met the requirements but they have improved the plan anyway and it exceeds the requirements
- they have completed some of the single-family homes – they will be full by the middle of May – they have even filled the model home

There has been no correspondence concerning this application. One neighbor from Hunt Road was in attendance but was just present to find out about the project.

Ang Cimo asked if there had been an issue with signage. Mr. Smeltzer stated they had proposed signage but were denied. They do not have any signage at the present time. They would have been allowed the signs if the sewer district had not required they combine the two parcels. Mr. Smeltzer said that it does cause some confusion.

Attorney Wright stated that the Board had determined that until they were built out they would do two year renewals. That would be his recommendation.

Motion made by John Merchant, seconded by Phil Pratt to renew the special use permit for The Gerry Homes, 2000 Southwestern Dr., Jamestown, NY for two years.

Carried. Ayes – 5 Noes – 0 Absent – 1 Abstain – 1 (Holton)

Motion made by Jean Holton, seconded by Phil Pratt to adjourn the meeting at 7:40 PM.

Carried. Ayes – 6 Noes – 0 Absent – 1

Valerie Pierce, Secretary