

MINUTES OF THE REGULAR MEETING OF THE TOWN OF ELLICOTT ZONING BOARD OF APPEALS/ PLANNING BOARD WAS HELD AT THE ELLICOTT ADMINISTRATION BUILDING, 215 SOUTH WORK ST., FALCONER, NY 14733 ON MAY 17, 2018 AT 6:00 P.M.

PRESENT: Chairman Dan Evans, Jean Holton, Patricia Martonis, Paul Volpe and John Merchant

ABSENT: Ken Lyon

Chairman Evans opened the meeting at 6:00 PM and led in the Pledge of Allegiance.

Motion made by Patricia Martonis, seconded by Jean Holton to approve the minutes of the April 19, 2018 meeting.

Carried. Ayes – 5 Noes – 0 Absent – 0

Attorney Duncanson swore in all of the applicants.

Secretary Pierce stated that the notice of public hearing had been published and notices had been sent.

Chairman Evans asked any neighbors that planned on speaking be sworn in. **Attorney Duncanson swore in anyone else that was planning on speaking at this public hearing.**

Code Enforcement Officer Dave Rowe told the Board that James and Suzanne Boland had withdrawn their application.

Chairman Evans opened the public hearing for David and Kay Dracup, 430 Howard Ave., WE, Jamestown, NY for a variance to build a pole barn garage.

Mr. Dracup addressed the Board and told them he is requesting to build a 24' by 30' pole barn garage but the notice stated a 20' by 30' garage. Attorney Duncanson stated the Mr. Dracup's application requested 24' by 30'.

Chris McGowan, Mr. Dracup's contractor explained the plans to the Board.

- He provided some photos and showed the Board where the proposed garage will be
- this is a 4 acre lot with a house which is currently under construction
- the garage will be approximately 100 feet off the road – and approximately 75 feet off the side property line
- the garage will be a pole barn construction but will be sided to match the house – vinyl sided, asphalt shingles, same type of door and concrete floor
- they have not been able to do a final grading because it has been so wet - if they are unable to get it level enough they would actually put in a concrete footer and foundation wall

John asked which way the roof line would run. Height to the peak of the roof will be approximately 14' to 15'. The house is one story. The garage door is on the front. The driveway comes down to the house then turns. The driveway will be blacktopped. There will be only electric run to the garage.

No neighbors appeared for this application. The reason for this variance is there is a garage attached to the house and they need a variance for a second garage.

Chairman Evans stated that:

- there are no setback issues
- there were no neighbors present
- the aesthetics are nice because they match the house
- the driveway is bituminous surface
- there are trees screening the building and they will remain

Motion made by Jean Holton, seconded by Paul Volpe to approve the variance for a second 24' by 30' garage for David and Kay Dracup, 430 Hunt Rd., Jamestown, NY.

Carried. Ayes – 5 Noes – 0 Absent – 0

Chairman Evans opened the public hearing for Doug Lindquist, 3365 Bonita Lane, Jamestown, NY for a variance to demolish an existing cottage and put up a new home (pre-fab double wide).

Mr. Lindquist and Mr. Shawn Finefrock from Hawk Manufactured Homes, Inc. addressed the Board.

Mr. Lindquist told the Board:

- they own a cottage that is falling apart and would like to demolish it and put in a new pre-fab and make it a little bigger
- they want this to be their home when they move back to the area

Mr. Finefrock provided a site plan for the home they wanted to build

- he would handle the construction on site
- they propose to tear the old cabin down (the floor is buckling and the walls are cracking and the ceiling is coming apart) - it will not be inhabitable for much longer
- they propose to put in a concrete slab that will be frost protected

Mr. Evans told them they needed a survey showing the setbacks. They stated that they would be 12 feet from the neighbors on one side and 13 feet from the other – the house is 24 feet wide with the overhangs.

Dan told them that the NYS fire code would not allow that. Mr. Finefrock said that there was actually more room than that. They are talking physical lot size not house to house.

Dan told him that the Town cannot allow them to build a building on a piece of property where a ladder cannot be put on in case of fire.

Attorney Duncanson said that the Lindquist's' should meet with Mr. Rowe to see what their options are on this piece of property.

Motion made by Pat Martonis, seconded by John Merchant to deny the application of Doug Lindquist for a residential home at 3365 Bonita Lane, Jamestown, NY.

Carried. Ayes – 5 Noes – 0 Absent – 0

Chairman Evans opened the public hearing for Neal and Cyndi Mechling, 3501 Lake St., Jamestown, NY for a variance to install a 4' aluminum fence on the lake side of the property.

Mr. Mechling addressed the Board:

- he explained they were asking to install a 4 foot aluminum fence that would enclose the entire back yard
- the primary reason for the fence is because of their grandchildren and dogs
- they provided photos of the fence from the contractor
- they provided a quote that also stated an option 2 which would be a black vinyl chain link fence – Mr. Mechling said that they were not considering that because that would not be aesthetically pleasing

Wendy Adams, a neighbor on the left side had concerns as what kind of fence they were planning on putting up. Mr. Mechling stated it would not be a chain link fence but an aluminum fence.

Nancy Miller, a resident on Lake Street, stated she and her husband Craig had concerns with this fence.

- the aesthetics are an issue
- she has concerns with their personal view of the lake – if they sit on their cottage front porch they will not be able to look down toward the Celoron area without obstruction
- they enjoy watching the activity on the lake
- they also have grandchildren and they have never had an issue
- they have a dog that stays in the cottage unless they take her out on a leash - she was wondering if they have considered an invisible fence for the dogs
- she did drive through the neighborhood and the lots in this neighborhood are fairly close together- they range from 27 feet to 33 feet and maybe one is 40 something – but they are small
- there are no enclosed front yards but there are some enclosed back yards facing the street – she wondered if that would be an option
- she said that they do have a 4 foot fence around their pool and it does obscure their view – when the kids are in the pool they need to get up and check on them

Dan said that there is a County law that states a structure has to be 50 feet from the lake. Dave said that was adopted by the Town of Ellicott but not by all municipalities.

Craig Miller, a resident on Lake Street stated:

- when they purchased the cottage next door the cottage was really old and they had to do a lot of improvements to it but kept the same footprint - he feels that improvements are good but should stay within the original footprint
- he feels that most of the people want to enjoy the lake view

Pat Martonis said when the Board approved the deck there was approximately 20 feet to the lake. She asked how much closer the fence would be. It would be right to the lake. Dan stated that a fence is considered a structure.

Dan said the problem is that on the lake the lots are very narrow and run into obstruction of view. That is a hardship for the neighbors.

Attorney Duncanson asked Dave Rowe if he was familiar with the character of this neighborhood. Dave stated he had been down there several times in the last couple of weeks. He said that the Google map was an accurate map of the neighboring properties. Attorney Duncanson said he did not see where there appear to be fences on any of the other properties. Dave said that there might be two that are as far out as Mr. Meckling's deck is.

Mr. Meckling told the Board that he did not believe an invisible fence would keep his dogs in.

Attorney Duncanson asked Mr. Mechling if he bought this property eyes wide-open and was familiar with the density that exist in these neighborhoods. He thought that there should be an amount of tolerance that they need to have.

Mrs. Mechling said that they had asked if they would be allowed to put up a fence when they purchased the property. The realtor had told them they were. She said that they read the code and it was allowed unless it was a nuisance.

Neil Robinson, Esq., attorney for Mr. and Mrs. Miller, stated:

- that a structure is what the Zoning Board determines it is because they have the power to interpret the zoning law
- looking at the five criteria of an area variance – this variance is certainly substantial – it is self-created - there is an alternative (they do have electric fences that will keep 180 lb dogs in) – children on the lake are an issue but you need to keep your eye on them
- the municipalities have finally begun to recognize how important the lake is to Chautauqua County – they have started to take some positive actions to try to clean up the lake and control the building on the lake

- it is their position that the applicants have failed to satisfy 3 out of the 5 criteria – and that results in denial of the application

Attorney Duncanson read the definition of a structure which includes walls and fences in excess of 5 feet. Attorney Robinson said that if you read the section that says front yard requirements in the lake section it would come under similar constructive facilities.

Mr. Mechling asked based on what Mr. Duncanson read if it was not in excess of 5 feet it does not violate the rules. Mr. Duncanson stated that he believes it is a structure. Dan said that it says in excess of 5 feet but a fence is a structure.

Pat Martonis asked if the fence would in anyway change the flow of the water. Dan said it would not cause any runoff because it is a pole with grass around it.

Mr. Meckling told the Board he should have the same opportunity that the others that have fences do even if they did not do them legally. Attorney Duncanson said he did not know if what Mr. Mechling was referring to was approved or not but Ellicott vigorously enforces its zoning laws.

Mrs. Mechling asked if they are able to put in bushes or shrubs. Attorney Duncanson said those are not structures. Pat Martonis suggested they contact the Chautauqua Watershed for information. Attorney Robinson stated that the law is clear that if the shrubs grow together they are considered a living fence. Dan said that if the shrubs grow together neighbors can request they be cut back.

Chairman Evans stated that the Board needs to meet all of the criteria for the approval of the variance. Mr. Meckling stated last month they did not when they approved his deck. Attorney Duncanson said in response to that his deck was permeable to water which is a concern in that area. And the Board also reduced the size of the deck significantly for visibility.

Elizabeth Hall, current owner of the property at 3503 Lake St., Jamestown, NY had some concerns. Her parents, Craig and Nancy Miller have transferred the property over to her. She did not like the subaudition that this is a problem for just the Mechlings. Everyone that has bought a house on Chautauqua Lake purchased the property on the lake front because they want a view of the lake. The view is not something that can be discounted when talking about whether the fence will be a nuisance to the neighbors.

Attorney Duncanson asked if there were any other questions or comments. He reviewed the criteria for an area variance in Section 267 B subdivision 3 of the Town Law. The Board needed to consider:

- whether an undesirable change will be produced in the character of the neighborhood or nearby properties will be affected
- whether the benefit to the applicant can be achieved by some other method other than an area variance
- whether the requested area variance is substantial

- whether the proposed variance will have an adverse or impact on the physical or environmental conditions in the neighborhood or district
- whether the alleged difficulty was self-created, which shall be relevant to the decision but shall not preclude the granting of the variance

Chairman Evans stated this is not allowable. If the Board approves this they will set precedence for any other owners that would come in and want to do this. It does not matter the reason they might want to do this such as to contain children, animals or just want the privacy. They have three out of the five criteria that are not allowed by law. This is also considered a structure defined in the code and would be permanent. The Board's decision cannot be based on the fact that other neighbors are in violation.

Jean Holton suggested that the fence be put on the back of the house so the children and animals could be contained there and when they were on the lake side they could be with them to supervise. Mrs. Mechling said that would be a consideration. She asked if they could put the fence in the back. Dave Rowe could give them the requirements for that.

Jean Holton made a motion, seconded by John Merchant to deny the application for Neil and Cyndi Mechling for an area variance for a 4' aluminum fence on the lake side of their property because it does not meet the criteria for an area variance.

Carried. Ayes – 5 Noes – 0 Absent – 0

Chairman Evans opened the public hearing for William C. Shaw, 2729 Willow Ave., Jamestown, NY for a variance to build a two story porch within 50 feet of the lake.

Mr. Shaw addressed the Board:

- he is requesting to build a 14' by 24' two story porch on the side of the building he owns
- it would be approximately 20 feet from the water
- on the street side of the property there is a single story 4 foot wide porch that is covered for the entryways into the building
- he removed a small cottage next door – in that place, which will not be the exact footprint (actually will be much smaller), he proposes to put the double decker porch
- there will be doors on the upper and lower section to go from the side of the building onto the porch
- he has Marvin Burkeholder out of Sherman to do the construction – he was not able to be at this meeting
- the cottage that he took down did have a deck on it which was much closer to the water
- he proposes to be back about 20 feet from the water
- the porch itself will have two levels and will match the house – it will be very similar to his brother's property which is right next door – so will look nice side by side
- it does open up the yard

- this will not block anyone's view – they own all of the property behind this
- he did not actually have a plot plan that shows they will be 20 feet away from the water or anything that shows what it will look like
- Attorney Duncanson asked why they were putting it where they were instead of the back – Mr. Shaw said that was because the bedrooms are in the back and they want to come out from the living room onto the porch
- this is a two family house

Attorney Duncanson said that there will be a significant reduction in hard surface. Mr. Shaw stated that the cottage was approximately 700 SF. Mr. Duncanson's point is that this would be a mitigation as far as achieving the ultimate goal. The runoff from the porch will be less than what came off the cottage. It was definitely an improvement taking down the other cottage.

Dan asked Dave about any depth structure for the buildings. Dave stated that the rules do not necessarily follow what the book says. He has talked to several engineers and architects and when you dig and hit water at 12" and it stays there and it does not freeze, at that point it does not matter how deep you go.

Mr. Shaw stated they will clean up the additional area and fill in with topsoil and grass.

There were no neighbors present for this application.

Motion made by Pat Martonis, seconded by Jean Holton to approve this variance for William Shaw, 2729 Willow Ave., Jamestown, NY for a two story porch within 20 feet from the lakeshore to be attached to his house.

Carried. Ayes – 5 Noes – 0 Absent – 0

Motion made by Pat Martonis, seconded by Paul Volpe to adjourn the meeting at 7:15 PM.

Carried. Ayes – 5 Noes – 0 Absent – 0

Valerie Pierce, Secretary