

ZONING BOARD AGENDA
Thursday April 11, 2024

OPEN MEETING / PLEDGE TO THE FLAG

ROLL CALL:

Rodgers Williams	Absent
Randy Rhoads	Present
Earl Makatura	Absent
Lynn Overgaard	Present
Steve Schmidt	Present

Alternates Donald Wright Present

Others present included: Jim Bird. Daryl Jones, Town Board Liaison. James McKinley, CEO. Bill Grove, John and Fran Springer. Steve and Lorraine VanDyke. John and Bailey Linehan. Mark Tiberio, Ray and Chris Colonna. David & Marcia English. Dave Hostutler. Margy Cadden. Paul Ellickson. Mary P. Schleiermacher. Joan Magnusen. Jeff Wowntaka. Jesse Jayne.

Correction to March 14th meeting minutes. The last application **R. Rhoads** not present for vote, marked as such. **Motion by S.Schmidt** to correct minutes. **Seconded by L. Overgaard.**

COMMUNICATIONS – Two letters of support for **App.#11-2024** Area Variance, Mark and Ann Tiberio.

AREA VARIANCE/PUBLIC HEARINGS:

R.Rhoads relays that **App #6-2024** Area Variance Tax Map: (116.43-1-11) 7314 West Bluff Dr. has been withdrawn via engineer Bill Grove. Applicant is revising house footprint and height, may not need a variance.

App #7-2024 Area Variance(s) applicants **Raymond & Chris Colonna/ John and Bailey Linehan present** along with engineer **Bill Grove.**

B. Grove explains that **J. Linehan** would like to build a home behind his in laws. A Private Road and subdivision have already been approved. Access to the proposed home will include two retaining walls, being the reason for the variance request. It is a big request because it is 0-foot setback, retaining wall is shared between the two properties.

R. Rhoads inquires where the property line is.

B. Grove points out the on the site plan to Zoning Board members. He explains more parking will be needed and that the retaining walls will provide a flat spot for parking. The retaining wall will hold the soil up behind it.

R.Rhoads pointing to the site plan asks if this portion of the parking area becomes an easement for the other property. **J. Linehan** said it will be shared use and will be deeded as such.

R. Rhoads said it is nice right now that is family, but in the future who knows who will own the property.

K.Colonna adds that she has spoken with a lawyer for correct language for the road, regarding who has to maintain it. It is built into the deed. She adds that she knows they have to go through the town board for that.

S.Schmidt reiterates that there needs to be a maintenance agreement with the town, it was discussed at Planning Board. The board had insisted on it.

R. Rhoads states that it appears some construction has already started.

B. Grove said yes some had started prematurely. **J. Linehan** explains that excavation had started but once former CEO **Bill Gerhardt** left his position they were told to stop.

L. Overgaard asked about steep slopes. **Engineer B. Grove** explains that the land is fairly level area in front of the proposed house, there is enough room for emergency turn around. The orange dash line depicts that area. As for as use, they have a boat and would like to be able to turn around and park boat. It is essentially a carriage house.

R.Rhoads asks about the requested setbacks.

B. Grove states one retaining wall has a zero-foot setback, so that is one they are asking for. **R. Rhoads** says that is for the lower property. **B. Grove** he guesses it would be from each property. It doesn't occur on the North side because the wall is less than 4 feet.

There is a variance for the wall on the upper property where it is 4.8 ft at the point where the wall becomes 4 feet tall, he points out on site plan. It is a smaller modular block retaining wall. It's a variance at that point. The third variance request is for the height of the house. It has to do with the fact that they need a higher garage space to be able to get the boat in under neath it. It is a standard two-story house above it. It does end up at a height of 37.2 feet where 35 feet is maximum.

L. Overgaard asks where the applicant plans to back a boat into.

J.Linehan answers he plans to store his boat along with a lift for his vehicles. **D. Wright** confirms the reason for the height variance is for the boat parking. **J. Linehan** answers, yes. It is a wake boat with a tower on it. **R. Rhoads** asked if he considered storing off site. **J. Linehan** states it is expensive and he can work on it at home in the off season.

R. Rhoads asks how tall the garage is. **J. Linehan** answers 14 feet tall.

L.Overgaard asks about additional retaining wall, what is it for. **B. Grove** says there is a 25% slope, it is a steep grade. They'd had to bury the basement and first floor back wall. It gives them

some flatter yard area in back of yard. You could get a vehicle up there if needed. It does give future to property.

R. Rhoads asks if there is any alternative to the variance on the North side. **B. Grove** there really isn't because there is a need to have a grade, cut the grade down below. Working his way backward, he has minimized it as much as he could.

L. Overgaard said it looks like the driveway looks like it is within a few feet of the home that is there. **J. Linehan** said the door is elevated above the driveway. There is at least 10-15 feet between home and driveway.

R. Rhoads asks how steep the driveway is. **B. Grove** answers 17% at the steepest point.

R. Rhoads responds that is very high. **B. Grove** answers the Planning Board did approve it.

R. Rhoads asked if there is an alternate for the variance, **B. Grove** states they have already minimized it as much as they could.

R. Rhoads asks the board if there is any further questions.

D. Wright asks what is the West of the property. **B. Grove** answers it is vacant land.

J. Bird asks if that wall crosses the property line making it two variances. **B. Grove** answers yes probably right, but they only applied for three.

L. Overgaard states they are asking for the zero variance, but that makes a zero variance for each property.

R. Rhoads suggest tabling application for next meeting until all paperwork is turned in for additional variance. **R. Rhoads** motions to open public comment, **L. Overgaard** seconds.

Unidentified resident asks to see the site plan place at table. **B. Grove** states there is a private drive for the upper property. **B. Grove** confirms the resident's property. He asks if the variance will be on his property.

B. Grove shows there is a stream. Resident states that it runs along property and is thinking of developing property, he is concerned about the height.

B. Grove states that the 37.2 ft peak of the home, it is lower than ground level to where your property starts. It likely wouldn't impact his view.

Another resident adds that wakeboards wreak havoc on the shoreline and that makes her uncomfortable.

R. Rhoads makes a motion to close public comment. **D. Wright** seconds.

R. Rhoads states they can vote on the 3 variances tonight and bring back another variance next month. They need to have a variance for each property. **L. Overgaard** adds that they could be separately at some point.

J. Bird adds that the Planning Board must go to the town board for a maintenance agreement regardless. **B. Grove** answers yes, he believes that is true.

S. Schmidt adds the Yates County Soil and water did approve it, and Planning board approved the agreement for the retaining wall. Driveway was approved already too.

J. Linehan confirms adding the fire chief and town representatives walked the property and were all in agreement. They were fine with the roadway, driveway and the proposed turn around area.

R. Rhoads states the board can vote on three variances tonight and applicant will need to come back for the fourth variance.

Area Variance test questions were read and reviewed regarding the requested side setbacks (both retaining walls) 4.8 ft side setback where 10 ft minimum is required. 0 ft side setback where 10 ft minimum is required with the following results: 3 majority yes, 2 majority no.

The board was polled as follows:

L. Overgard- Grant
D. Wright- Grant
S. Schmidt- Grant
R. Rhoads- Deny

R. Rhoads states that variance is approved, they will do the height variance separate.

Area Variance test questions were read and reviewed regarding the requested height variance: 37.2 ft height where 35 ft maximum is required, a variance of 2.2 feet with the following results: 3 majority no, 2 majority yes.

The board was polled as follows:

L. Overgard- Grant
D. Wright- Grant
S. Schmidt- Grant
R. Rhoads- Grant

R. Rhoads states variance is approved, they will need to come back with additional variance next month.

App #8-2024

Area Variance

Paul Ellickson

Tax Map: (109.27-1-12) 3518 West Bluff Dr

Engineer **B. Grove** and homeowner **Paul Ellickson** present to board.

The requested variance, 25.8' setback where 44.75' is required for an 18.95' variance. The requested variance is for a storage building on the lakefront portion of the lot. The triangular shape area is where it meets setbacks, there is nowhere to do anything. There is already a set of stairs and landings to get down to the shoreline. They are proposing that the storage building be built on the south side of the landing, that's the easiest spot. It puts them at 25.8 feet from the center line of the road. It does sit down below the elevation of the road. There is an existing parking barrier there.

R. Rhoads asks if there is flat land already existing, if so how large is it.

B. Grove answers not really, it will be on stilts. How will it be there inquiries **L. Overgaard**.

R. Rhoads if there will be any excavation, **B. Grove** said it will be minimal. 16.5 x 10 is how large it is. **L. Overgaard** adds it was hard to figure out where it would be because the property was not staked out.

Board member **S. Schmidt** states that if the site is not staked out, as the Zoning Board of Appeals they can table the application. **R. Rhoads** adds that it really needs to be staked out. He votes they table it until next month.

B. Grove answers he will stake out the project. He asks if it were staked would they entertain the 25.8-foot setback.

L. Overgaard adds the road is above it, she said sometimes they have questions about the highway maintenance. Ask if it goes higher than the road. **B. Grove** answers yes.

R. Rhoads adds that during a snowstorm it is likely they will get snow all the way down the bank, and against the side of the shed. **B. Grove** answered potentially, but the town is not liable for damage by snow plows, they understand the risk with the location of it, and it does not make sense to move it.

R. Rhoads motions to open public meeting. **S. Schmidt** seconds.

Neighbor John Springer (3578 W. Bluff Dr.) neighbor whom is a contractor inquiry about the 10-foot building height, is it 7-foot above elevation on the road. **B. Grove** said no probably 4 or 5 above the center line. It will meet height risk requirements. **J. Springer** adds that in the description he found it amusing that is described as an addition to a landing, it's clearly a building. A building is a building. Is the retaining wall by the highwater mark as part of application.

B. Grove answers its existing.

R.Rhoads adds that they are not voting on that.

J.Springer asks if they have an existing dock on the property. Asks if they are adding stairs to beach and if there is a storage locker on the beach. **P. Ellickson** said its existing.

R. Rhoads responds again that they are not voting on that. **J. Springer** also asks why not put on the other side of road; east side of the property has plenty of room. **P. Ellickson** said it's pretty steep of a hike. **B.Grove** said it would have to be 64.75 ft by the center line, you are almost to the home by that point.

R.Rhoads states that 64.75 ft is required to code.

J. Springer said there is plenty of room and he does not see a hardship showing that it needs to be put there. It is a very, very steep slope.

R.Rhoads tells applicant to mark out the property and they can review the application next month. **R. Rhoads** votes to table the application. **S. Schmidt** seconds.

App #9-2024

Use Variance

Jeffrey and Kate Ingraham

Tax Map: (103.81-1-10.11) 8835 E. Bluff Dr.

Homeowner and applicant **Jeffrey Ingraham** presents to Zoning Board.

He states he purchased the property at 8809 E. Bluff Dr in 2012.

At the time there was an additional structure called the parsonage, the appeal was that there was an additional structure on that property that could be used as an auxiliary building in addition to the parsonage he purchased.

It was previously (2) lots, in 2014 they purchased the lot just to the south of that.

8835, they own that today. When they purchased 8835, they sold 8809 to friends of theirs. Before they did it, they combined the two lots that use to exist there. The gully came down next to the buildings and separated the two structures, it made more sense to go with the 8835 properties. They folded that auxiliary building into 8835.

R. Rhoads asks if they subdivided the north property. **J. Ingraham** shows on site plan. They combined those two, the town had encouraged it at the time. He adds they renovated it back to its original condition, which included living area and kitchen. That is already done and be approved. He is asking for the Use Variance to allow it to have a kitchen.

The one property was nonconforming, they combined lots to make it conforming. It used to be 3 now it's all conforming.

L.Overgaard asked if the structure is attached to home.

J. Ingraham answered no, there is a breezeway. **R. Rhoads** said a breezeway makes it essentially one structure.

L.Overgaard states the question is whether they can have two houses with full facilities on one lot, **R.Rhoads** answers no, it makes it nonconforming. The Zoning Code states they do not allow to go from conforming to nonconforming.

R.Rhoads asks if he is aware that they do not allow a property to go from conforming to nonconforming.

D.Wright asks how this was approved. **J.Ingraham** said a building permit was approved to renovate. The building has already been built.

R.Rhoads says the building permit application sites it would be a bathhouse construction, without kitchen facilities and not for living purpose. That is what was approved a bath house. It was not approved for living quarters. What James found was there is a kitchen, living quarters and a bathroom. Now it was nonconforming. It has everything to make it living quarters and is now nonconforming, that is why the applicant is present and had been cited by the Code Enforcer.

L. Overgaard adds that a few months ago they did not approve a garage that wanted to add water and everything to, and we said no.

S.Schmidt adds that he cannot have two dwellings on one property.

R.Rhoads motions to open the public comment, **D. Wright** seconds.

Resident **Jean Geertz** is a neighbor, they are to the South of the property, and states that her family would love to have a beach house. They combined there lots for tax purposes, but maybe should not have so they could have a beach house.

She asks if the neighbor asks if they have two grinder pumps. **J. Ingraham** responds no. She shows the Zoning Board pictures of the original house provided by Diversified contracting. She brings up the Willcott property, they have a similar property. They have many buildings similar to what **J. Ingraham** did. They have three separate houses.

R.Rhoads replies they are not there to talk about that and to she can check the Zoning Code online for allowable uses. **J. Geertz** shows pictures of how small the cottage used to be. Shows the shed, the house, and the beach house. **R.Rhoads** says it's a beautiful home, but it is nonconforming. You cannot take a conforming property and turn it into a nonconforming.

L.Overgaard adds that you cannot have (2) dwellings on one property.

Neighbor **David Hostutler** (9074 E. Bluff) speaks state that has lived on the lake for 29 years, that it was formerly a shed on the beach they had jacked up and put on a foundation. A foundation that was double, that was knocked down a new building was put up. He says as far as he knows was never water and sewer or electric. What they are doing now is ongoing since 2015. It was a structure that was never permitted, why does it exist today. It was done outside the zoning laws.

R.Rhoads states that the building permit was issued for a bathhouse construction without a kitchen or living quarters in 2018. What is there is different from what is there now. **J. Ingraham** adds, from a Use standard.

D.Hostutler says it is nonconforming and now the applicant is asking for forgiveness, why should it exist.

R.Rhoads states they are not there to judge intent.

Resident **David English** (8565 E. Bluff Dr) and wife Marcia speak. **D. English** states that in 2010 it was nothing but a slab of concrete. There is nothing that's a valid nonconforming structure associated with this property. It cannot be kicked back to being grandfathered. He does not know anything about the building permit, whether it was a legal one or not. If it was improper the town is not bound by the CEO and a permit.

A Use Variance is totally illegal. Not one thing about it is legal. Granting it does not make it legal. They cannot even subdivide it because they do not have enough coverage. The town can require it be torn down. There are 4 elements required and he has not heard any of them stated.

R.Rhoads they are voting to deny or grant the Use Variance.

Four criteria are required to permit a Use Variance: Applicant cannot realize a reasonable return on entire parcel, the alleged hardship relating to the property, the requested variance if granted will not alter the essential character of the neighborhood, and the alleged hardship has not been self-created. He adds that J. Ingraham must convince the Zoning Board that all four of those things are true before they can even begin to talk about a Use Variance.

R.Rhoads asks if anyone else has public comment.

Marcia English, E. Bluff Dr. She is a 50-year resident of the lake; she states that she is sick of people doing whatever they want without the right permissions and then asking for forgiveness. That is a trend, and she wants it stopped. They have abided by the laws. Everyone is doing whatever they want with no penalty. If they keep giving it away everyone will keep doing it with no penalty.

Homeowner **J.Ingraham** states that he feels it is being misrepresented. He understands her concern. He wants to make clear that they did everything to make the building of that structure so it fit the code. **R.Rhoads** states that is not true.

J. Ingraham replies that the design was to fit zoning rules. Bathroom was approved, water was approved with permits and the permission. The kitchen and counter space were added because they had water. They put beds in for kids to nap, and tried to be intentional with the space. He does not want it to be thought the intent was ill.

M.English asks about the entertainment aspect of the legal posting. **J. Ingraham** answers it is just for hosting dinner on the porch. He adds there is no intent to rent it out or use it as an entertainment place. It is for family to gather.

D.English adds that what he did was illegal and it does not comply with the town of Jerusalem, the town was not bound by permits. He does not meet the Zoning Law. He is sympathetic that they may have misunderstood the Zoning laws.

R.Rhoads adds that there cannot be two principal structures on the same property. The property was originally conforming and now is not with a second structure. The board is present to vote on whether to grant the Use Variance.

R.Rhoads motions to deny the Use Variance. **L.Overgaard** seconds.

The board was polled as follows:

L. Overgard- Deny

D. Wright- Deny

S. Schmidt- Deny

R. Rhoads- Deny

R.Rhoads tells homeowner **J.Ingraham** the next step is to talk to Code Enforcer and the town to make the property conforming. It must be corrected. It was conforming and is now nonconforming.

Code Enforcer **James McKinley** adds that the structure itself is fine, and meets zoning requirements as an accessory structure. The main issue is the kitchen and the sleeping quarters. As the permit was written applied for the structure is fine, without those things, they need to get back to that. It needs to go back to what it had been permitted for to make it conforming.

App #10-2024

Area Variance

Christopher Caden

Tax Map: (94.84-1-2) 3313 W. Bluff Dr.

Margy Caden presents to board. Request is for a 10 x 14 shed. There is a requested variance of 24.75' A 40.9' front yard setback where 64.75' is allowed. CEO **J. McKinley** clarified the variance is for 40.9 ft. **L.Overgaard** confirms it is 40.9 ft where 64.75 is required.

D. Wright inquired about the lot coverage. **M.Caden** answered 1.5 acres, **R. Rhoads** states they are well under for lot coverage. **R. Rhoads** asks if the board has any further questions.

With no further questions, **R.Rhoads** motions to approve the 40.9 ft setback from the center of the road, where 64.75 ft is required, for a total of 23.85 foot variance, **D. Wright** seconds.

Whereas the Area Variance test questions were read and reviewed regarding the requested variance of 24.75', a 40.9' front yard setback where 64.75' is allowed with following results: 3 majority no, 2 majority yes.

The board was polled as follows:

L. Overgard- Grant
D. Wright- Grant
S. Schmidt- Grant
R. Rhoads- Grant

App #11-2024

Area Variance

Mark Tiberio

Tax Map: (103.42-1-9) 7917 E. Bluff Dr.

Homeowner and applicant **Mark Tiberio** along with contractor **Jesse Jayne** present to Board. **M.Tiberio** explains that he met with the former Code Enforcer Bill Gerhardt in early 2023 and was told all setbacks were good. A year went by and he did not realize he needed a variance.

He is asking to expand his existing porch by 5 feet. It is currently unsafe and not convenient as is. Expanding it will make it safer and usable. Allowing more coverage will protect the structure. It will not be seen from roadside, probably cannot tell from the lake either.

R. Rhoads asked about the size of lot coverage. CEO **J.McKinley** answered 25%. **R.Rhoads** said lots now must be 20,000 feet by code, M. Tiberio only has 6,000 ft. **D. Wright** asked what lot coverage will now be. M. Tiberio answered 26.5% lot coverage.

Whereas the Area Variance test questions were read and reviewed regarding the requested lot coverage size of 1.65% to 26.5% where 25% is existing and 20% is allowed with following results: 1 majority yes, 3 majority no, 1 majority tie.

R. Rhoads motions to approve the 1.65% lot coverage increase. **S. Schmidt** seconds.

The board was polled as follows:

L. Overgard- Grant
D. Wright- Grant
S. Schmidt- Grant
R. Rhoads- Grant

With no further business **R. Rhoads** motions to close the meeting at 8:36 pm. **L.Overgaard** seconds.