

TOWN OF SAUGERTIES
ZONING BOARD OF APPEALS
4 HIGH STREET
SAUGERTIES, NY 12477

MINUTES

SEPTEMBER 12, 2005

Present: Jeanne Goldberg, Henry Rua, Bill Geick. Dan Ellsworth and Dick Conley absent. Tom Macarille present.

Jeanne Goldberg presided as 2nd Vice Chair

PUBLIC HEARINGS

1. 09-07-05 MICHAEL & KRISTA DeANGELIS
 39 EMERICK ROAD, WEST CAMP
 SAUGERTIES, NY 12477

SECTION INVOLVED 5.1 BULK REGULATIONS, SIDE YARD SET BACK
FOR THE PURPOSE OF BUILDING AND ADDITION/GARAGE 10 FEET FROM LINE.

Mr. DeAngelis presented green receipts

No public comment.

Mr. DeAngelis has a letter from his neighbor Joe Bisignano of intent to sell parcel of land, if the Board grants the variance. With the addition of the new property the garage would be 10 feet from property line.

Applicant understands he has to go to the Planning Board for a lot line change. Applicant to supply Board with copy of letter.

Public Hearing closed.

2. 11-08-05 DAVID VOLKLE
 52 EAST CHURCH ROAD, QUARRYVILLE
 SAUGERTIES, NY 12477

SECTION INVOLVED 5.1 BULK REGULATIONS, SIDE YARD SET BACK
FOR THE PURPOSE OF RETAINING A CERTIFICATE OF OCCUPANCY FOR DOUBLE WIDE
PLACED 20 FEET FROM PROPERTY LINE.

Mr. Volkle presented green receipts

No public comment.

Board received a letter from Pat Connaughton, immediate affected neighbor. Would not object to this appeal but only in regards to the existing home and does not imply support for any other or future structures which may not comply with setback regulations.

Public Hearing closed.

3. 10-07-05 RAYMOND BONNET.

Public hearing cancelled by applicant because he felt he could not get the information requested in time.

Represented by Tom Auer. Requested to reschedule public hearing for October 3. Applicant was advised the public hearing noticed had to be mailed no later than September 13. Applicant agreed. Information given.

Public Hearing scheduled for October 3, 2005.

NEW APPEALS

1. 12-09-03 WILLIAM GARDINIER
 5 ROSE LANE
 SAUGERTIES, NY 12477

SECTION INVOLVED 5.1 BULK REGULATIONS SIDE AND REAR YARD SET BACKS
FOR THE PURPOSE OF CONSTRUCTING A DETACHED GARAGE 2 FEET FROM PROPERTY
LINES.

Mr. Gardinier representing.

Garage would be 20 x 26. Wants it in the back of property so area behind garage does not become a "dumping/storage" area. There is a tree that would hinder moving it along the rear line.

Public Hearing scheduled for October 3. Applicant given information. Must mail notices by September 13.

2. 13-09-05 SUSAN SURACE- PELEGRINI
P.O. BOX 231
MT. MARION, NY 12456

PROPERTY LOCATED 706 GLASCO TURNPIKE (MT. MARION MARKET)
SECTION INVOLVED 4.1 SCHEDULE OF USES IN RH ZONE
FOR THE PURPOSE OF CONVERTING GROCERY / GENERAL STORE TO KENNEL FOR
BREEDING AND BOARDING OF CATS AND DOGS.

Mr. and Mrs. Pelegrini representing

Have been trying to sell for years. They live upstairs. Mother lives in back. Property is about 1./3 acre. Since have been unable to sell, wants to try different occupation. Kennels not allowed in RH zone. Needs a use variance.

Discussion about public hearing notices. Public Hearing scheduled for Nov. 7, Applicants given information.

3. 14-09-05 JONATHAN SHERRY & VIRGINIA PERRIN
389 WEST SAUGERTIES ROAD
SAUGERTIES, NY 12477

PROPERTY LOCATED 389 AND 393 WEST SAUGERTIES ROAD
SECTION INVOLVED 5.1 BULK REGULATIONS SIZE OF LOT.
FOR THE PURPOSE OF A LOT LINE ADJUSTMENT MAKING LARGER LOT UNDERSIZED AND
SMALLER LOT CONFORMING.

Ms. Perrin representing. They currently live on the smaller lot. Larger lot is occupied by a tenant. Larger lot is "L" shaped behind smaller lot. They wish to extend smaller lot to encompass the part of the other lot that is behind their residence. They have tried several configurations and this proposal seems to be the only way to get the privacy they want in their back yard.

Public Hearing scheduled for November 7, 2005. Applicant given information.

4. 15-09-05-I JOHN STOWELL
227 PARTITION STREET
SAUGERTIES, NY 12477

SECTIONS INVOLVED 4.2.1; 4.2.5; 6.4 ET SEQ. AND OTHERS
FOR THE PURPOSE OF INTERPRETING THE METHOD OF CALCULATING AND APPLYING BULK
AND AREA REQUIREMENTS WHERE MORE THAN ONE BUILDING IS OR WILL BE PLACED ON
A LOT.

Mr. Stowell representing.

Appeal is requested as a result of the decision made on the Jeffrey's appeal #06-06-05.

Discussion held on notices. Should applicant send notices and to whom?

Motion by Jeanne seconded by Bill that because this question related directly to the properties in Malden, notice should be sent to neighbors of those properties as per requirements. Goldberg - yes; Rua -yes; Geick-yes. Ellsworth and Conley absent.

Public Hearing scheduled for October 3. with the understanding the notices must be mailed September 13. Applicant given information.

SEQR

1. 07-06-05 FORMISANO: Type 2 on Motion of Jeanne seconded by Bill 3/0

DECISIONS

1. 07-06-05 FORMISANO:

Jeanne quoted "Short Course" A Basic Guide for Planning Boards and Zoning Boards of Appeals in New York State. by Harry J. Willis, David Church & James W. Hotaling.

Use Variance. *Proving Unnecessary Hardship.*

In order to grant a use variance, the applicant must prove *unnecessary hardship* by demonstrating that for each and every permitted use in the district:

1. The applicant is substantially unable to make a reasonable return from the property, as shown by competent financial evidence;
2. The hardship is somewhat unique, or at least not shared by a majority of parcels in the same zoning district;
3. The hardship has not been self-created; and
4. The relief asked for -- i.e., the requested variance - will not alter the essential character of the neighborhood.

If you read the state statute, you'll notice that we've stated the last two elements in the box above in the reverse order as they appear there. We've done this because it seems more logical that the board should deal with the entire question of hardship -- including whether it has been self-created- before proceeding to a consideration of the requested relief. If the applicant cannot adequately prove *each* element of hardship, his variance request should be denied regardless of whether his requested use would be compatible with the character of the neighborhood.

The first element requires the applicant to show, by competent financial evidence, that he is unable to realize a reasonable return on his initial investment by complying with the established zoning regulations.

The courts have required that this be shown in "dollars and cents" fashion, which means that the owner must put forth actual dollar figures relating to the value of the property, advertised attempts to sell, offers received, actual income realized, and so on.

It's important to bear in mind both (1) that the applicant must demonstrate such inability for *each and every use allowed in the district* - not merely for the use to which the property is currently being put -- and (2) that this inability must be *substantial*.

A failure to meet the reasonable-return standard in dollars-and cents terms should result in a denial. Assuming, however, that the owner has shown an inability to realize a reasonable return, then the board must require him to show that this inability is due to somewhat *unique circumstances*, i.e., circumstances that are not shared by more than a small minority of properties in the same zoning district. *Unique circumstances* could be geographic,... They could also be environmental,..."

Zoning Law requires the Board to grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant.

Applicant has owned the property since 2/2005

Applicant provided no financial evidence

Applicant did not provide any of the requested information for 1 - four family vs 2 - two family structures.

Motion by Bill seconded by Jeanne to deny the application for failing to provide the required information.

Goldberg - yes; Rua - yes; Geick - yes; Ellsworth - absent; Conley - absent.

Motion is passed and the appeal is denied.

2. 08-07-05 CHARLES SERRO

Applicant has hired professional contractors to do the work. Applicant was not involved in construction. Requested variance in minimal. There is no other way to correct the error. There would be no changes in the neighborhood. Applicant agrees to put neighbor's boundary stakes back
Motion by Henry seconded by Bill to grant the appeal to correct the error done during construction.
Goldberg - yes; Rua - yes; Geick - yes; Ellsworth - absent; Conley - absent.
The motion is passed and the appeal is granted.

DISCUSSION

1. Mr. Eugene Brice addressed the board. He has a survey map that shows his deck would be 15 feet from the property line. According to Governing Rules of the Zoning Board of Appeals, a rehearing can be heard upon a motion of a board member and a unanimous vote of those present.

Motion made by Bill seconded by Henry to allow Mr. Brice to reapply his appeal
Goldberg - yes; Rua - yes; Geick - yes.; Ellsworth - absent; Conley - absent.

It was explained to Mr. Brice that he must go through the complete process again and needs to file a new application.

2. Minutes for August approved on Motion of Bill seconded by Henry 3/0

3. Planning Board Minutes for August received.

3. SEQR training with Ms. Daniels of New York Planning Federation will be September 26 at 7 pm.
There has been no response from any one in the town.

4. NY Planning Federation training school in October at Saratoga. Jeanne hopes to attend.

5. Bill presented his comments on the Jeffrey's appeal. Dick, Henry, and Jeanne on file.

6. Board received a copy of the County Planning Board on three proposed zoning map changes the Town Board is considering. Public Hearing will be 9/14. ZBA had not received any communication from the Town Board regarding these.

7. Mr. Macarille requested a budget for 2006. He informed the ZBA that the Town was getting a new computer program that would cost the ZBA \$8000.00 He also suggest raising the training budget. ZBA secretary declined a raise. (Secretary sent budget to Mr. Macarille 9/13)

8. Board was asked by Secretary if the 90 day time limit (Governing Rules) should be a condition of approvals. She received communications from the Building Department regarding an appeal that was granted in 2002 that the applicant was now filing for a building permit.

Next meeting October 3, 7 pm at the Frank D. Greco Senior Center.

Meeting adjourned on Motion of Henry seconded by Bill