

Cazenovia Zoning Board of Appeals

Meeting Minutes

April 22, 2013

Members present: Chris Fischer, Chairman; Louis Orbach; Richard Sheridan; David Silverman;
Gene Smith

Members absent:

Others present: Wendy Reese, Esq.; Timothy Hunt; Graham Egerton; Anne Redfern; Joseph Gugino;
Thomas Stevens; Nancy Stevens

Timothy Hunt, highway superintendent, trained the Zoning Board of Appeals on the Town of Cazenovia workplace violence policy program.

C. Fischer called the meeting to order at 7:30 p.m.
The May meeting will be a week early, May 20, 2013 due to the Memorial Day holiday falling on the fourth Monday of the month.

C. Fischer asked if there were any corrections or comments for the February meeting minutes.

Motion by G. Smith, seconded by C. Fischer to approve the February meeting minutes as modified was carried as follows:

Chris Fischer:	yes
Louis Orbach:	yes
Dick Sheridan:	abstain
David Silverman:	yes
Gene Smith:	yes

Jerabek, Eric – #98-117 – Special Use Permit Renewal – 1639 Delphi Road

C. Fischer said based on the file number, it is a permit that has been in use for quite a long time and it is to allow agricultural activities.

C. Fischer stated R. Cook inspected the property on March 23, 2013 and found no items of non-compliance.

C. Fischer said it is characterized as homestead farming with a mixture of animals and crops.

C. Fischer reviewed the file and confirmed this was the renewal where the applicant leased an additional parcel. He further stated the limitations are twenty chickens, one pig, and three large animals.

Motion by C. Fischer, seconded by D. Silverman to renew the special use permit under the same terms and conditions as currently in effect and reaffirm the SEQRA determination was carried unanimously.

Stevens, Thomas & Nancy – #13-880 – Area Variances(2) – 4310 Syracuse Road

C. Fischer said this application has been delayed due to some misunderstandings with the Zoning Board of Appeals, as well as, the applicant. He stated the variances are for a second accessory building and the side yard setback. He further said the shed is already partially constructed and only the roof needs to be completed.

Dave Silverman stated he is a neighbor to the property and he stopped by on Saturday, April 20, 2013 and the roof needs to be shingled.

C. Fischer referred to counsel to see if the Board should proceed without the applicant being present.

W. Reese stated at the last meeting, the Board wanted a survey showing proximities to the boundary lines.

C. Fischer said the Board needed to see the location in regards to the property line to determine the specific variance that is required.

D. Silverman further stated the Board cannot grant relief without knowing how much relief is needed.

C. Fischer reviewed the file contents and it was determined the applicant did not submit the survey with proximities, as requested.

The Board Secretary confirmed a letter was mailed to the applicant requesting the information.

D. Silverman phoned the applicant to see if he was coming to the meeting.

C. Fischer found a survey in the 2006 renovation file which was pulled for the meeting.

Tom Stevens arrived at approximately 7:40 p.m. to present his application.

C. Fischer asked the applicant the exact location of the building and indicated to him he was looking for a survey. He further stated he had a survey from the 2006 file.

C. Fischer inquired about the exact location of the building in regards to the setback lines and how many feet the structure is from the boundary lines?

The Board further explained to the applicant they needed the exact measurement because they would not know how much relief was needed.

T. Stevens said the structure is 5' from his property line. He stated he knows where his property line is and the shed is 5' from the line. He said he put a stake at the property line and measured to the building.

C. Fischer inquired about the distance from Route 92.

T. Stevens said he was unsure, but maybe 60'. He further stated the shed is on an existing concrete slab. He said he did not know the Board needed exact measurements.

D. Silverman said the Board has never approved anything without a survey.

T. Stevens stated he believed it to be 5' from his property line with his adjoining neighbor, Joseph Gugino.

C. Fischer confirmed the requirement for a side yard setback is 25'.

C. Fischer said he would be comfortable if the old survey map was used and Mr. Stevens drew the building on indicating the distance between the property line and the building. He further stated it would be coupled with the understanding that it will be placed on the existing concrete slab.

T. Stevens stated he put the shed there so it would not create any more impervious surface.

The applicant drew the shed on the survey map dated April 25, 2006. He further stated the garage was wider than 24' as shown on the 2006 survey.

C. Fischer told the applicant to also extend the garage on the survey map and correct it.

C. Fischer said at the February 7, 2013 Town of Cazenovia Planning Board meeting; they voted on a positive recommendation for the area variance for the accessory building subject to the planting of two 5' evergreen trees west of the new accessory building to shield the view from Route 92.

T. Stevens stated regarding the trees he did not think they were necessary. He said the shed will be painted the same color as his house and garage and he does not think it will be unsightly.

C. Fischer told the applicant he will need to go back to the Planning Board for site plan approval. He stated the Zoning Board issues the variance. He further stated the Planning Board will probably still request the trees.

T. Stevens said he agreed to plant the trees.

C. Fischer said since it is on a State road it was referred to the County for a G.M.L. He stated the County sent back their response which he read to the Board....*The applicant wishes to place a proposed 10'x12' storage building on a parcel that is currently the site of a home and detached garage. The Lake Watershed and Riparian Zone district, of which this parcel is zoned, very clearly states in 165-20B of the Town's Zoning Law that "A principle use and structure may also have one accessory structure, providing such accessory structure is secondary to the principle use and structure..."The proposed shed would certainly be a second accessory structure. In order for the ZBA to authorize the use of land for a purpose which is otherwise not*

allowed by the zoning regulations requires the applicant to submit a use variance application, not an area variance as has been submitted to this office. The Town's own definition of use variance states "an increase in density or intensity of use shall be deemed to require a use variance if such increase is not allowed by right or by special permit." More than one accessory use is not allowed by right as the current code reads, and allowing multiple accessory structures would certainly be an increase in density and intensity of use. With all this in mind, given the State's strict criteria for use variances this will nearly always be legally impossible to satisfy in case of residential accessory buildings. Should the ZBA begin granting such requested use variances on grounds of simple "reasonableness, "it will run the risk of undercutting its locally perceived grounds for disapproving future use variance appeals where their denial is much more appropriate.

If intent of the Town is not to limit the property owners to one accessory building than the code needs to be updated to reflect that. A more appropriate means of doing so might be either: a) a more realistic and reasonable cap of the number, or b) use of special permits with Planning Board (or ZBA) discretionary review for proposed accessory buildings after the first. While the proposed construction of the storage buildings will have no adverse county-wide or inter-municipal impact, and thus is being returned for local determination, we believe the Town should reconsider the application as a use variance: the immediate issue of the proposed shed is not where it will be placed, but if it is an allowed use in the zone.

C. Fischer said the Board has had this issue recently with the County Planning Department. He stated the counsel for the Town determines a second accessory structure is an area variance and not a use variance. C. Fischer further stated that the Zoning Board of Appeals agrees with the Town's counsel and they are not in agreement with the County Planning Board on this issue.

T. Stevens stated the recommendation states the Zoning Board of Appeals has the "final say."

C. Fischer confirmed.

C. Fischer stated the file had been noticed for a public hearing and asked if anyone was present to speak for or against the application. He further said the applicant has sent out notices, as well as, the Town.

Joseph Gugino stated he was in favor of his neighbor putting up the shed; and that he and his wife indicated this in a letter that they are in agreement with the Stevens putting the shed up.

C. Fischer stated there was a letter in the file, indicating J. Gugino is a neighbor and they are in support of the variance application.

Dave Silverman, Board member and neighbor, decided to recuse himself from the vote, so he could speak regarding the application.

D. Silverman stated the applicant took a property in horrible condition and through hard work made it a lovely home with classic style. He said The Stevens are good neighbors and take care of the property and it is a "showplace."

Motion by C. Fischer, seconded by G. Smith to close the public hearing was carried as follows:

Chris Fischer: yes
Louis Orbach: yes

Dick Sheridan: yes
David Silverman: abstain
Gene Smith: yes

C. Fischer said the Board needed to decide if they were comfortable moving forward with the survey map that they have from the 2006 file.

G. Smith said he did not have a problem with proceeding since the applicant measured the distance.

L. Orbach said he thought it was fine.

C. Fischer had the applicant put the distance from the shed to the property line on the 2006 survey map.

C. Fischer stated he wanted the 2006 survey moved to the new file. He told the Board Secretary to put a copy in the old file. He stated he would "cloud" around the shed in yellow.

Motion by G. Smith, seconded R. Sheridan to appoint the Zoning Board of Appeals as Lead Agency for purposes of the State Environmental Quality Review Act (SEQRA), to declare the matter an Unlisted Action and to make a Negative Declaration of environmental significance, all based upon the Board's review of the Short EAF, and to approve the second accessory building on the site granting a setback variance of 20' on the northern property line for a 10'x12' storage shed on the existing concrete pad was carried as follows:

Chris Fischer: yes
Louis Orbach: yes
Dick Sheridan: yes
David Silverman: abstain
Gene Smith: yes

W. Reese stated the applicant would need to go back to the Planning Board meeting for site plan approval.

C. Fischer reminded the Board the May Zoning Board of Appeals meeting will be on May 20, 2013.

C. Fischer told the Board members if someone can't make a meeting to notify the Board Secretary or the Chairman.

Motion by C. Fischer, seconded by G. Smith to adjourn the meeting was carried unanimously at 8:10 p.m.

Zoning Board of Appeals Secretary – Connie Sunderman – April 25, 2013