

Town of Kingsbury
210 Main Street, Hudson Falls NY 12839
Phone: (518) 747-2188 Ext. 3008 Fax: (518) 747-9115
OFFICE OF CODE ENFORCEMENT AND PLANNING

MINUTES OF THE ZONING BOARD OF APPEALS

Minutes of July 24, 2014

MEMBERS PRESENT:

John Graham, Chairman
Hank LaFountain
Sondra Michaud
Michelle Richardson
Bill Whipple
Brian Heasley

MEMBERS ABSENT:

Rich Hogan - Excused
Scott Winchell - Excused

CODE ENFORCEMENT OFFICER/ZONING ADMINISTRATOR:

Francis Cortese

TOWN ATTORNEY:

Mary Ellen Stockwell

The meeting was called to order by Chairman Graham at 7:00pm.

Roll call of all members.

Chairman Graham entertained a motion to approve the minutes from August 22, 2013

ON A MOTION BY MR. LAFOUNTAIN, seconded by Ms. Richardson, the minutes of August 22, 2013 meeting were adopted, as presented.

AYES: 6

NAYS:

ABSTAIN:

MOTION CARRIED

1. **DAVID I HAYES** owner of the property known as 31 Country Acres Drive, Hudson Falls, NY, Town of Kingsbury, tax parcel ID 146.10-1-19 is seeking an area variance to construct a 363 sq. ft. garage addition at this location with a side yard setback of 18 feet. This application was denied by the Code Enforcement Officer pursuant to Chapter 280, Section 280-22 G 2 Regulations for Low-Density Residential Zoning District. The minimum required side yard setback is 25 feet for this Zoning District.

Chairman Graham opened the Public Hearing.

Chairman Graham invited David Hayes to address the Board.

Mr. Hayes stated he is here tonight to ask for a relief of 7 feet on a side yard setback. He would like to add a 363 square foot addition to his garage. From the existing garage there is 34 feet to the set back.

Mr. Hayes introduced Justin Tougas, 27 Country Acres Drive to the Board. Mr. Tougas would be directly impacted by this relief. Mr. Tougas has no problems with this project.

The Public Hearing was closed at 7:15 pm.

After further discussion among the Board the following resolution was put forward.

**ZONING BOARD OF APPEALS OF THE TOWN OF KINGSBURY
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution No. 1 July of 2014
Adopted July 24, 2014

Introduced by Bill Whipple
who moved its adoption

Seconded by Hank LaFountain

**RESOLUTION GRANTING
AREA VARIANCE REQUEST OF
DAVID I. HAYES**

WHEREAS, pursuant to the Chapter 280 of the Code of the Town of Kingsbury, the Town of Kingsbury Zoning Board of Appeals (hereafter the "ZBA") is authorized and empowered issue

variances in accordance with said Zoning Ordinance and Section 267 (now 267-b) of the Town Law;

WHEREAS, David I. Hayes (hereafter the "Applicant"), has requested an area variance for seven (7) foot relief from the current 25 foot side yard setback to 18 foot setback to construct a 363 square foot garage, located at 31 County Acres Drive, identified as Tax Map Number 146.10-1-19; and

WHEREAS, the Applicants request requires a variance from the side yard setback requirements found in Section 280-22 G of the Code of the Town of Kingsbury; and

WHEREAS, in accordance with the State Environmental Quality Review Act (hereafter "SEQRA"), the requested variance is a Type II action; and

WHEREAS, a public hearing was duly held on the requested variance at which time the Applicant and members of the public were entitled to comment on the requested variance; and

WHEREAS, the ZBA has reviewed the Application and supporting materials, and has taken into consideration the comments from the public, and has reviewed the criteria found in Town Law Section 267-b.

NOW THEREFORE BE IT RESOLVED:

Section 1. Considering the area variance requirements , in considering the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, while noting that the ZBA must grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community, the ZBA denies the application and finds the following:

- (a) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance?

No, as there were no members of the public there against such variance and only a member of the public who are of neighboring parcels there in support of the variance.

- (b) Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than through an area variance?

No, applicant is using the most feasible method to locate the garage. Also, if he was to put the garage in the back yard, instead of to the side of the house, he would not be meeting the accessory structure side setback. Also, applicant confirmed with board he is able to move around the structure to access his septic system.

- (c) Is the requested area variance substantial?

No, as the current setback is twenty five (25) foot and the applicant will still be eighteen (18) feet from the side yard as it is only a seven (7) foot side setback relief granted.

- (d) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

No, cosmetically it makes sense to create the structure the construction as proposed and this will not adversely impact the environment conditions in this neighborhood.

- (e) Was the alleged difficulty self-created?

Yes, the Applicant is desiring to place the garage in this location, he does not have to build a garage. However, the location of the garage is the most feasible on the property in this location.

Section 3. This resolution shall take effect immediately.

PRESENT:
John Graham, Chairman
Henry LaFountain

Sondra Michaud
Michelle Richardson
William Whipple
Brian Heasley

AYES: 6
NAYS: 0
ABSTAIN: 0
ABSENT: 2 (Richard Hogan and Scott Winchell)

2. WALTER AND MICHELE MCWAIN owner of the property known as Farm Way, Hudson Falls, NY Town of Kingsbury, Tax Parcel ID 147.-2-32.1 is seeking an area variance to subdivide Kingsbury due to the definition for required lot width is measured at the front lot line of an approved road. Farm Way is not an approved road in the Town of Kingsbury.

Chairman Graham stated this request was before the Board in 2007. At that time there was a different owner of the property and was denied.

Chairman Graham opened the Public Hearing.

Chairman Graham invited Walter McWain to address the Board.

Mr. McWain stated he is the new owner of this property. The parcel is 30 +/- acres. He would like subdivide this property into two (2) lots. Mr. McWain stated he was able to speak with Mr. Cortese and Michelle, Code Enforcement Clerk to help him understand why this was denied in 2007. He stated that he had done some research to try and elevate some of the problems previously with this project. He stated he met with the Fire Chief at the property concerning the road.

Comments from the public:

Brian Chensey stated he is trying to get this property subdivided so that he can build a house there to raise his family.

Dave & Debbie Nassivera, 102 Farm Way, stated he has nothing personal against with Mr. McWain or Mr. Chensey. He stated they are both very nice. In saying that, he does have a problem with subdividing the property and is not in favor of this, if you let them subdivide then you are allowing every other lot out there to be subdivided. Mr. Nassivera stated the road is not an official road. It is more of a long driveway maintained by the residents that live there.

Bill Miller, 122 Farm Way, stated he is in agreement with Mr. Nassivera. They have spent a lot of time and money to get the road the way it is today.

Pete Lathrop, 78 Farm Way, stated he has lived there for 5 years. The road is a concern as he has worked on it also. He has a concern with more traffic and who would be responsible for maintain it.

Mike Graham, Highway Superintendent, stated to make this a Town road a rough estimate would start at about \$150,000.00.

Woody Miller, 83 Farm Way, stated he purchased the property but does not live there. One of the reasons he purchased this was the appeal of it.

John Folk, 374 Dike Road, stated he has an easement that adjoins his property to this. He does not want to lose the easement. He needs this easement in order to sell his property.

The Public Hearing was closed at 7:30pm.

After further discussion among the Board the following resolution was put forward.

**ZONING BOARD OF APPEALS OF THE TOWN OF KINGSBURY
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Resolution No. 2 July of 2014
Adopted July 24, 2014

Introduced by Henry LaFountain for **denial**
who moved its adoption

Seconded by William Whipple

**RESOLUTION DENYING
AREA VARIANCE REQUEST OF
WALTER & MICHELE McWAIN**

WHEREAS, pursuant to the Chapter 280 of the Code of the Town of Kingsbury, the Town of Kingsbury Zoning Board of Appeals (hereafter the "ZBA") is authorized and empowered issue variances in accordance with said Zoning Ordinance and Section 267 (now 267-b) of the Town Law;

WHEREAS, Walter & Michele McWain (hereafter the "Applicant"), has requested an area variance for the minimum road frontage for potential sale of lot #1 and retaining the remaining real property, located on Farm Way, identified as Tax Map Number 147.-2-32.1; and

WHEREAS, the Applicants request requires a variance from the road frontage requirements found in Section 280-21 G of the Code of the Town of Kingsbury; and

WHEREAS, in accordance with the State Environmental Quality Review Act (hereafter "SEQRA"), the requested variance is a Type II action; and

WHEREAS, a public hearing was duly held on the requested variance at which time the Applicant and members of the public were entitled to comment on the requested variance; and

WHEREAS, the ZBA has reviewed the Application and supporting materials, and has taken into consideration the comments from the public, and has reviewed the criteria found in Town Law Section 267-b.

NOW THEREFORE BE IT RESOLVED:

Section 1. The Board notes that the applicant is essentially asking the Board to reconsider its decision rendered July 26, 2007 on an application by then applicant Peerless Development LLC where the ZBA denied an area variance for complete lack of road frontage. The ZBA declines to reverse or reconsider that decision.

Section 2. Considering the area variance requirements , in considering the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant, while noting that the ZBA must grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community, the ZBA denies the application and finds the following:

- (a) Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance?

Yes, Zero highway access. Access road is inadequate, does not meet Town specifications. Inaccessible for Fire Company.

- (b) Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than through an area variance?

No, there is no accessible legal road frontage.

- (c) Is the requested area variance substantial?

Yes, the requested reduction is for 100% which is a substantial amount. The Applicant is requesting the Board to eliminate the requirement for road frontage in its entirety.

- (d) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Yes, in addition to the reasons above, the soil existing clay soil is not conducive to highway construction. It would allow for increased development along all of Farm Way. It would require the existing private way to be widened and improved and potentially increase the permitted density. Applicant did not submit any information to refute or mitigate these concerns.

- (e) Was the alleged difficulty self-created?

Yes, the Applicant is desiring to subdivide the property into a non-conforming lot without producing any evidence to support their position.

Section 3. This resolution shall take effect immediately.

Zoning Board of Appeals Meeting
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PRESENT:

John Graham, Chairman
Henry LaFountain
Sondra Michaud
Michelle Richardson
William Whipple
Brian Heasley

AYES: 6

NAYS: 0

ABSTAIN: 0

ABSENT: 2 (Richard Hogan and Scott Winchell)

ON A MOTION BY MR. LAFOUNTAIN, and seconded by Mr. Heasley, with all members approving the meeting was adjourned at 7:45pm.

MICHELLE RADLIFF
SECRETARY

Chairman Pro Tem stated there is a change in the minutes of July 24, 2014. Section 1 should be "the ZBA approves the application and finds the following."

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