

ZONING BOARD OF APPEALS

The hearing on Tuesday, September 15, 2020 was called to order by Mr. Kwiek at 11:00AM.

Members present: Ron Carey

John Johnston

Greg Kalinowski

Harry Kwiek

Robert Schaefer

Also: Phyllis Todoro, Town Atty

Joe Colern, Bldg. Inspector

Appeals Case #1382 for Thomas and Francis Banas of 1181 Girdle Road, Elma, NY who were given a continuance for a variance to split the property at 1181 Girdle Road and create two nonconforming lots, section 100-3, Residential C. all persons of interest will be heard at this time.

Mr. Lorigo addressed the board that as we discussed the last time, he now provided the board with a survey of the final location. In his opinion dividing this property would comply with our code. With what he has done, we have been able to comply with section 144-99, which is the town zoning section, which allows the existing house on the 169 ft lot, in full compliance with that whole section. That section of the code says that you need a lot which is 100 ft frontage by 250 ft in depth and 32,000 sq. ft. Mr. Lorigo stated the Banas' have 169 ft. by 261 ft. and 4,109 sq. ft. so that is in full compliance. In terms of the lot he was asked to create, section 100-3, even though he has his issues with this regard on how that section is applied to your town requires 150 ft by 350 ft with a minimum of 2 acres and as you can see from the survey I have provided 258 ft by 338 ft with 2 acres. I believe we essentially comply. It's 507 ft off Girdle Road which is plenty of room, these people simply want to transfer their existing bigger house to their son and his family and build a house alongside of him, they are retired, older and could use the help of their son. It would conform to the 144-99 existing code section it conforms to the corner lot under 20 ft.

Mr. Kwiek asked what the depth was again. Mr. Lorigo stated the new lot created is 338x258. Town code requires 2 acres, but they do not current have. Mr. Kwiek asked if the measurements were from the center of the road. Mr. Lorigo said they were and that those are the measurements on the title and the town code doesn't make that distinction.

Mr. Colern stated the lot needed to be 150 feet by 350 feet and two acres not including center of road measurements (section 100-3) and section 144-2 on the depth of the lot.

Mr. Kwiek went over the drainage, and directly across the street there are wetlands. Mr. Lorigo stated the wetlands would not be an issue with the variance. Mr. Lorigo stated again he is unable to get a building permit without providing plans that take that all into account and water is contained on that property. The builder was supposed to drop off plans showing water can be contained on this property. Mr. Kwiek stated it is an issue if it becomes a detriment to a neighbor.

Mr. Carey asked about the criteria of hardship and what their hardship is, and Mr. Lorigo stated that the Banas's are older, they need assistance and their son can help them throughout their retirement years.

Mr. Carey stated if it can be accomplished in another way with the consideration of an in-law apartment. Mr. Lorigo said it was considered, but this is what they feel best suites their situation.

Mr. Lorigo supplied Joe Colern the building inspector with the property survey which was on his phone at the meeting and Joe proceeded to print out copies for the board. Mr. Colern pointed out the elevation on the property survey. Stating there was a natural grade dropping into the southwest corner.

Mr. Carey was asked if he brought up the in-law apartment, he said he had, and it was not desired. Mr. Kalinowski stated the in-law apartment is a viable alternative. Mr. Lorigo stated it is not a viable alternative for the family situation.

Mr. Kalinowski went over self-created hardship and the duties of the zoning board. He stated a self-created hardship is worse as time passes something that is suitable today may not be tomorrow.

Mr. Lorigo stated that section 144-99 allows for this property to be divided and said that there is enough room for 2 properties on the 507ft frontage. Mr. Kalinowski stated the various property dimensions and compared them to the surrounding houses.

Mr. Kwiek asked if anyone was in favor or against the variance.

Against the variance was Mary Kraft 1551 Jamison Road. As well as 4 letters from residents. Letters against read from 4 residents.

John and Judy Augustyniak 1590 Jamison Road

Michael Barsottelli 1641 Jamison Road

Rita Gerard 1661 Jamison Road

Robert Jagodzinski 130 Valley View Dr.

Mr. Kalinowski made a motion to approve appeals case #1382 for Thomas and Francis Banas of 1181 Girdle Road, Elma, NY who were given a continuance for a variance to split the property at 1181 Girdle Road and create two nonconforming lots, section §100-3, Residential C. after consideration of the factors:

- 1) An undesirable change would not be known. Mr. Kalinowski opined that approving the appellants' request would not adversely change the existing neighborhood but rather complement the surrounding residential properties.
- 2) The benefit could not be achieved another way. Mr. Kalinowski mentioned that there does not appear to be any other practical means suitable to the appellants.
- 3) The request is not substantial. Mr. Kalinowski noted that the extent of non-conformity resulting is not overwhelmingly disproportionate when compared with other residences along Girdle Road.
- 4) The request would not have an adverse physical or environmental effect. Mr. Kalinowski stated that the Town of Elma has taken steps over time to improve drainage and control the water table level at the intersection of Girdle and Jamison Roads.
- 5) The alleged difficulty is not self-created in this case.

Seconded by Mr. Johnston

Mr. Kalinowski asked Mr. Colern if he had anything to add and he said the perk test would have to be done and if it did not perk then a sand filter system would be used. A drainage district could also be created.

Yes - Mr. Kalinowski and Mr. Johnston No - Mr. Schafer, Mr. Carey and Mr. Kwiek

Motion to approve August minutes by Mr. Carey and seconded by Mr. Johnston

Motion to adjourn 12:05pm by Mr. Carey, seconded by Mr. Johnston

Respectfully Submitted,

Kerry Galuski-Secretary
Zoning Board of Appeals