

## **12/13/05 Zoning Board Minutes**

### ZONING BOARD OF APPEALS

The hearing on Tuesday, December 13, 2005 was called to order by Chairman Trzepacz at 8:00 PM.

Members present: Alfred Harrington also: Tom Stynes, Asst Building Insp  
Harry Kaczmarek Robert Pierce, Town Atty  
Michael Komorek  
Robert Schafer  
Donald Trzepacz, Chairman

After Roll Call, the Clerk read the Notice of Public Hearing for Appeals Case #1030 for Fischione Construction Co Inc, 2151 Transit Rd, Ste B, who are requesting a variance for current commercial zoning to include parking of construction equipment on property, Commercial, 144-78 B; Appeals Case #1031 for Fred & Judette Dahleiden, 2209 Woodard Rd, who are requesting a variance to construct a second floor addition on an existing cottage located on the right corner of their property, Res. B. 144-51 (1), 144-98 A, 144-98 (4), 144-10 D, 144-10 B, 144-11 C, 144-33; Appeals Case #1032 for Ken Gough, 5811 Seneca St, who is requesting a variance to split an existing non-conforming lot into two (2) lots, the existing lot is 256.65G+ deep, Commercial, 144-10 D, 144-10 A, 144-100 B 2, 144-72 (1); Appeals Case #1033 the application was withdrawn; Appeals Case #1024 for Metzger Civil Engineering, 8560 Main St, Williamsville, who were granted a continuance until December 13, 2005.

In the matter of Appeals Case #1030 Anthony Fischione from Fischione Construction stated they are requesting the company be allowed to park their equipment on their property, like a dump truck, tractor, loader, one dozer and a trailer. They would like to store the equipment off season and sporadically during the summer. The equipment is currently being stored behind their building on Transit Road in a fenced in area which is usually not visible from the road. The rear of their property backs up to Aurora Plumbing. Most of the equipment is kept at the job site and between jobs the trailer is usually the only piece of equipment stored on the property. Equipment may be brought back to the property for basic servicing or cleaning. Miscellaneous materials like pieces of piping, wire mesh, lumber, and plywood left over from jobs that could be used on other jobs are

on site. There will be no large storage of gasoline or diesel fuel except for some 5 gallon containers for fueling their equipment. No one spoke in favor of this project. Those against the project:

Larry Komorek, 2125 Transit Rd, is concerned with topsoil and stone piling up, loud equipment traffic in and out daily, noise and dust, and what other materials will be stored. Also where there used to be trees, now he has to look at a building and equipment. Fred Streif, 130 Streif Rd, who owns a residential piece of property to the east and rear of Fischione property is concerned with the topsoil shredder causing noise and dust and feels a time limit should be set for allowing the equipment to stored on the property.

In the matter of Appeals Case #1031 Judette Dahleiden stated her husband purchased the property on Woodard Rd about 1 1/2 years ago with the one floor cottage already on the property. The neighbors told the Dahleiden's the cottage had been rented out as a private residence over the past 30 years by past owners. Mrs. Dahleiden stated they recently built a new garage on the cottage and are now building a second floor bedroom over the garage. No building permits were applied for either job. Mrs. Dahleiden apologized and said they didn't know building permits were required for the garage or the second floor addition. A survey submitted shows the driveway for the cottage crosses on to the adjacent neighbor's property. The neighbors have never complained to the Dahleiden's about the driveway. Mrs. Dahleiden's brother will be living in the cottage. Two letters were submitted by Mrs. Dahleiden from neighbors in favor of the project. The letters were from:

Frank & Gwendolyn Hill, 2210 Woodard Rd, states the cottage needs improvement and does not interfere or bother them.

Mr. & Mrs. Vohwinkel, 2220 Woodard Rd, would like to see the addition get done and feels the work to the cottage will improve the look of the property and request a yes be given for the variance.

No one spoke against this project.

In the matter of Appeals Case #1032 Ken Gough and Attorney Brain Lewandowski for Aurora Sales and Service were present. Mr. Lewandowski stated Mr. Gough would like to subdivide the lot on which he currently operates a retail business and leases from Bruce Weller, the property owner. The sub-division would create two lots, one vacant (100x256) and one containing the existing building/business (168.58x256). Mr. Gough is proposing to construct a building on the vacant lot and move his retail business from its present location to the new building. The existing lot is non-conforming as it lacks the

required depth of 300G+. By dividing the property, it creates two non-conforming lots as well as a non-conforming lot coverage on the property containing the building. Mr. Lewandowski says buying the neighboring property with the old furniture store building would not be a practical purchase. Customer and employee traffic will be minimal. They proposed to build a stockade fence for a buffer on the northern boundary of the property. No one spoke in favor of this project. Those against the project: Fred Streif, 130 Streif Rd, owns the property at 5930 Seneca St, is against creating two non-conforming lots from one existing non-conforming lot, he's also concerned where the septic will be placed and front set back issues.

In the matter of Appeals Case #1024 Jack Gordon and Mike Redlawsk from West Minster Place Partnership and Al Hopkins from Metzger Civil Engineering were present. This matter was continued from last month for further comment from the Erie County Department of Planning on the actual variance on lot depth as being 45' not the previously stated 17G+. The County again states it is a local concern. Mr. Redlawsk stated the project plans havenG+t changed since submitted back in September 2005 other than a driveway that had to be moved and widened as per the DOT and signage was moved. Mr. Redlawsk then went on to say in the matter regarding the discrepancy in the measurement for the lot depth, that their 17G+ measurement was taken at the longest depth of the lot from the Right of Way. The applicant was advised that the correct measurement should have been taken from the shortest depth. The area for the lot is 47,000 sq. ft. and the Town's lot area requirement is 30,000 sq.ft. All setback and parking requirements have been met. They would like to break ground as soon as possible pending Planning Board and Town Board Approval. No one spoke for this project. Those against the project:

Peter J. Sorgi, Attorney for the Orlando Family who own property adjacent on Clinton St and adjacent on Transit Rd. The Orlando's are concerned with the property on Clinton St which is zoned commercial but won't be able to be used commercially if this project is approved; what will happen to the Transit Rd property and how can that lot be utilized; where will the frontage actually be (Mr. Sorgi states the actual shortage is 127' because the frontage is actually Transit Rd with the measurement taken from the center of the road) and if they propose the frontage on Clinton St then that's a different project; Mr. Sorgi listed 5 factors of Town Law 257 B that the Board should consider:

1. Not consistent with the neighborhood if frontage is on Clinton St.
2. What is the impact on the environment - where will the septic be placed?
3. Is the shortage of depth substantial?

4. Is it self-created?
5. Are there feasible alternatives or not.

Town Attorney Robert Pierce stated that Mr. Komorek will abstain from any discussion and voting on the decision for Fischione Construction for reasons of past business dealings.

Mr. Schafer made the motion: In Appeals Case #1030 for Fischione Construction Co Inc, 2151 Transit Rd, who are requesting a variance for current commercial zoning to include parking of construction equipment on their property, I move the variance be denied. Seconded by Mr. Kaczmarek. Poll vote G( 4 ayes, 1 - abstained. Carried. (Mr. Komorek abstained).

Mr. Komorek made the motion: In Appeals Case #1031 for Fred and Judette Dahleiden, 2209 Woodard Rd, who are requesting a variance to construct a second floor addition on an existing cottage located on the right corner of their property, I move the variance be continued until stamped architectural drawings are submitted to the Building Inspector showing the existing building to be structurally sound. Seconded by Mr. Schafer. Poll vote- 5 ayes. Carried.

Mr. Kaczmarek made the motion: In Appeals Case #1032 for Ken Gough, 5811 Seneca St, who is requesting a variance to split an existing non-conforming lot into two lots, the existing lot is 256.65' deep, I move this variance be denied. Seconded by Mr. Komorek. Poll vote- 5 ayes. Carried.

Mr. Harrington made the motion: In the matter of Appeals Case #1024 for Metzger Civil Engineering for an area variance for properties bordering on the corner of Clinton Street and Transit Road, as more properly described and indicated on the Preliminary Site Plan, Area Map and the Application attached hereto and made a part of this decision, I move that the area variance be granted for the reasons elaborated in writing below:  
In accordance with Town Law Section 267-b, the Town of Elma Zoning Board of Appeals in its deliberations of ApplicantG|+s request for an Area Variance took into consideration the benefit to the Applicant if the area variance was granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals specifically considered the criteria set forth in Section 267-b of Town Law. In doing so it considered the comments of the public,

testimony and written materials submitted at the duly noticed public hearings on the date initially scheduled, October 11, 2005 and on dates of continuances of November 8, 2005 and December 13, 2005, including the application of Applicant with supporting project information; letters of present owners of property subject to the requested area variance authorizing the application; letter from Westminster Place Partnership; the proposed owner of such property canceling prior contract to purchase neighboring properties to property subject to the requested area variance; letter dated October 4, 2005 from neighboring property owners identified as Glúthe SchustersG!Ñ stating that they were not sure if they were for or against project but noted their anger at what they deemed to be G!úmanipulation, mistrust and lies that have gone on with the projectG!Ñ; letter from Attorney Peter Sorgi representing Karen Jans-Orlando, property owner directly adjacent and behind the properties subject to the requested area variance, in opposition to project; overview pictures and maps provided by applicant indicating subject property and surrounding properties; original and revised Preliminary Site Plans for project provided by Applicants; comments for and against the project at the above referenced Zoning Board of Appeals meetings of October 11, 2005, November 8, 2005 and December 13, 2005, the minutes of the meetings of October 11, 2005 and November 8, 2005; and the Site Plan and Zoning Referral form, with sketch map submitted by the Town of Elma to the Erie County Department of Planning and the reply of Erie County dated December 6, 2005 that it had no recommendation with regards the request for an area variance, that the County of Erie reviewed the request and determined it to be a matter of local concern. All above referenced comments, testimony and documentation are incorporated by reference and made a part of this decision.

The Zoning Board of Appeals after a hard look and thoroughly reviewing that before it as a basis of its determination to grant the requested area variance in accordance with applicable Laws, Rules, Regulations and Ordinances found as follows:

1. An undesirable change will not be produced in the character of the neighborhood nor will a detriment to nearby properties be granted by granting of the area variance. The property is presently commercial. It is acknowledged that the subject property is located in an area that has a mixture of commercial, residential and agricultural uses. However, it is located at the corner of a 5 lane highway (Transit Road) and Clinton Street with surrounding properties on all other corners of Transit and Clinton having commercial uses and the adjacent property to the north owned by Karen Jans-Orlando presently occupied by a commercial building. Additionally, on the proposed property are two residential homes that are vacant and in various stages of disrepair which will be

demolished in accordance with plans submitted and as a consequence such demolition will have a positive impact on the area. The Zoning Board of Appeals considered information provided by potential increase of traffic if the area variance was granted, including, the increase the potential large truck traffic, and determined that in view of the proposed layout of the structure/building to be placed on subject property there would not be significantly increase amount of traffic, noise or pollution to detriment of surrounding properties that are located in the area of the above referenced roads, Clinton and Transit. Further, the Board acknowledges and recognizes that the revised plans of applicant minimize, if not eliminate, the negative impact that the location of the driveways to be used by large delivery trucks to the remaining residential homes in the immediate vicinity to the subject property. The changes will minimize any detriment to the health, safety and welfare of those individuals in such remaining residential homes.

2. The benefit sought by the applicant can not be achieved by some alternative method feasible for the Applicant to pursue The depth of the project property, and assemblage of legal lots which were created prior to the lot dept requirement of 300G'+ for commercial properties by the Town of Elma Code, can not be changed without the purchase of additional lands. The Zoning Board of Appeals does not have before it the feasibility of the purchase of additional lands nor is it within its authority to determine whether the potential cost of purchasing such additional land, if available, is reasonable and/or feasible.

3. The requested area variance is not substantial. It is recognized that the lot depth is measured at the least depth from Clinton Right of Way is 254G'+, 46G'+ less than the 300G'+ the Elma Town Board set as necessary to create a conforming commercial lot. However, the Zoning Board of Appeals is given the authority and requirement by law to look at each variance request on a case by case basis looking at all factors, particularly those factors relating to the criteria set forth in Section 267-b of the Town Law in determining whether the area variance is substantial. In this case whether the lack of depth is determined to be either 278G'+ or 254G'+ when viewing all the factors in this particular case it can not reasonably be deemed to be substantial.

4. The proposed variance will not have a significant negative impact in the physical and/or environmental conditions of the neighborhood. This documentation is made in full recognition that there is already commercial activity in the area of the subject property. The proposed area variance, and the use on which the property is proposed, will result in only a minimal increase in traffic in the immediate vicinity of the property overall and a minimal increase in truck traffic. It is the determination of the Board that the roads surrounding the subject property, Transit and Clinton, can safely and readily handle this

minimal increase with no significant negative impact or risk to the health safety and welfare to the residents in the surrounding residences.

5. It is determined that the alleged difficulty that the Applicant will suffer in the absence of the variance being granted is not self created. The assemblage of lots made part of the subject property were lots created prior to the implementation of the 300' depth requirement in the Elma Code. They were created as commercial lots but could not now be individually sold for use on which commercial activity could take place because of their non conforming nature in the absence of an area variance. The problem was created as a result of legislation subsequent to the creation of the lots not as a result of the actions of present or proposed future owners. However, even if the Board deemed the necessity for a variance self created by the proposed owner in purchasing the property the applicant knew was non conforming, the Board makes the determination that fact alone when viewed with the other factors weighed herein is not sufficient to deny the request for the area variance.

6. An area variance is not subject to State Environmental Quality Review Act requirements. However, it is the determination of the Board based upon a review of the factors listed above and the comments, testimony and documentation presented for and against the request for the area variance that the granting of such would not have a significant environmental and/or physical impact that would require further Environmental Impact Study.

Seconded by Mr. Schafer.

Motion duly made and seconded December 13, 2005

Elma Zoning Board of Appeals voting in favor of granting request of area variance:

Mr. Harrington Aye

Mr. Kaczmarek Aye

Mr. Komorek Aye

Mr. Schafer Aye

Chairman Trzepacz Aye

Elma Zoning Board of Appeals voting against granting request of an area variance:

None

The minutes of the last meeting of November 8, 2005 were approved as submitted.

Mr. Komorek will be attending the NYS Association of Towns Conference in February 2006 as a representative of the Elma Zoning Board of Appeals.

There being no further business, the meeting was adjourned at 9:30PM.

Respectfully submitted,

Jennifer M. Ginter  
Secretary-Clerk