

**MINUTES OF A REGULAR MEETING
OF THE ZONING BOARD OF APPEALS OF THE TOWN OF POMPEY**

August 14, 2023

7:00 PM

Pompey Town Hall

Board Members Present: David Tessier, Chairman
David Hale
Kevin Sharpe
Donald Neugebauer
Seara Haines

Also present were Town Supervisor Renee Rotondo, Tim Bearup, the Town of Pompey Codes Enforcement Officer and Attorney Jamie Sutphen.

Chairman Tessier called the meeting to order at 7:00 pm.

Application by Harrington Homes, Inc. for TWO AREA VARIANCES, to allow a reduction of 0.62 acres, from the minimum of 2 acres per lot, as required for a single family residence in a Farm District, as per Schedule 165 in the Town Code, resulting in a lot size of 1.38 acres for each of two lots on Watervale Road, tax map numbers 4.-01-15 (lot 2), and 4.-01-3.2 (lot 3), just south of 4334 Watervale Road (lot 1).

The application fee was paid, neighbor notices were mailed and the matter has been properly advertised.

Chairman Tessier reviewed the application. The owner of property is Harrington Homes of Jamesville-Michael Pettinano is the Vice President. The applicant filled out the five standards of proof in the application. These are the items that the Board needs to consider when weighing the benefit to the applicant versus the detriment to the community.

Chairman Tessier confirmed that a petition has been received and signed by concerned neighbors of Watervale Road. The petition lists several reasons why the neighbors do not wish to see a zoning variance granted for these properties. The Board does have this on file. There have been no additional documents relative to the application received by the Board.

This a residential area variance, which is a Type 2 action. Type 2 actions are items that create no significant impact; no further environmental review is required. The ZBA acts as the lead agency on Type 2 actions. K. Sharpe makes the motion to accept this at 7:10 pm. D.

Neugebauer seconds the motion. All are in favor, none are opposed-the motion carried at 7:10 pm. This does not mean that the Board is not concerned for the environment; it just means a form does not need to be filled out.

Present for the applicant is Pat Reynolds from Ianuzi and Romans Land Surveying P C. Mr. Reynolds provided a copy of both the tax map and the subdivision map to the Board members and the audience.

The two lots are two existing tax parcels that were purchased by Harrington Homes with the intent to build houses on them. When the time came to pull permits, it was found that the lots do not have a subdivision map filed with the County. They also do not meet the required area requirements under Pompey zoning law. They are not creating any new lots, these are existing tax parcels.

K. Sharpe asked for confirmation of timeline of dates. Harrington Homes purchased the lots in February of 2020. The earliest deed that Mr. Reynolds could find that referenced three separate lots was from 1989. When the lots were purchased, there was no indication that they were not created legally. This was not looked into by Harrington Homes at the time of purchase.

Chairman Tessier says it was not clear on the application if they are asking for a variance for one or two lots. They are seeking the variance for both lots, so this means that the Board will need to vote on each lot separately. J. Sutphen confirms that the application is sufficient as is, there does not need to be a separate application for each lot.

The lots meet road frontage and lot depth requirements. The third lot is the same size as the other two lots in question. They feel the two residential homes that are proposed are not going to change the harmony or character of the neighborhood.

D. Hale asks for confirmation on details of the deed. In 1989, they were deeded from Smith to Meltzer. It is unclear if this is when a previous subdivision was pursued.

D. Neugebauer asks for further clarification. It appears the lots were previously purchased from the property behind the lots now in question, now labeled "Hootnick" on the map.

K. Sharpe asks if the applicant knows when the house was built on Lot 1. The applicant does have copies of the deeds if the Board would like them to be provided.

Chairman Tessier confirms that Lot 1 is already built on; Lot 2 and Lot 3 are currently the lots in question.

D. Hale wonders if Lot 1 had to previously come before the ZBA. It is unclear at this time when the two-acre requirement came into Town Code.

The Board questions if the applicant has approached the owner of the land behind. They could add .62 acres to each lot to equal 2 acres. They could also alternatively combine the lots and make one parcel with one house.

D. Hale asks if any work has already been done on the lots. Just the septic tests and design to ensure they can support a proper septic. There are no wells present.

Public Hearing

D. Hale motions to open the hearing at 7:24 pm. K. Sharpe seconds the motion. All are in favor, none are opposed. The Public Hearing is opened at 7:24 pm.

Chairman Tessier asks if there is anyone present who would like to speak in favor of the application. Mark Harrington is present and speaks in favor.

Eric Schwedes-4310 Watervale Road. Mr. Schwedes is in opposition of a two-house solution. He looked to purchase the property in question for years. He has done some extensive research. The details are murky re: the subdivision and the transfer. He provides map that he was provided when he purchased his five-acre property. The map was drawn in 1994 and is labeled the "Broadbrick Subdivision." It contains the three parcels in question. In 1994, the lots are shown as a single parcel. He looked at the history, at some point it was subdivided, he believes, contrary to the two-acre minimum. It was sold from E. Meltzer to a Thomas Cooney. He is unsure when the two-acre minimum was put into place. He is concerned with septic-it shows it right near his turn around, which does not make him happy. He is concerned with the 29 acres-would this mean that there could be 29 septic's, 29 wells? It was shown as two parcels when the sale was made. He was very interested in purchasing the property. When it first came up for sale when Meltzer passed away, the lots were being sold as two lots at 44k a piece. He told the seller that there was a two-acre minimum-the realtor was unaware. She adjusted the sale price accordingly. It was made perfectly clear that the lots needed to be sold together because the lots needed to be able to be combined. Two small houses will adversely affect the neighborhood.

Chairman Tessier adds that he was on the ZBA when the two acre minimum was put into effect. It was a result of the study re the generally poor soils in the area. It was put in place to allow for septic, well and future septic and wells if needed. The committee began with the proposal that five acres was appropriate but the Town Board approved the two acre minimum.

Wynn Collins-4333 Watervale Road. Mr. Collins lives across the street from the property. When it was originally advertised, it was shown as one lot. The developer builds beautiful homes; he feels he does a great job. The developer was aware that it would require a fight to turn this into two lots. He feels that this will cause problems down the road. Behind the lots empty into limestone creek, if something happens that will affect the trout stream. This should not be given away just for the profit of Mr. Harrington.

Eric Schwedes-4310 Watervale Road-A lovely couple from Tully stopped to speak to him about the lot while he was outside working. They told him that they loved the lot, they wanted to purchase both lots and build one house and they were told that it was going to be sold as two lots, not one. There are people out there who would buy the three acres and put one house in.

Jeff and Julie Hughes-4334 Watervale Road-they own Lot 1. This is a high traffic road. Together the neighbors have contacted the Sheriff's Department. Re: the speeding traffic. At the crest of the hill, there are already currently six driveways. Putting in two more driveways would lead to a concern with traffic.

D. Neugebauer notes that whether the two-acre requirement was put into place in 1980 or 1995, he is unsure what difference that would make as it pertains to this matter.

Eric Schwedes-4310 Watervale Road. He did find a clause that said if in fact something was created, in one to two years it becomes null and void; it has been much longer than two years.

S. Haines agrees that it does not matter-the two-acre requirement was in place in 2020 when this land was purchased.

Mr. Reynolds notes that if the lots were created through subdivision at the time when it was an approved lot, that this should be taken into consideration. In the deed, it says that it is three separate parcels. If they were divided, even out of subdivision, if they met the requirements at that time then that should be considered. It would also help to look into County tax records to see how far back this goes. The applicant could provide that information prior to next meeting. K. Sharpe notes he could also approach landowner behind.

D. Neugebauer confirms that the subdivision occurred in 1989 and shows three separate lots. It looks like the land was split by deed. J. Sutphen confirms that there was an application to the Town; the Subdivision appears to have been granted but not filed. T. Bearup confirms that there is a map that shows three lots all the same sizes that was approved by the Town Planning Board, but the map was never filed.

T. Bearup provides map of previous subdivision from 1986. It shows the three lots as a part of a 105-acre subdivision. The one that was turned in is dated 1994. This map of the Phil Smith subdivision was never filed.

The Board will need to take more time on the matter. The Board will need to decide if the Public Hearing will be closed or left open. The applicant can look into adding some land, if that is a possibility.

Mr. Harrington thanks everyone for their comments and consideration. He has been a resident of the town of Pompey for many years, and he is not interested in building something that does not fit with the rest of the neighborhood. When he looked at all the different pieces, it looked

like it was no problem. They did all the engineering on the septic. He personally owns 20 acres of land.

J. Sutphen reminds the Board that the Variance can always be granted with conditions.

Sheila Schwedes-4310 Watervale Road. There was some discussion of adding property on from the back. That might please the numbers but that does not solve the concern-the frontage is tight. If you shoehorn two houses on to that property, you change the entire dynamic of that street. She bought a five-acre lot in a subdivision surrounded by multiple other acreage properties. It is not a matter of getting him acreage in the back so he can build; there is a room full of residents that are present. It is the taxpayer's views and rights vs. the builder.

It is confirmed that the two lots have 200 ft. of road frontage and meet the requirements specific to road frontage.

D. Neugebauer the point that was made was that if they were willing to purchase the .62 acres, then they would not need a Variance. These other concerns –septic, driveway, frontage etc. are factors, but are not issues for this Board. If that happened, they would have to go to the Planning Board for another subdivision.

Jeff and Julie Hughes-4334 Watervale Road. If the property is bought behind, that takes care of the Variance. J. Sutphen confirms that the Chair can decide whether they vote tonight. He wants to know what additional information is needed-is there a map filed, when was the two-acre minimum put in place. Regardless of what the ZBA decides, they will likely have to go back to the Planning Board because the subdivision map was not filed. The Board needs to confirm that before they can vote.

K. Sharpe asks if the land goes up for sale, can there be a bidding war. If he approaches the neighbor and they agree to sell him .62 acres, can the other neighbors attempt to purchase this as well?

Sheila Schwedes-4310 Watervale Road. The landowner behind them is Hootnick, who previously came before the board and was denied a subdivision.

K. Sharpe feels that he has all the information he needs to make a decision. He feels they need 2 acres.

D. Neugebauer does not believe that when the two acres was put into place will matter to him. S. Haines agrees. D. Hale is up in the air with the two maps. J. Sutphen feels that the Board should know if this was properly subdivided before making a decision.

K. Sharpe feels that it would be appropriate to leave the hearing open. D. Hale agrees. K. Sharpe makes a motion to adjourn the public hearing to 9/11/2023 at 7:00 pm. D. Hale seconds the motion at 7:58 pm. All are in favor, none are opposed. The motion carries at 7:58 pm.

Application by Double Swan Holdings, LLC, (Michael Skeele), for AREA VARIANCES for a building height increase of 14 feet, from the maximum of 15 feet, to the existing 29 feet, and/or building setback reduction of 14 feet, from the minimum of 33 feet, to the existing 19 feet for the property at 3857 Pompey Center Road, Tax Map number 8.-01-23.1.

Present is the applicant, Michael Skeele. This is a complicated issue. The Fees have been paid, the matter has been advertised and the neighbors have been notified. Onondaga County Planning Board review was not required as the application is for an area variance.

A Building Permit was applied for and granted for a pole barn with a lean-to addition. All prints were presented to Bob Rodriguez, former Town of Pompey Codes Enforcement Officer. They discussed the side setback, and Bob said that it needed to be five feet, and his drawings showed 18 feet. The applicant now finds out that he is in non-compliance.

There is a letter from Tim Bearup that was sent to the applicant re: notice of violation. The accessory building placed too close to sideline. Code allows for a maximum of 15 feet high-the building appears to be 29 feet high. The Board does have a small survey of the property dated 6/5/23 that was done by Tom Jones. The survey is very thorough.

There has been a letter submitted by former Town Resident Joan Armstrong. D. Tessier lives in the neighborhood and drives by the properties every day and has been friends with the Armstrong's for many years. He has no further connection to the Armstrong's and will view this as fairly as he can.

Mr. Skeele says that he tried to be a good neighbor to Ms. Armstrong. If he had known what the sideline requirement was, he would have built differently. Bob Rodriguez missed it, and he missed it. He owns multiple properties and is from DeRuyter. He needed a location to store his equipment that was closer to his home in Fayetteville. He does keep wood in the lean-to because he likes to saw wood. He has met the new neighbors; they are a nice young couple. He feels bad, and he did not intend to cause any issue and now cannot do anything about it because the building is already there.

This is a Type 2 action for a residential area variance, so no further environmental review is required. The ZBA acts as the lead agency. K. Sharpe makes a motion to accept this at 8:12 pm. D. Neugebauer seconds the motion. All are in favor, none are opposed. The Motion passes at 8:13 pm.

J. Sutphen confirms with Mr. Skeelee that he does not live at the property. Ron and Sandra Tarbox live there. He is renting it to them, but he and his children are using the barn as a personal workshop. One son works on automobiles and the other son enjoys woodworking. The house was two units when he bought it, and still is two units. Another young woman who is related to the Tarbox's also lives there. It is unclear when it became two units. The only thing he has done since purchasing the property was to add the deck on the back. He purchased the property in October of 2020 from Stan Relyea; he also had another family living there.

D. Neugebauer makes a motion to open Public Hearing. D. Hale seconds the motion. All are in favor, none are opposed. The motion passes, and the Public Hearing opens at 8:16 pm.

Dale Sherman-3844 Pompey Center Road. Mr. Sherman lives directly across the road. He has been there for 25 years. He knew the previous owners, Stan and Dottie Relies. They moved in to take care of Stan's mother. At some point, his niece moved in with them. Mr. Harrington confirms that the units are side by side and a wall went up. Mr. Sherman has mixed feelings about the property-it has been fixed up and looks nice. He used to be able to watch sunsets from his porch but is no longer able to do so. If the building were within the height requirement, he probably would still be able to. He felt sorry for Ms. Armstrong because she completely lost her view. There is an ad that went out from Matt Skeelee advertising storage in the building-that seems commercial in use; Mr. Skeelee is also storing equipment for a commercial business. Mr. Sherman is surprised that Bob Rodriguez would grant a permit for a building that tall within the property line. It should be easy enough to find the Zoning Laws for the Town of Pompey, especially for someone who conducts business in the town of Pompey. The application says 29 feet, but he feels it may even be more than that. He does not know the solution, but it does seem very tall. He also has a personal hobby woodworking shop. He understands the desire to have a shop, but this is pretty big for a woodworking shop. Was this building always intended to be commercial? Seems that Mr. Skeelee is really pushing the envelope on that.

Ryan Yaroski-3837 Pompey Center Road. Mr. Yaroski submits photos. He purchased the property remotely on 7/25/23 after going through video showings and photographs. His real estate agent did a video walkthrough via FaceTime; obviously, this comes with a risk. They mentioned the barn but they were surprised to see it when they showed up. Everything was bigger than they expected. If it were set back a little further, shorter, then that would seem more acceptable. Typically the risk of buying a home sight unseen would not include dealing with Zoning Violations that include your neighbor building a building twice and large and twice as tall as it should be. The photos shown on Zillow do not depict the new structure.

K. Sharpe asks if knowing about the barn would have changed Mr. Yaroksi's mind about buying the property. It would have changed their offer for sure. D. Hale feels he should contact his realtor. D. Tessier welcomes him to the neighborhood.

Stephanie Cross 3844 Pompey Center Road. She has been expressing concern about the building since the beginning. There should be letters on record from her re: the size, location, and the intent of the nature of building. One year ago, there was an ad on the Cazenovia-Chittenango-Canastota Yard Sale site advertising the building for storage. Mr. Skeelee violated the Codes with the building itself, and is going against what the property is supposed to be used for. D. Hale confirms that Ms. Cross sent letters to the Town regarding this. She confirms that she sent an email, spoke to the Town Supervisor and sent a letter. This was prior to the concrete even being poured. The neighbors next door also had an extensive conversation with someone at the Town as well.

Town Supervisor Renee Rotondo confirms that she took a phone call from Ms. Cross way back when the concrete pad was laid. At the time, she told Ms. Cross that "you're the best eyes on the property, if something starts to happen there please let us know." It was not Bob Rodriguez who issued the permit-it was Tim Gainey. The letter from Ms. Cross may have gone to Codes, which was a revolving door that summer. She never got anything in writing but has spoken to Ms. Armstrong on numerous occasions. There was no permit needed for the concrete-he poured the pad and then came in for the permit.

Mr. Skeelee said that he was not aware he needed a permit for concrete. The building was up for a year prior to the floor being poured. There were building stakes marking where the pad was going to go-it was stone, not concrete. Bob Rodriguez is the one who he worked with-he thinks Bob left and came back.

K. Sharpe asks who the builder was. It was Burkholder Brothers from the Southern Tier. D. Hale thought the concrete was poured first, but he stands corrected. He saw the stone pad laid out.

K. Sharpe questions the timeline on the paperwork. Mr. Skeelee only dealt with Bob Rodriguez and Tim Bearup. He applied for a permit with Bob and supplied blue prints etc. Tim Gainey may have signed the permit, but Bob is the one who he communicated with the whole time. Tim Bearup confirms that Mr. Skeelee did deal with Bob the entire time. Tim Bearup has gone through old emails. The communication was up front, and everything seemed okay between the two. T. Bearup feels this was a complete error on Code Enforcement's part.

J. Sutphen asked how low the building would need to be so that it is within setback. The survey shows that the building is 19 feet back at the closest corner. T. Bearup confirmed that the building is 28.5 tall. A 19-foot setback gives the applicant the right to have a 22-foot tall building. To get an additional 7 ft., the building would have to be an additional 14 feet back. D.

Hale noted that the depth of the lot is not long enough for Pompey Zoning. D. Tessier confirmed that the lot is supposed to be 250 feet deep, and it is only 230 feet deep.

The survey also shows two lots with a property line right through the center of the property, but there is only one tax map number. Mr. Skeelee confirmed that previously there were two lots, but he purchased it as only one. If you measure to the street line you only get 1.7 acres, so this not a two acre lot, which does not meet Pompey Zoning. The Board needs to recognize these two issues that there is not enough lot depth or acreage on this property.

J. Sutphen asked if the building could be picked up and moved. It cannot. K. Sharpe asked if Mr. Skeelee knows the pitch of the roof, and he does not.

K. Sharpe inquired about what Mr. Skeelee needs the height for. The family owns a large RV, and eventually Mr. Skeelee plans to put a mezzanine in for storage.

J. Sutphen confirmed that the use will need to be looked at for the next meeting. It is unclear whether this structure can be used by someone who does not live on the property. On a residential property, an accessory structure can only be used by the occupant of the building. If it is rented, then that would be the person who is renting. That is Town Code. The issue of the use of the structure is a question, and this is monitored by Codes. S. Haines noted that then the Board would be looking at a use variance instead.

Mr. Skeelee says that none of this was mentioned when he applied for the permits for this building.

J. Sutphen noted that a use variance is a very complicated legal situation.

K. Sharpe asks what will happen if the Board denies the variance. Does the roof come down? It appears that the Town has issued Mr. Skeelee a permit. J. Sutphen confirmed that there is immunity to the Town on this issue. It does not prevent the Board from taking an adverse. The Board needs to go through the criteria.

D. Tessier noted that there is still a violation existing that needs to be addressed. He recommended that the Board adjourn the decision and the Hearing.

D. Hale asked for confirmation on immunity. J. Sutphen explained that the fact that this was a mistake does not make it determinative for the Board. The Board either grants the variance or does not grant the variance.

K. Sharpe asked why we are here if the permit was granted. The Town of Pompey made a mistake. J. Sutphen confirmed that that appears to be the case. Someone is going to have to stand up and accept that this is what the Town did. D. Hale confirmed that the Town has

previously been in this position, when Codes made a mistake in the past. Fortunately, that project was not this far along.

K. Sharpe asked for confirmation on what information the Board is looking for in the next 30 days. J. Sutphen responded that we need to know how much of a variance is actually required. D. Neugebauer agreed that the Board needs to make sure we understand the math, as the application may need to be re-submitted.

D. Tessier confirmed that the lean-to has the proper setback from the rear property line.

D. Hale made a motion to adjourn the hearing to the September meeting. K. Sharpe asked if anything could be done on a use variance at the next meeting. D. Neugebauer wondered if the use is a problem that requires a variance. J. Sutphen noted that use is a separate issue that the Board will need to talk about. D. Neugebauer seconded the motion to adjourn the hearing. All in favor, none were opposed. The motion passed at 8:53 pm. The Public Hearing is adjourned until 9/11/23, following the hearing on Harrington Homes.

The ZBA meeting was also adjourned at 8:53 PM.

Respectfully Submitted,

Sarah LoGiudice
Secretary to the Zoning Board of Appeals
Town of Pompey