

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

May 8, 2023

7:00 PM

Pompey Town Hall

Board Members Present: David Tessier, Chairman
David Hale
Kevin Sharpe

Board Member Donald Neugebauer was absent. Also present were Tim Bearup, the Town of Pompey Codes Enforcement Officer, and Town Supervisor Renee Rotondo. Attorney Tim Frateschi joined the meeting by Zoom at 8:11PM.

Chairman Tessier calls the meeting to order at 7:08

The ZBA is a five-member board, and there is currently an absence. The Board hopes to fill the absence soon.

The Board can adjourn tonight's Public Hearing and/or meeting if they feel that there is further information needed on the project.

**Steven Perry
7940 Broadfield Road Manlius, NY 13104
(Tax Map No. 004.-03-44.1 and 004.-03-49).**

This is a fairly complex project; it is an application for an area variance to modify two existing parcels to create three new tax parcels.

The project was referred to the Onondaga County Planning Board (OCPB.) The County did a thorough review of the project, and essentially has no opinion on the matter. The decision lies with the referring board (ZBA.)

The fees have been paid, the matter has been properly advertised and neighbors were notified by Mr. Perry.

None of the parcels included in the application will have the required 200 ft. of road frontage. The property is owned by Perry Real Estate Holdings LLC Steven Perry, Managing Member, who is in attendance.

The Board is to consider five items when reviewing the application. At the end of the discussion, the Board is charged with determining whether the benefit to the applicant

outweighs the detriment to the community. The five questions and the applicant's responses are as follows:

- 1. Whether the benefit sought by the applicant can be achieved by some other feasible method?**
 1. The applicant says no.

- 2. Whether the variance will result in an undesirable change in the character of the neighborhood?**
 - a. The applicant says no.

- 3. Whether the requested variance is substantial?**

The applicant says yes.

- 4. Whether the variance will have an adverse effect on physical or environmental conditions?**

The applicant says no.

- 5. Whether the alleged difficulty was self-created?**
 - a. The applicant says yes.

The Short Environmental Assessment (SEQR) Form has been filled out. A residential Area Variance is a Type 2 action-it has no significant adverse impact on the environment and no further environmental review is required. The ZBA will act as lead agency and determine that this is a type 2 action. K. Sharpe made a motion at 7:22PM to determine this. D. Hale seconded the motion.

Resident Phillip Miller asked if public comments need to be heard before it is determined that this a Type 2 project. The Town Attorney may agree, however Chairman Tessier stated that by nature of the type of application, it is listed as a Type 2 Action.

All are in favor, none are opposed and the motion carries 3-0. Chairman Tessier noted that this vote is not an approval of the application.

Pat Reynolds, Ianuzi and Romans Land Surveying P.C is present and representing the applicant, who is also present. Mr. Reynolds provided large size maps to all Board Members; he also provides a brief summary of the project. Mr. Perry acquired the vacant parcel behind the lots and was interested in subdividing. Initially, Mr. Perry proposed an application to subdivide the land into two parcels. They added the third lot due to the easement for the septic system.

Chairman Tessier noted that they propose to change lot 1, from an undersized lot to a 2 acre lot which is the minimum required in this zoning district. The existing 17+acre Lot currently has a total road frontage of 120 ft., but it is split into 60 ft. on each proposed new lot 1 and 2. There is no way to get the required frontage unless a public road is added, and this is not an expense that Mr. Perry wants to take on at this time.

The original deed submitted also notes the possibility of a future road. It is not likely that the Town would be interested in a future road here.

D. Hale noted that Lot 1 already has a dwelling, and that -a pool house, fence and septic system are on the other properties. The applicant's attorney and the property owner's Attorney's spoke and decided that it would make sense to eliminate these encroachments by moving the south lot line of Lot 1, to add approx. 1 acre to Lot 1, and reduce lot 2 by approx. 1 acre.

Chairman Tessier noted that the deed states that an access easement is in place for the Holden property. The deed for the Apex property notes a 15 ft. right of way as well. They are using the existing drive-that does not fall within the 15 ft. The ZBA needs to know that both parties are okay with the situation. There may be agreements in place but the Board needs to look out for potential future property owners. The Board may need to see a more formal agreement for access to the Apex property.

D. Hale stated that it's a shared right of way currently; but it will be owned by Lot 2 and will continue to be a shared driveway. Apex and Holden share the responsibility.

Mr. Perry spoke with Holden who acknowledged that they share the responsibility currently. The Board would like a formal document noting that all 3 parties, Holden, Perry, and Apex Companies, are all in agreement with this.

Chairman Tessier has a list of questions, most having to do with the easements. Lot 1 has no frontage. The Board would have to refer to the easement to allow for that Lot to be created with no frontage.

D. hale is not sure how the lot was developed with no frontage. There was likely an assumption that this was supposed to be a horseshoe road. If there was a road there, there could have been many more lots.

Mr. Perry is not interested in developing the land any further. His goal is to have one house for himself on lot 2, and to sell lot 3 for one house.-He plans to keep it in character, with what else is in the area. The current common entrance is at the top of the hill. The second entrance is proposed to be a driveway at the end of the hill, to access lot 3. The County will have to approve any new or improved driveway onto Broadfield Road.

D. Hale asked, if this does not get approved what happens to Lot 1? There is already a dwelling there; that is unclear at this time. The properties cannot be accessed from Fraser Fir drive. There is a house on another lot, in front of the house on Lot 1 on Broadfield Road.

Mr. Perry stated that when he purchased the property he was under the impression that the driveway was a right of way; he was under the impression that it was at least one buildable lot, maybe two.

Pat Reynolds confirmed that they can add an easement on their map to confirm the access easements. The applicant needs to go back to the Planning Board to approve the actual subdivision.

Chairman Tessier would like to see this easement on their maps as a condition of any variance. The deed submitted with the application is from 1985.

D. Hale noted that the easement was put in place to allow access to the other lots. They assumed that something would be built there at some point.

Codes Enforcement Officer T. Bearup stated that any questions from him were addressed by the Planning Board. His only concern is Lot 1 and what will happen with that if it doesn't go through.

Chairman Tessier stated that Lot 1 would be a pre-existing non-conforming lot of approx. 1 acre.

Mr. Perry stated that he would work with the landowner of Lot 1, for whatever reasons necessary.

D. Hale motioned to open the public hearing at 7:42 pm. K. Sharpe seconded; all in favor. Motion passed 3-0.

Public hearing

George Holden-7932 Broadfield Road

-In regard to the right of way-he thinks he has an easement. The land was originally a gravel pit; the roadbed is solid. He does not see any reason to worry too much about the use. He would want to make sure that at the mouth of the shared driveway that there is enough room to stop and get mail etc. – He feels 60 ft. should be plenty. Mr. Perry stopped to talk to him, and he was a perfect gentleman; he doesn't anticipate any problems.

Chairman Tessier asked if the driveway is well made.

G. Holden said Yes, there is no pipe under the driveway, and the entire drive is gravel. If it was paved that may change the drainage. A third house will not change it much.

D. Hale noted that equipment will be going in and out during building.

Mr. Holden has had equipment in and out many times.

Karen Burns-7864 Broadfield Road

-She would like to see a large version of the map; she has questions on clarification of the easement.

Chairman Tessier stated that an easement is an agreement from one owner to another to allow one another to travel on each other's property. He also noted that they may have a gentleman's agreement, but it needs to be made part of the deed so that it transfers from owner to owner. In this case it is just for access.

Ms. Burns notes that right now there is only room for one car. This is for the owners to work out.

D. Hale feels that there should be enough room as a highway lane is 10 feet.

Ms. Burns wonders how can so many cars going in and out of the driveway can be safe. She walks the road regularly.

Members of the Board stated that the private and owned by the owner of Lot 2; the Town has no say in this. All decisions on driveway entrances are up to the County. The Town/County concern would be where the driveway meets the road so that it is not a hazard. They need to plow, keep ditches clean, ensure drainage etc.

Ms. Burns feels it is an unsafe spot. There is another similar easement down below that would be accessed by Lot 3, with one house, and one driveway. That would be a new driveway and they would need permission from the County Highway Department.

Bob Evans-7900 Broadfield Road

- If this is 60 ft. wide, he is concerned they will cut 17 feet into his property.

Chairman Tessier stated that this will just be a single driveway, and will have to be approved by the County Highway Department.

Sue Reisman-7868 Broadfield Road

- Her property is below the project and is the lowest point. She typically has water in the front of the house, there are culverts on the side of the road etc. She pays a lot of money for flood insurance. She does not feel there is any way to ensure drainage is sufficient if a driveway is made.

Chairman Tessier said that roadside drainage is a County responsibility, and they have to approve it and issue a driveway permit.

Phillip Miller on behalf of Sue Reisman

-The notice that she received indicated that there would be a Public Hearing re: the creation of three tax parcels. They received the resolution from the county that confirms that they are also proposing a subdivision. This is the first time that they got any information about the project. They asked for a map from Codes, they said they sent it, but we never got it. It is hard for them to make an intelligent decision about the project. They feel the notice from the Applicant is insufficient, as it does not describe the true nature of the project. He guesses that 90% of the people have not heard any detail about what is really going on. The Town has a 200 ft. requirement for frontage on all properties. They feel that this project would change the character of the neighborhood. If they are going to allow this variance, why even have the 200 ft. of frontage in town law? Ms. Reisman has a flooding problem and lives immediately West

of the property. She has a video of the water already flooding her property. Will this new development increase or redirect runoff thereby affecting the floodplain and floodway to Ms. Reisman's property? Where will the water go? She is a senior citizen who lives alone at this property. Heard that the County has said there are no significant adverse implications on an intercounty scope. Mr. Miller feels that the application needs to be reviewed by the Army Corp. of Engineers, the DEC and the State.

D. Hale asked how long she has been at this residence.

Ms Reisman said since 2006, there has always been water in the backyard, and when it rains hard in the front lawn as well.

Bob Evans-7900 Broadfield Road

-He has been there 43 years and feels that the only reason there is not more water is because there is a berm where the driveway will be going. This will require a significant amount of drainage work. There are springs present and the land will need to be built up significantly.

John Cavalline-7866 Broadfield Road

-The Northwest part of Lot 3 is in a flood plain and it is very, very wet. He is not sure if the applicant is aware of the water issue, and he is very concerned for Ms. Reisman because everything that comes out ends up on her property.

D. Hale asked if the previous owners disclosed that there were water issues at Ms. Reisman's property. No they did not, but she did need flood insurance.

Chairman Tessier noted that there are two parts to this application. The subdivision is a Planning Board issue; the Planning Board cannot approve the subdivision with the small road frontages. If the ZBA approves the Variances, the project goes back to the Planning Board. Each board has received their own comments back from the County. The ZBA comments were short and to the point. The Planning Board's were much longer and the drainage issues, wetlands, archaeological issues etc. are noted there. Attorney Tim Frateschi joined the meeting via zoom at 8:11 pm.

Phillip Miller finds that the ZBA is supposed to enforce certain rules and regulations.

Chairman Tessier stated that enforcement is the responsibility of the Codes Officer, not the Board.

Mr. Cavalline asked if the applicant has a plan for water management.

Chairman Tessier stated that this issue is for the Planning Board. The ZBA's issue is with the width of the property frontage.

Debbie Evans-7900 Broadfield Road

-Lot 3 says almost 8 acres. Does this mean one house, or will it be subdivided?

Chairman Tessier stated that they are planning on two houses, one on Lot 2, and one on Lot3

Mike Burns - 7864 Broadfield Road

- Is there any chance that someone else down the road could subdivide further?

Chairman Tessier stated that If so, they would need to come before the ZBA/Planning Board again. Mr. Perry already agreed with the Town that that would be a condition of subdivision to not divide the property again. The neighbors would get official notice when there is a Public Hearing re any proposed subdivision.

Charles Heffner 4275 Fraser Fir

-The 18/19 acre plot that is Lot 2 would butt up to three separate properties on Fraser Fir. He is totally in the dark as to what exactly the project looks like re house construction. The area is totally saturated with water. Mr. Perry said earlier that his plan was to move the houses all the way to the back of the property. The neighbors will want to know where these houses are going to be. He just heard for the first time that Lot 2 is 9 acres. The other is seven, almost 8 acres. He is also concerned about further subdivision. What are the next steps now? Is the Board in a position to actually vote on this application? He seconds the concerns with the water and impact on the community. He wants to know where structures are going to be situated.

Chairman Tessier noted that it appears there was planned to be a road through this property. Mr. Perry has already stated that he will agree to the condition that this property will not be further subdivided, and again, this is a Planning Board issue.

Steven Perry

-In no way shape or form is he looking to degrade someone else's property. He agrees that drainage needs to be addressed, and he is committed to working with the Town to make sure that this happens. He can assure everyone that this will be in writing on the maps and this will be enforced. He feels the back of the property is beautiful for homes. He does not have a specific spot, because it is so overgrown and so thick. He is not a developer. He is looking at this potentially for himself and maybe for his daughters. He bought the piece of property from a friend of the family, and was told he was able to build on it because there was a right of way. Until he knows that this is buildable, he is not going to get too far ahead of himself.

Mr. Heffner is skeptical about how this will shake out in the end, despite good intentions.

A neighbor on Gibbs road asked if there has been a topo survey done; she understands that the ZBA will be lead on SEQR for this matter. Chairman Tessier noted that the Planning board works closely with the Pompey Environmental Conservation Committee.

Chairman Tessier explained that if they approve the variances, the application can go to the Planning Board for a Public Hearing on the subdivision. There is potential for three area variances to be granted; one for each lot. Not sure if the ZBA will be ready to vote on this tonight.

Jason Tom-4257 Fraser Fir

-Is this common practice for the ZBA to issue such variances? Are they setting a precedent for other landlocked areas in the town of Pompey?

Chairman Tessier confirmed that the Board treats each property separately. Mr. Tom seeks clarification on the five SEQR questions.

D. Hale suggests that if they requested a lot line adjustment, that they could adjust both properties off the easement, as the easement is already established. This is physically possible, not sure if the Planning Board would allow it. Only Lot 1 would need to be fixed.

Mr. Perry would be open to this. He was told the County would frown upon that, as they did not like four owners having access from one driveway. He was previously told that there were no issues with site distance.

Chairman Tessier explained that Attorney Frateschi advised to hold the Public Hearing open for one more meeting. D. Hale agrees, and there may be one or two members of the ZBA present next week as well.

Mr. Perry initially wanted to use the existing right of way for both new houses. He was led to believe that that would not be accepted, but if it were acceptable, he would prefer to go that way.

Phillip Miller cited previous minutes re: driveways and private roads. The Planning Board has tried to shy away from shared driveways in the past. The existing driveway is already being used by three residents.

Mr. Holden notes that this would lead to eight trash cans, mailboxes, etc. at one driveway entrance.

Chairman Tessier will take T. Frateschi's advice and recommend they adjourn this Public Hearing until the next meeting. This will give everyone time to think over the project and all of the concerns. The next meeting is June 12. We can keep the Public Hearing open until then.

Attorney Frateschi apologizes that he was stuck in another meeting. The ZBA needs to keep focus on the variance component. The subdivision is left to the Planning Board; the substantially of this variance is what will really need to be focused on. A lot of issues have been raised, and there is a lot that needs to be thought through. We can regroup next month and decide how the ZBA wants to move forward.

Chairman Tessier asked for a motion to adjourn the Public Hearing to June 12. D. Hale made the motion. K. Sharpe seconded the motion. All are in favor. The motion passed 3-0, The hearing is adjourned.

K. Sharpe moved to close the meeting at 8:39pm. D. Hale seconded the motion. All are in favor; 3-0, the meeting is adjourned.

Respectfully Submitted,

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