

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

June 12, 2023

7:00 PM

Pompey Town Hall

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

Also present were Tim Bearup, the Town of Pompey Codes Enforcement Officer and Attorney Tim Frateschi.

Chairman Tessier called the meeting to order at 7:03 pm.

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

Many details on this project were discussed at last month's meeting. The Board viewed the environmental form-this is a Type 2 action, so no further environmental review is required. The Onondaga County Planning Board (OCPB) reviewed the project and took no position.

Present were the applicant, Steven Perry and Pat Reynolds from Ianuzi and Romans Land Surveying P.C. Mr. Perry spoke with John Leathley, the owner of Apex Companies, which is the other property (Lot 1), subject to the common driveway. Mr. Reynolds reported that the Apex company was involved in the subdivision application that went to the Planning Board.

D. Neugebauer asked for clarification on the role of the ZBA and Planning Board as it pertains to this application. The Planning Board has not ruled on the subdivision application yet. -They need to wait for the ZBA's decision regarding the variance. T. Frateschi confirmed that the subdivision plan is dependent on the granting of the variance.

The survey was placed on the large board and reviewed. Mr. Reynolds explained what is present on the property today. Lot 1 will become larger; Lot 2 and Lot 3 will be newly created. If the subdivision is approved, four houses will share the existing driveway.

Resident Dan Reisman was present on behalf of his mother, Sue Reisman. He questioned how far down the existing driveway comes into the property now.

D. Neugebauer confirmed that the ZBA is looking at three lots using one driveway that is existing now.

T. Frateschi explained that a right of way is a legal description of a deed or an easement of one person's property to another person's property. The ZBA is not focused on that. The ZBA is focused on the road frontage, specifically if it should grant a 140 ft. variance to Lots 3 and 4.

D. Hale made a motion to open the Public Hearing at 7:22 pm. D. Tessier seconded the motion. The motion passed 5-0.

Public Hearing

Phillip Miller on behalf of Sue Reisman-7868 Broadfield Road

-Mr. Miller quoted the OCPB resolution dated 4/26/23. He heard someone mention a fourth lot. D. Neugebauer clarified that he previously mentioned a fourth lot, and there is no fourth lot included in this application. The OCPB indicated that Lot 3 has a 60.1 ft. of frontage on Broadfield Road. Lot 2 also has 60 ft. of frontage, and Lot 3 has no frontage. The Town requires 200 ft. of road frontage for each lot. The lots only have 60 ft., so this requires a 140 ft. variance on each of Lots 2 and 3.

Debbie Evans-7900 Broadfield Road

-Ms. Evans questioned if Mr. Perry will make a road in between her home and the Reisman's home. There will not be a road, but a driveway. This was the matter at hand last month-Ms. Reisman's home is consistently flooded. The ZBA confirmed that as it stands now, an additional home could be built on the lot that exists now.

Dan Reisman on behalf of Sue Reisman-7868 Broadfield Road

-He understands the purview of the Zoning Board-he is on the Village of Fayetteville Planning Board. His concern is that the impact that this variance will have has not been addressed. He has not seen any engineering information re: how what will be done on that property will impact the neighbors, specifically his mother. The variance will be creating a myriad of issues. Everyone here has said how cumbersome and wet the land currently is. He feels that the Board needs to understand what that impact will be prior to issuing the variance.

T. Frateschi reiterated that what is being discussed is the building of one additional residential home on two properties of eight or nine acres each. When the Board goes through the balancing test that is what they will be considering.

D. Hale noted that everyone has a right to build a house without first consulting with an engineer.

T. Frateschi explained that if you are disturbing more than one acre, then a storm water prevention plan must be submitted to Code Enforcement.

Bob Evans-7900 Broadfield Road

-He has had to make modifications to his property to account for the water that gathers when it rains. If drainage is not accounted for, then Ms. Reisman's property will be greatly affected.

Phillip Miller submitted copies of the standard flood plain maps for Ms. Reisman's property, as well as her neighbors. These properties are already located in a flood zone. What evaluation has been made for even one lot?

Patrick Reynolds explained that the flood plain is determined based on elevation. The property that they are submitting for is not in a flood plain. The properties down by the creek are lower. Mr. Perry is not looking to displace anyone or cause any hardships. He is willing to put money into the project to negate any additional runoff.

Chairman Tessier reminds all parties to direct comments to the board-this is a hearing not a debate.

John Leathley (Apex Properties)-7940 Broadfield Road

-Mr. Leathley currently lives on Lot 1. They built all of Spruce Ridge behind him and he never had any issues with flooding. He has a small creek that runs through his lot. He is a contractor as well, and does not believe that Lot 2 will have any effect on anyone.

T. Frateschi noted that the Spruce Ridge plans were filed in 2005; therefore, it is likely that the Spruce Ridge Subdivision was subject to all of the storm water regulations. Drainage issues would be a Planning Board issue, not a Zoning Board issue.

Chairman Tessier noted that the Board is charged with balancing the benefit to the applicant vs. the detriment to the community. He assured all parties that the Board is listening to everyone's concerns.

Karen Burns-7864 Broadfield Road

- She has lived there for 38 years and has had a number of issues with (storm) water. She wondered when they would see pictures or plans. Chairman Tessier explained that it will be up to the Planning Board to determine if more information is needed. T. Frateschi noted that it is important to remember that the Planning Board cannot do anything until the ZBA makes a decision. One of the conditions imposed could be to provide a plan that would show how the runoff would affect neighboring properties.

Dan Reiseman on behalf of Sue Reisman-7868 Broadfield Road

- Can the ZBA redirect the matter to the Planning Board to have the engineering work done prior to the variance being granted? Chairman Tessier said that the Planning Board will work with Codes Enforcement to take the drainage issues into account. The Planning Board could ask the Town engineer to explain this to the Planning Board, if the variance is granted.

Philip Miller on behalf of Sue Reisman-7868 Broadfield Road

-How do you know if the project will have a negative impact on the neighborhood without knowing this in advance?

Steven Perry, Applicant

-He is not a developer. If the Planning Board comes back to him and asks him to get an engineering study, he will not continue with the project. All he wants to know is if he can build two houses. Either he builds two houses or he will sell the lot.

K. Sharpe noted that each variance that is being asked for is substantial-200 ft. down to 60 ft. is a very large request.

D. Hale said that the Board has granted similar variances in the past. All applications have to be looked at individually.

T. Frateschi confirmed that case law says that variances do not set precedents for other variances. This application is asking for two variances to allow for two houses as opposed to no variance that will allow for one house.

Karen Burns-7864 Broadfield Road

-She questioned where the 200 ft. frontage comes from. Chairman Tessier explained this has been the road frontage that has been standard in the town for approximately 30 years. T. Frateschi explained that this is a standard, common in towns that are rural in nature. Ms. Burns also wonders what the five questions for an area variance are. Chairman Tessier reviewed the questions aloud. This is a balancing test of the benefit to the applicant vs. the detriment to the community.

D. Neugebauer noted that we know what he is trying to build. Is there any way that the new buildings can go to the same driveway? The other two residents that own the properties that share the driveway are present. Neither of them see a problem with this. The ZBA could add a condition that states that any access to Lot 3 would be through an easement through Lot 2.

John Leathley (Apex Properties)-7940 Broadfield Road

-He noted that there are neighboring properties that share a driveway that do not have anywhere near this amount of road frontage.

Mr. Perry would want the house on Lot 3 to be up on the hill. He believes the town Planning Board was concerned with four people using a common driveway, so that is why he abandoned that idea.

Chairman Tessier confirmed that part of the Town's concerns with the shared driveways are that homeowners will eventually want the Town to take over the care of the driveway.

T. Frateschi noted that it is possible that the Planning Board would not find the proposed driveway condition acceptable to them, and then the variance process would need to start back over. There would be valid reasons for that condition to be issued-specifically, the neighbor testimony.

Phillip Miller noted that he feels that Mr. Leathley will benefit from this project as well. Mr. Leathley noted that they would proceed with their plans for the subdivision regardless. This could always be done with a lot line adjustment.

D. Neugebauer made a motion to close the Public Hearing at 8:01 pm, D. Hale seconded the motion. All are in favor, none are opposed. The Public Hearing is closed at 8:01 pm.

D. Hale reported that he believes that the 200 ft. frontage requirement was put in place so that houses would not be stacked on top of one another. These houses will be set far back and this will not impact the character of the community.

The Board considered the following five questions:

1. Whether the benefit sought by the applicant can be achieved by some other feasible method?

No, there is no other feasible method to get two houses onto these 16 acres

2. Whether the variance will result in an undesirable change in the character of the Neighborhood?

No, there will not be a change to the character of the neighborhood. The property is adjacent to the existing Spruce Ridge development. The two proposed houses will not likely be seen from the road.

3. Whether the requested variance is substantial?

Yes-the variance of 140 feet is substantial. It would be a 70% reduction. In terms of mathematical frontage, it is substantial.

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

Will one house on 8 acres have a significant environmental impact? Typically no, but here the driveway is probably the issue. The Board can mitigate the impact

with a condition. If they add the condition, the Board can say that they have attempted to mitigate the environmental impact. The Planning Board could further explore this.

5. Whether the alleged difficulty was self-created?

Yes, the difficulty is self-created.

Chairman Tessier said that if the Board is considering a condition, we should create that and see if it makes a difference.

D. Neugebauer noted that right now the Board is looking at potential for two additional houses. Can the Board add a further condition that says that no additional lots can be created? T. Frateschi suggested a condition that only the Holden property and Lots 1, 2 and 3 can use the shared driveway.

George Holden-7932 Broadfield Road

- He confirmed that he is concerned with the volume of trash etc.-but he is not concerned with the ingress/egress at all.

K. Sharpe asks if we say this, we are shutting down the use of the 60 ft. frontage on Lot 3 for a driveway.

Mr. Perry confirmed that he knew the family that previously owned the land, and he bought it through a private sale.

The ZBA imposed the following condition: Lots 1, 2, and 3 will be serviced through easements from an existing driveway to Lot 2. The reason for this condition is to limit the amount of impervious pavement on Lot 3, which is known to have flooding issues, as expressed by the neighbors at this Public Hearing for the variances.

D. Neugebauer made a motion to approve the variance of 140 ft. for Lot 2 with the condition noted above, at 8:19 pm. D. Hale seconded the motion at 8:20 pm. There was no further discussion by the Board. Chairman Tessier asked for a roll call vote.

Roll Call Vote

Lot 2 Variance

- D. Neugebauer-Yes
- K. Sharpe-No
- D. Tessier-Yes
- D. Hale-Yes
- S. Haines-No

The Motion carried with a 3 to 2 vote.

D. Neugebauer made a motion to approve the variance of 140 ft. for Lot 3 with the condition noted above. D. Tessier seconded the motion. Chairman Tessier asked for a roll call vote.

Roll Call Vote

Lot 3 Variance

- D. Neugebauer-Yes
- K. Sharpe-No
- D. Tessier-Yes
- D. Hale-Yes
- S. Haines-No

The Motion carried with a 3 to 2 vote.

D. Hale made a motion to adjourn the meeting at 8:22 pm. S. Haines seconded the motion. All are in favor, none are opposed.

The meeting is adjourned.

Respectfully Submitted,

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