

LIVONIA JOINT ZONING BOARD OF APPEALS

MEETING MINUTES- November 17, 2014

Present: Chair P. Nilsson, C. Rider, M. Sharman, G. Cole, B. Weber
Code Enforcement Officer A. Backus, Recording Secretary J. Brown

Excused- J. Campbell-Town Attorney

- AGENDA:
- (1) Accept and approve the meeting minutes of November 3, 2014
 - (2) **David Ward (Barry Carestio)**
Area variance requested for a 2 lot subdivision/lot line adjustment at **5752 Big Tree Rd., Lakeville, NY 14480**
 - (3) **Mary Allison**
Use variance requested for a home occupation in an accessory dwelling at **3650 Livonia Center Rd., Livonia, NY 14487**

Chair P. Nilsson opened the meeting at 7:00p.m.

Chair Nilsson proposed to postpone approving the November 3, 2014 Livonia Joint Zoning Board of Appeals meeting minutes as submitted due an edit needing to be made proposed by G. Cole.

Code Enforcement Officer A. Backus read aloud the legal notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday November 17, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of David Ward for an area variance pursuant to Section 150-17C of the Zoning Code Of Livonia. The area variance is requested for a subdivision/lot line adjustment which will violate the requirements according to Section 150-31E which describes minimum area and width requirements. The property is located at 5752 Big Tree Rd., Lakeville, New York and is zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Code Enforcement Officer A. Backus asked to have the board members polled on a site visit:

Chair Nilsson- YES

C. Rider-YES

M. Sharman- YES

G. Cole-YES

B. Weber- YES

Chair Nilsson invited David Ward and Barry Carestio to come forward to explain the request. David said that he is the executer of 5752 Big Tree Road and he and his sisters are co-owners of 5748 Big Tree Road. G. Cole asked to clarify that David in fact does have ownership and legal authority over both properties. David said that he does.

CEO A. Backus said that he just wants to make sure that there's no conflict of ownership and is understanding Chair Nilsson's point that the owners are the distributees of the will. G. Cole asked David if he is able to speak on behalf of Anne Ward and Alice Dillon.

M. Sharman interjected that he received a call from the attorney for the estate who represented David Ward to be the executor of the estate of the Jane Ward property. M. Sharman stated that the co-owners would only stand to gain by this action of the subdivision/lot line adjustment. M. Sharman said that despite us not have an affidavit from the co-owners with David, there is no conflict because the situation is such that this application would be an improvement and will benefit all the owners with David.

CEO A. Backus said that he wants to properly document this for the record to reflect that the board considered all aspects of the application.

David said that they want to redraw the lines to make the lots more equal and the intent is to sell 5752 Big Tree Road and they feel that with this proposed adjustment, the lot will be more sellable. Barry said that they lot they are proposing to create will be 14,000 sq. ft. and the other lot will be 22,000 sq. ft.

Chair Nilsson said that the proposed nonconforming lot will be just under the required 15,000 sq. ft. and there is no conflict of ownership.

M. Sharman said that he will abstain from voting as he is the listing agent for the property.

Chair Nilsson opened the meeting to the gallery.

Seeing and hearing no further comment from the gallery, Chair Nilsson closed the public hearing portion of this case.

Chair Nilsson asked the board members to review the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? No- it would be an improvement
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? NO
3. Is the variance substantial? NO
4. Will the proposed variance have an adverse effect of impact on the physical or environmental conditions in the neighborhood? NO
5. Is the alleged difficulty self-created? NO-they inherited the property the way it is.

Chair Nilsson asked if there were any further concerns and hearing and seeing none, called for a motion on the application.

Motion: (C. Rider/ G. Cole) to accept the application as submitted.

Motion carried: 4-0 with one abstaining.

Code Enforcement Officer A. Backus read aloud the second legal notice:

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday November 17, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Mary Allison for a use variance pursuant to Section 150-17C of the Zoning Code Of Livonia. The use variance is requested for a home occupation in an accessory dwelling. The proposed use will violate the requirements according to Section 150-33D (8) which states that a home occupation excludes retail sales. The property is located at 3650 Livonia Center Road, Livonia, New York

and is zoned Agricultural Residential Conservation- 5 District (ARC-5). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

Code Enforcement Officer A. Backus asked to have the board members polled on a site visit:

Chair Nilsson- YES

C. Rider- YES

M. Sharman- YES

G. Cole- YES

B. Weber- YES

Chair Nilsson invited Mary Allison forward to explain her request. She is accompanied by her husband Ralph Allison.

Mary stated that she would like to run her existing antique sales operation out of an accessory building on her home property. She said that her property is zoned for agricultural use but because of the small size and non-conformity of her lot, she is not able to use her property for its intended use for economic benefit.

Mary said that her intent is to use the existing small shed in back of her property to house her antique sales. She said she thinks she would be able to sell larger items out of her shed and retain a larger profit compared to her current situation renting a small space.

Chair Nilsson asked Mary how she obtains the antiques that she sells. Mary said that she accumulates them from yard sales and the like and has collected them over the years. Chair Nilsson asked for the hours of intended operation- Mary replied that sometime between 11:00am and 4:00pm roughly. She stated that it would be a daylight operation only.

Ralph Allison said that their intent is not for a high volume operation, but only to provide a return on Mary's investment, which she is not realizing at her current situation of renting a case at the Crossroads Country Mall in Lima. Mary explained that she rents a display case at the Crossroads Country Mall for \$35/ month and as evidenced by the financial statements she provided, most months she does not even recoup her rent payment in sales. She is losing money and it is causing her hardship.

Chair Nilsson asked Mary if she has an idea of how many customers they expect at the proposed location as he is trying to justify this as low-impact. Mary said it would be difficult to say exactly how much business they expect having never sold anything out of her home before.

Chair Nilsson asked Mary if she ever refinishes or cleans up any of the antiques she sells. Mary said that no, she does not do that kind of work yet.

C. Rider asked Mary how many sq. ft. she has for her sales operation currently. Mary said that at the shop in Lima she has a very small case.

Recording Secretary J. Brown distributed a packet of financial record to the board members that A. Backus stated could illustrate that she has an established antique business that could help justify the reasoning to operate out of her home.

G. Cole clarified that this distinguishes her situation as a hardship and Chair Nilsson continued that he is trying to justify this as a low impact scenario and not what the code was trying to protect the area from. CEO A. Backus said that this is a difficult legal process for the Zoning Board unless they can show a distinction between something like this and a high volume retail operation.

Mary said that understands what we are trying to say, but to her there's no comparison.

M. Sharman said that this is a very difficult request- proving hardship is usually the crux of the question as far as what the board can do as far as their authority.

Chair Nilsson said that there is also the cost Mary incurs in finding that purchasing the antiques for her antique business in addition to the rent money that she spends to operate her business.

B. Weber asked CEO A. Backus if he informed the Allison's what the criteria are to obtain a use variance. A. Backus said that he assisted them in filling out the variance application.

B. Weber said that a use variance is very difficult to obtain and that you must meet all four (4) of the criteria in order to be granted the variance. He went on to say that Mary cannot say that she is not able to derive allowed use out of the property because an allowed use is for a single family residence, which she has.

CEO A. Backus mentioned again that because her property is zoned ARC-5 and permitted agricultural operations would be prevented due to the size of Mary's lot-she is deprived of all economic benefit.

B. Weber said that there are still other uses permitted that the property could be used for such as daycare and roadside stands. He said that Mary would have to show him that she could not use the property for any of the permitted uses. He also stated that he does not feel her property is unique and that approving this would change the character of the neighborhood. B. Weber also said that it may or may not be self-created and that is his interpretation of the four criteria.

B. Weber said that he feels this would create a slippery slope-allowing retail sales on this property. In 10-20 years from now, we may not like what retail sales operation was being carried out on the property.

CEO A. Backus asked the board if an approved use variance specify that only antique sales be permitted out of that particular structure on the application and not mean that the use variance is permitted for any retail operations in general.

B. Weber said he thought that the Zoning Board could not put conditions on a use variance.

G. Cole asked if it would be possible for Mary to advertise perpetually as a garage sale type operation.

A. Backus said that there is a bit of a history for the Town of Livonia regarding non-stop garage sales and it is quite variable.

B. Weber asked if the board issues a retail use variance, would it have to go to the planning board for site plan approval.

J. Brown said that the planning board has already reviewed the concept plan and were satisfied with the proposal pending the Zoning Boards approval. J. Brown also said that they had prepared an agricultural data statement and sent everything to the Livingston County Planning Board for review. The County replied that no significant impacts were found to the county and recommended local option.

CEO A. Backus reiterated that the Livonia Joint Planning Board did review this at their November 10th meeting and responded favorably as indicated on the county referral form.

CEO A. Backus suggested that perhaps under the site plan approval from the Planning Board, conditions could be set upon the operation such as hours and other limitations. He said that historically, for a couple places of assembly that used to be barns, the Planning Board has set forth site plan conditions with approvals for those use permits.

CEO A. Backus stated that Mary Allison's application has verbiage throughout that specifies that the request is to operate antique sales out of a 14'x16' existing shed between specific hours-granting the

variance for this specific request would not automatically grant a blanket retail sales variance for the entire property.

M. Sharman said that there's not one board member that does not want to see her succeed and get out of the small display case and into a situation where she's able to make some money-the board needs to be able to justify meeting the four criteria or not.

CEO A. Backus asked the board about the criteria of the request not being in character of the neighborhood- regarding the fact that her property is less than 0.30 acres from a handful of other retail businesses. CEO A. Backus said that the close proximity of her property to the retail operations in the Hamlet District helps meet the criteria of the request being in character of the neighborhood.

Chair Nilsson announced that he would like to have Town Attorney Jim Campbell weigh in on the application to see the viability of placing restrictions on the approval and get his input on the variance application.

The board members agreed that it would be prudent to have Jim Campbell review and have Mary come back to the next Zoning Board meeting on December 1, 2014 for further review and final approval or disapproval.

M. Sharman made a motion to postpone this decision until the next Zoning Board meeting and reconvene after getting feedback from Jim Campbell.

Chair Nilsson opened the meeting to the gallery. Seeing and hearing no comments, he closed the public hearing portion of the meeting.

Motion: (M. Sharman/ G. Cole) to postpone the decision on this hearing until the December 1st ZBA meeting.

Motion carried: 5-0

Chair Nilsson asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 8:30pm.

M/2/C (C. Rider, G. Cole)

Motion carried: 5-0

Respectfully submitted,

Jeanne Brown

Recording Secretary