

## LIVONIA JOINT ZONING BOARD OF APPEALS

### MEETING MINUTES- December 1, 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 & November 17, 2014
- (2) *Darryl Johnston*  
Area variance for an addition to a commercial building at **3191 Rochester Rd., Lakeville, NY 14480**
- (3) *Phil Leger*  
Area variance to demolish and reconstruct both structures on the property at **6202 Wilkins Tract, Livonia, NY 14487**
- (4) *Mary Allison*  
Use variance to have a home occupation in an accessory building at **3650 Livonia Center Rd., Livonia, NY 14487**

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

M/2/C (G. Cole/ M. Sharman) to approve the November 3, 2014 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.

Motion carried 5-0

M/2/C (P. Nilsson/ G. Cole) to approve the November 17, 2014 Livonia Joint Zoning Board of Appeals meeting minutes as submitted.

Motion carried 5-0

#### **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 December 1, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Darryl Johnston for two area variances pursuant to Section 150-17C of the Zoning Code Of Livonia. The area variance is requested to build an addition to the shop. The proposal will violate the requirements according to Section 150-40F (2) (a) which state the minimum side set back requirement The property is located at 3191 Rochester Road, Lakeville, New York and is zoned Commercial/ Limited Industrial District (C/LI). 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 **Daryl Johnston** to come forward and explain his request. Daryl said that he would like to build a 12'x40' addition on the north side of the existing shop building. He said that his business has grown and he needs more room to expand.

Chair Nilsson asked Daryl, why the plan is not to build on the south side of the building rather than the proposed north side. Chair Nilsson explained that the space to expand is much greater on the south side rather than the north side.

Daryl stated that in the future, he would like to build another, larger addition onto the south side of the building that would have garage doors.

G. Cole asked Daryl, who his neighbor is to the north and if that neighbor is aware of Daryl's plans. Daryl answered that Frank SanFilipo is his neighbor and that Daryl believes Frank is very happy with everything he doing on the property and is supportive of his plans.

M. Sharman asked Daryl about an item number 5 on his property drawing that he submitted to the board for review. M. Sharman asked Daryl what kind of storage structure it is and how large it is. Daryl replied that item number 5 is van body storage and it is roughly 8'x16' in size. M Sharman asked Daryl if the van body storage structure will be removed if and when the proposed addition is built. Daryl replied that no, it is not his intention to remove the van body from the premise.

B. Weber asked A. Backus if the proposed setback would be 13.6' to the north east corner property line. A. Backus answered it appeared that way, yes.

B. Weber proposed an administrative change to the application to state that the applicant is seeking relief from Section 150-F rather than 150-G. Recording secretary noted the change. J. Brown and A. Backus also mentioned to the board that Daryl had previously obtained an area variance for the existing shop a few years ago for the setback violations.

B. Weber continued and told Daryl that his proposal might be more palatable if the addition was proposed to be on the south side of the existing shop rather than the north side. Daryl told the board that the reason why he cannot build to the south right now is because of the cost. He said he cannot afford to build to the south at this time. Daryl said that he is however, able to afford the smaller north addition at this time.

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 deterrent to nearby properties be created by granting the variance? NO
2. Can the benefit be sought by the applicant be achieved by some feasible method other than a variance? YES- the addition could feasibly be built on the south side of the property.
3. Is the variance substantial? YES
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? YES

Chair Nilsson said that he would look more favorably upon the addition being built on the south side of the shop.

M. Sharman said that he is very glad to see that Daryl's business is doing well and can see how Daryl's location encumbers him some. M. Sharman said that proposing an addition to the north is a large request and even building to the south would still require a variance.

C. Rider proposed postponing a vote on the application until another ZBA meeting so that Daryl can provide the board with a valid survey map and clarify his future plans with an office in the residential structure on his property.

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 postpone the application as submitted until the next meeting date to be determined.

Motion carried: 5-0

**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 December 1, 2014 at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York to consider the application of Phil Leger and Melissa Claxton for four area variances pursuant to Section 150-17C of the Zoning Code Of Livonia. The area variance is requested to demolish and reconstruct both structures on the property. The proposal will violate the requirements according to Section 150-31F which states that buildings and structures shall not exceed 25% of the area of the parcel and the requirements according to Section 150-31G (2, 3) which states the minimum required side and rear setbacks and the requirements of Section 150-60D which states the area for an accessory dwelling unit shall not exceed 40% of the principal dwelling and Section 150-70A (2) which states that no nonconforming building shall be enlarged, extended or increased. The property is located at 6202 Wilkins Tract, Livonia, New York and is 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 Melissa Claxton and Phil Leger forward to explain their request. Phil remained in the gallery and their hired architect, Randy Peacock came forward with Melissa to explain the application.

Randy said that Phil and Melissa purchased the property and right now there's an uninhabitable structure closest to the road that is vacant and has no electricity or sewer connections. The building is basically unusable with the exception of the foundation. Randy stated that they plan to use the existing foundation for the new guest house. The plan is to demolish the derelict building and rebuild it according to the plans submitted and then live in that building while they then proceed to Phase II of the plan, which is to demolish the main cottage on the waterfront and reconstruct that. Randy said that the square footage for the smaller structure right now is about 800 sq. ft. and they proposed footprint will essentially be the same, but they would like to fill in the corner on the northwest corner of the building. It is a 6'x16' space and they would like to wrap a deck around the north and west sides of the building. The existing building has a walk out basement and they would preserve that feature in the reconstruction. Randy continued that

for the main cottage, after demolition they propose to reconstruct it a few feet farther from the north property line. In the current situation the existing house sits at 0.8 feet off the east point and just 1.0' off the west point of the north property line. We are proposing to rebuild the cottage at 3' off the north property line. We don't have that option unfortunately on the guest house reconstruction as the foundation is already there and they would like to utilize that foundation for financial reasons. Randy said that the proposed main cottage will end up maintaining the 2,534 sq. ft. size and the guest house will be 884 sq. ft.

Chair Nilsson asked for clarification from Randy on whether or not there will be a kitchen in the proposed Phase I guest house). Randy answered yes.

Chair Nilsson asked for a time table for both phases of this project. Melissa said that within a year they would like to finish Phase I of the guest house and then Phase II in the next few years as they are financially able to do so.

G. Cole clarified that when all is done- you will have two habitable spaces on the property. Randy agreed, yes.

Chair Nilsson opened the meeting to gallery for public comment.

Steve Mulvaney (6198 Wilkins Tract) stood up and addressed the board. Steve said that he lives at the property to the north and wants the new cottage to be reconstructed at least 5' from the side property line between his property and Melissa and Phil's. Steve argued that with the proposed 3' setback they won't be able to maintain the property. Steve also argued that he does not want two primary homes on one lot next to his. A. Backus explained the code to Steve, that their proposal constitutes an accessory dwelling unit as long as the property owner always resides in one of the two structures on the property.

Justin Allen (lives in Rochester, NY, son of Melissa Claxton) address the board and explained that he would like to refute Steve's concerns of future possible renting of the property. Justin said that he and his siblings would be utilizing the property with their mother and Phil.

Melissa Claxton said that the intent is for her family to enjoy the property. She said that her family is growing and wants the space to share with her family-it is a dream of hers and Phil's. Melissa said that if there came a time that they needed to rent one of the structures from a financial aspect, they could not discount that possibility of that maybe happening in the future.

Randy offered, in an address to Steve, that they could possibly move the proposal for the main cottage another foot to obtain a total of a 4' side setback from Steve's lot.

Chair Nilsson closed the public comment portion of the hearing after seeing and hearing no further comments.

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

1. Will an undesirable change be produced in the character of the neighborhood or will a deterrent to nearby properties be created by granting the variance? NO
2. Can the benefit be sought by the applicant be achieved by some feasible method other than a variance? NO
3. Is the variance substantial? YES
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? YES

M. Sharman asked Melissa if they had considered parking options with this proposal. Melissa said they had not. M. Sharman suggested having Randy design some off-street parking. Melissa and Randy agreed to arrange that.

B. Weber stated that he has a problem with the proposed 3' side setback and suggested the board approve the proposal with a 6' side setback for the proposed main cottage. Melissa was agreeable to the amendment to the plans.

Chair Nilsson asked for a motion on this application.

Motion: (B. Weber/ M. Sharman) to approve the application with the main cottage being reconstructed 6' from the north side setback and provisions for on-site parking for four (4) cars. The on-site parking for four cars is required upon the completion of the second building.

Motion carried: 5-0

Chair Nilsson called Mary Allison forward to continue her appeal to the Zoning Board from her original public hearing meeting on November 17, 2014.

Chair Nilsson stated that the board has received the memorandum written by A. Backus and J. Brown derived from dialogue with the Town of Livonia Attorney Jim Campbell and read aloud the following:

"At the Livonia Joint Zoning Board of Appeals meeting on Monday November 17, 2014, Mary Allison brought her appeal for a variance from Section 150-33D (8) forward to the board for consideration. Section 150-33D (8) states that a home occupation is to exclude retail sales.

While use variances generally have a broad and restrictive nature, it might be advisable in this situation to hone in on one small element of a specific part of our code. Should a use variance be granted, it would not be a 'blanket use variance' and would not cover the entire property in question. According to the NYS guidelines handbook for Zoning Board of Appeals, our Zoning Board of Appeals has the ability to place conditions on any area *or* use variance.

If a use variance is granted, a motion to approve could be made to this effect:

"To allow as a home occupation, use of the 14x16 out building as an antique shop between the hours of x-z. The granting of this variance is conditioned upon the building not being expanded and the hours of operation being limited as stated above. Additionally, the granting of this variance is conditioned upon the home occupation being only for the use as an antique shop and no other non-permitted use under the rules and regulations governing home occupations.

Also, conditioned upon the property continuing to be primarily used as residential with a home occupation as the secondary use.

This specific variance is to allow an antique shop as provided for above, and is not to permit any other retail use."

Furthermore, we can have a document with the above written out with a line at the bottom for the applicant, Mary Allison to sign.

To summarize, the ZBA would not be permitting the entire property to have a use variance for retail sales, but rather, only one small element of a home occupation, which is a permitted use as long as it's subordinate to the permitted primary use of residency.

Jim reviewed the application and agrees that it is appropriate to consider the application in that limited fashion rather than a use variance for the entire property. It will also require a conditional use permit. “

Chair Nilsson said that he has found the guidelines set forth by Jim Campbell to be quite acceptable.

M. Sharman said that we need to be very specific that this conditional use permit say that it is only allowable for Ralph and Mary Allison and that the variance is not transferrable to any future owners of the property. M. Sharman made a motion to approve a conditional use permit for only Ralph and Mary Allison with the provisions stated in the document that Mary Allison will sign.

Motion: (M. Sharman/ P. Nilsson) to accept the application for the variance as amended above.

Motion carried: 5-0

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

M/2/C (M. Sharman/ G. Cole)

Motion carried: 5-0

Respectfully submitted,

Jeanne Brown

Recording Secretary