



TOWN OF POESTENKILL

38 Davis Drive / P.O. Box 210
Poestenkill, NY 12140
(518) 283-5100 Phone
(518) 283-7550 Fax

Zoning Board of Appeals

ZONING BOARD OF APPEALS June 12, 2018 Minutes

Attendees:

Paul Jamison, Chairman
Kevin McGrath
Tim Hoffay
Michael Colello
Susan Kalafut

Absent:

Nicole Heckelman, Alternate

Chairman Jamison opened the meeting at 7:30 pm with the Pledge of Allegiance and moves to the Public Hearings.

Public Hearings:

Rocco Testo
136.0-9-1.4

3 Lot Minor Subdivision
Algonquin Beach Road

ZBA Clerk, Lynn E. Kane, read the Public Hearing Notice into the record. Chairman Jamison reviews the project to allow three (3) area variances (road frontage) - for Lot 1 to allow 30 foot of lot width where 150 feet is the minimum required by code and for Lot 2 to allow 147.84 foot of lot width at where 150 feet is the minimum required by code and for Lot 3 to allow 132.74 foot of lot width at where 150 feet is the minimum required by code. This property is located on Algonquin Beach Road, Averill Park located in the Town of Poestenkill, NY. Chairman Jamison asked the audience if there were any public comments. Mr. Mike Catone, abutter to the rear of Testo property spoke of concern that Lot 1 would be a ðflagö lot and thought the Town would not allow them further. Also is worried that with excavation and/or fill on Lot 1, that he will have run-off problem. With Lot 2 & 3, he is concerned that future purchaser could subdivide again. Member Kalafut asked Applicant Testo for a response to Mr. Catone's concerns. Mr. Testo responded that the excavation at Lot 1 will pitch away from the Catone property and that Lots 2 & 3 can not be subdivided for at least 10 years. Chairman Jamison shares Mr. Catone's concerns of additional subdividing for newly created lots. Member McGrath suggest ðconditionö to Approval that ðfuture structures may not be built until a minimum of 150 feet width of the lot is reachedö. Chairman Jamison suggested ðconditionö to Approval that ðno further lot frontage area variance be granted for any lotö.

Motion by Chairman Jamison to close the Public Hearing, seconded by Member Colello, five (5) ayes, zero (0) nays and zero (0) abstentions. Chairman Jamison made the motion to grant three (3) variances ó for Lot1 to allow 30 foot of lot width where 150 feet is the minimum

required by code and for Lot 2 to allow 147 feet of lot width at where 150 feet is the minimum required by code and for Lot 3 to allow 132 feet of lot width at where 150 feet is the minimum required by code and with the conditions 1) Future structures may not be built until a minimum of 150 feet width of the lot is reached and 2) No further lot frontage area variance be granted for each lot. Motion seconded by Member Colello. Chairman Jamison polled the Board and Members decided to vote on the application of this meeting. The Members were polled for their vote and the reasons for that vote.

After considering all of the mandatory area variance factors, **Board Member McGrath** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* No, lots are larger than required.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó No, with 12 acres in a 1 acre zone, it would be unreasonable to require it be divided into 2 lots.
- 3) *Whether the requested variance is substantial.* ó Yes for Lot 1, No for Lots 2 & 3.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, similar lot sizes in the area.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, landowner doesn't have to subdivide.

After considering all of the mandatory area variance factors, **Board Member Hoffay** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* ó No, residential development.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó Yes, 2 lot subdivision instead of 3.
- 3) *Whether the requested variance is substantial.* ó Yes, well under 150ø min. Lots 1/3.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, simple variance of 150ø front line setback.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, 3 lot subdivision as opposed to 2 lots.

After considering all of the mandatory area variance factors, **Board Member Colello** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* ó No, the character of the neighborhood would remain the same and code enforcement would monitor issues.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó No, 4 lot subdivision with road was too costly.
- 3) *Whether the requested variance is substantial.* ó Yes for Lot 1, No for Lots 2 & 3.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, would remain residential, similar lot sizes.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, land purchased with intent to subdivide.

After considering all of the mandatory area variance factors, **Board Member Kalafut** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* ó No, brought to Board's attention by Mr. Catone's concern regarding excavation.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó No, a road is one possibility or only 2 lots is another. However, the proposal seems to be most feasible.
- 3) *Whether the requested variance is substantial.* ó Yes for Lot 1, No for Lots 2 & 3.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, one neighbor expressed concern about numerous considerations but Applicant has committed to avoid such concerns.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, there are alternatives.

After considering all of the mandatory area variance factors, **Chairman Jamison** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* ó No, the lot sizes are large enough to situate houses in conformance with the neighborhood standard.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó No, the Applicant has attempted other layouts but this was the only one financially feasible.
- 3) *Whether the requested variance is substantial.* ó Yes Lot 1 is very substantial at 80% of code requirement. No for Lots 2 & 3.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, the only issue is related to driveway width, no other physical or environmental impact.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, this is a desired, not required subdivision.

Chairman Jamison states that within five (5) days, the Resolution for these variances will be filed with the Town Clerk and Applicant is now ready for re-appearance with the Planning Board. Chairman Jamison brings up Code provision (Section 150.85 (G)) that Applicant has one (1) year from approval to get permit or variances void, would need to re-apply. Much discussion between Members about impracticality of this provision since this project is vacant land to be sold. Town Attorney to be contacted regarding this issue.

Resolution: Grant 3 area variance with conditions set above.

Larry Dickinson
126.-1-24.114

2 Lot Minor Subdivision
Snake Hill Road

Member Kevin McGrath excused himself from participation in the proceedings due to a conflict of interest. ZBA Clerk, Lynn E. Kane, read the Public Hearing Notice into the record. Chairman Jamison reviews the project to allow two (2) area variances (road frontage) - for Lot 1 to allow 26 foot of lot width where 200 feet is the minimum required by code and for Lot 2 to allow 49 foot of lot width at where 200 feet is the minimum required

by code. Chairman Jamison reads the Rensselaer County Economic Development & Planning opinion, "Due to building code requirements on fire apparatus accessibility, it would be better to have a joint driveway to access the lots." Chairman Jamison asked the audience if there were any public comments, none is given. Discussion with Mr. Dickinson about property perimeters, possible future subdivisions, Applicant is "leaving the door open to possible development in future." Discussion and review of the 2015 International Fire Code with regards to required driveway width of Lot 1 "Chairman Jamison determines that only 20' driveway width is required as length of driveway is 400'." Discussion of future dedication of Lot 2's driveway to the Town as a Town road, where 50' minimum width is required. Applicant requests change of application to 25' width for Lot 1 and 50' width for Lot 2. Change accepted.

Motion by Chairman Jamison to close the Public Hearing, seconded by Member Hoffay, four (4) ayes, zero (0) nays and zero (0) abstentions. Chairman Jamison made the motion to grant two (2) variances "Lot 1 to allow 25 feet of lot width where 200 feet is the minimum required by code and Lot 2 to allow 50 feet of lot width at where 200 feet is the minimum required by code and with the condition that Lot 2 grant an easement for the driveway to Lot 1. Motion seconded by Member Hoffay. Chairman Jamison polled the Board and Members decided to vote on the application of this meeting. The Members were polled for their vote and the reasons for that vote.

After considering all of the mandatory area variance factors, **Board Member Colello** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* "No, no objections from neighbors, it is zoned Residential.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* "No, applicant working with existing, would cause financial hardship.
- 3) *Whether the requested variance is substantial.* "Yes, existing frontage is substantially smaller than required.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* "No, similar lots in the area, easements for driveways are common.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* "Yes, no alternatives.

After considering all of the mandatory area variance factors, **Board Chairman Jamison** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* "No, lots themselves would be in keeping with the character of the neighborhood, only driveway is at issue.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* "No, there is no other way to give more than one lot access to the road.
- 3) *Whether the requested variance is substantial.* "Yes, substantial at 85% for Lot 1 and 75% for Lot 2.

- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, no environmental impact.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, partly, lot is already non-conforming but further division is desired not required.

After considering all of the mandatory area variance factors, **Board Member Hoffay** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* ó No, residential zone.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó No, existing frontage restriction.
- 3) *Whether the requested variance is substantial.* ó Yes, 75ø opposed to 200ø
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, only road frontage variance.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó No, existing frontage only access to property.

After considering all of the mandatory area variance factors, **Member Kalafut** voted to **approve** the variance giving the following reasons for this decision:

- 1) *Whether an undesirable change would be produced in the character of the neighborhood or detrimental to nearby properties.* ó No, no public comment to suggest change would be detrimental.
- 2) *Whether the benefit sought by the applicant can be achieved by a feasible alternative to the variance.* ó No, no feasible alternative available.
- 3) *Whether the requested variance is substantial.* ó Yes, lot frontage substantially less than required for both lots.
- 4) *Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood?* ó No, concerns about easement for driveway 1 road.
- 5) *Whether the alleged difficulty was self-created. This fifth argument is not in and of itself grounds for denial.* ó Yes, Applicant purchased property some time ago, preceding current laws and restrictions.

Chairman Jamison states that within five (5) days, the Resolution for these variances will be filed with the Town Clerk and Applicant is now ready for re-appearance with the Planning Board.

Resolution: Grant 2 area variance with conditions set above.

Minutes

The minutes of the Board meeting on May 8, 2018 were reviewed. Corrections noted 1) first paragraph, last sentence, should read "each Member ifí"; 2) second paragraph, last sentence, should read "each member ifí"; 3) Motion to adjourn was by Member Hoffay. A motion to accept the minutes with corrections was made by Member Kalafut, seconded by Member Colello, approved by a vote of five (5) ayes, zero (0) nays, and zero (0) abstentions.

Organizational Items

There being no further business, a motion to adjourn was made by Member Colello and seconded by Member Kalafut and approved by five (5) ayes, zero (0) nays and zero (0) abstentions. The meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Lynn E. Kane
Clerk to ZBA