



TOWN OF GALWAY
ZONING BOARD OF APPEALS
SARATOGA COUNTY, NY
ESTABLISHED 1792

P.O. Box 219
Galway, NY 12074
(518) 882-6070

ZBA MEETING AGENDA

Meeting Date/Time: **Wednesday, March 9, 2011** 7:30 PM
Location: Town Hall Complex - 5910 Sacandaga Road - Galway

- 1) Convene Meeting
- 2) Roll Call
- 3) Procedure and Purpose of the Zoning Board of Appeals
- 4) Review/approval of minutes of previous meeting (November 10, 2010)
- 5) SEQRA review/classification
- 6) **Public Hearing**
 - Application #11-001 – Request of Joanne and Ronald Gomula, Jr. for an area variance thereby seeking relief from town of Galway Zoning Law Section 115-15-F(1), Appendix 3A and 3B regarding the minimum road frontage requirement of 200' for lots in the AR zone to allow subdivision of a 4.343-acre lot from an existing 100± acre parcel located at 4604 Jersey Hill Road in the A/R District in the town of Galway, tax parcel #211.-1-26
 - Application #11-002 – Request of James and Pamela Lombard for an area variance for an attached garage on their property located at 9660 Harts Rd A in the Lake District of the town of Galway, tax parcel #185.13-2-9.
- 7) Close Public Hearing
- 8) **Public Meeting**
 - Application #11-001 ... Joanne/Ronald Gomula, Jr. ... tax parcel #211.-1-26
 - Application #11-002 ... James/Pamela Lombard ... tax parcel #185.13-2-9
- 9) Other Business
- 10) Adjournment



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MINUTES OF ZBA MEETING

Meeting Date: March 9, 2011

Meeting Location: Town Hall - 5910 Sacandaga Road, Galway, NY

Meeting called to order at 7:30 pm by Chair, Jon Hallgren. Clerk called the roll:

MEMBERS PRESENT: Jon Hallgren, Herb Kopper, Brian Hendrie and Mark Kindinger

MEMBERS ABSENT: Tim Bogdan (excused)

ALSO PRESENT: Carol DeLorme, Clerk. George Weed was present in the audience, as were the code enforcement/zoning officer, Chet Ciembroniewicz, and deputy code enforcement officer, Michael Tillson, approximately 10 people and the applicants.

PURPOSE AND PROCEDURE OF THE ZONING BOARD OF APPEALS

Chair read/explained the purpose and procedure of the ZBA and criteria for granting an area variance. Both applicants indicated they had reviewed the purpose/procedure which was included in the application packet.

REVIEW AND APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

All board members previously reviewed the minutes of the previous meeting (November 10, 2010). **Motion by Mark Kindinger** to approve the minutes as presented. **Second by Tim Bogdan.** Voice vote: All ayes. **Motion carried.** Approved without correction.

SEORA REVIEW/CLASSIFICATION

Motion by Mark Kindinger that both of tonight's applications (#11-001 and 11-002) fall under the Type II SEQR list and, therefore, no further action under SEQR is required. **Seconded by Brian Hendrie.** Voice vote: All ayes. **Motion carried.** Minutes approved as presented.

PUBLIC HEARING OPENED @ 7:35 pm

Clerk read the two legal notices as they appeared in the *Daily Gazette* on 2/22/11.

Application #11-001 – Request of Joanne and Ronald Gomula, Jr. for an area variance thereby seeking relief from town of Galway Zoning Law Section 115-15-F(1), Appendix 3A and 3B regarding the minimum road frontage requirement of 200' for lots in the AR zone to allow subdivision of a 4.343-acre lot from an existing 100± acre parcel located at 4604 Jersey Hill Road in the A/R District in the town of Galway, tax parcel #211.-1-26

Mrs. Gomula was present, as was her sister, Judy Kenyon. Mrs. Gomula would like to transfer 4 acres of land from her approximate 100 acre parcel to her sister so she can take possession of a FEMA manufactured home to replace an existing mobile home that is currently on the land. Mrs. Kenyon had been living in that mobile home but it was recently declared uninhabitable so they are seeking to replace it. There is a provision [from the federal government] that in order to qualify for one of the FEMA homes and accompanying funds, the person

must have clear title to the land. This is why Mrs. Gomula wants to transfer the property over to her sister. The property in question is accessed via Rhinebeck Road, which is a private road off Jersey Hill Road. There is no frontage on a public roadway. The house would otherwise meet all zoning requirements. Chair asked Mrs. Gomula if she was aware that Town Law (§115-62) does not permit creation of a lot without frontage on a public roadway. Mrs. Gomula responded that she was not. Mike Tillson explained that the request for subdivision was presented to the Planning Board (October 2010) but the application was tabled as the PB felt the request would require a variance from the Zoning Board of Appeals because of the lack of frontage on a public roadway. Further explained that this program is a complete "swap out"; the government gives them the new home, sets it up on a foundation, well, septic, etc., would all be brought up to code and provides for removal of the existing structure. However, the recipient must have title to the land. Chair then clarified that this Board's charge is to consider granting a variance of the frontage on a public roadway requirement so that the PB can then act on the request for subdivision; ZBA does not rule on the subdivision request itself. Chair then read a copy of letter from Saratoga County Attorney, Mark Rider regarding State Law §280-a (attached and made a part of these minutes) in which he interprets the right of [town] planning boards to deny approval of subdivisions based on the lack of frontage on a [public] road. This then raises the question of whether the ZBA has authority to grant a variance. State law §280-a allows for a variance, while case law seems to interpret that the ZBA does not. Chair then cited Town Code §115-62. Chair further reported that PB/ZBA attorney, Martin Pozefsky's interpretation is that the PB can deny subdivision under 280-a or 115-62 where access is by a private road outside the Lake District. In regard to whether a variance can be granted to allow private access, the county attorney says 280-a allows for a variance, but case law suggests otherwise. However, if 115-62 applies, attorney Pozefsky sees no provision for a variance; therefore there could be no subdivision. In summary, under 280-a, the possibility of variance exists, while under 115-62 it apparently does not. Attorney Pozefsky suggests it may be important for the town boards or the building department to decide which section applies.

Chair then cited some concerns he had: That Rhinehardt Road is not a town road (essentially a long driveway) and the town does not maintain or plow the road. The road is only a single lane serving several landlocked parcels. Increasing the number of buildable lots would increase the current hazard for the fire dept/ambulance corp. Allowing this subdivision has the potential for future requests for subdivision thereby compounding the concern for public safety. Brian Hendrie asked about possible "grandfathering" of this property; could it be allowed if they are simply replacing one structure with another. Chair responded this was discussed. Assuming no subdivision is sought or obtained, having two residential uses on one lot would constitute a non-conforming use. Since this use currently exists, it could continue following review by the PB and granting of a special use permit for continuation of an existing non-conforming use (§115-34 (1)).

Application #11-002 – Request of James and Pamela Lombard for an area variance for an attached garage on their property located at 9660 Harts Rd A in the Lake District of the town of Galway, tax parcel #185.13-2-9

Mr. Lombard was present and supplied each board member with a copy of his drawing/plot plan (which was not included with the application). Mr. Lombard explained that the request as submitted in October 2010 was to build a 2-car garage with an apartment on the second floor. After learning this was not possible, he has amended his request to be for a 36' x 24' 3-car garage with no living space. It was noted/discussed that the notice was advertised as being for an attached garage. This was picked up from the Zoning/Code Enforcement Officer's Comments section (page 4 of the application) in which he states the garage to be "attached". It is, in fact, "unattached". Mr. LaDue (neighbor) expressed concern that information he obtained via a FOIL didn't seem to pertain to tonight's application. Appears he may have been given information regarding a previous application(s). Mr. LaDue also had questions about what was being proposed which Mr. Lombard answered. Following discussion board members were poled and all agreed that while map should have been submitted with the application, as is the norm and preferred manner, they would move forward on discussion of the

application tonight. Board discussed with Mr. Lombard, the possibility of moving the garage – lot is rather large and seems it could be moved over so that no variance would be required. Mr. Lombard continues to hold fast to his desire to place the garage at this location to allow use of an existing driveway and without having to move an existing shed. Chair - Only variance required would be from the south side property line. Brian Hendrie stated his feeling that the proposed location constitutes a self-created hardship (could easily be moved to a location without the need for variance). Also proposed size violates §115-20 b, e. If garages are considered “accessory” buildings they cannot exceed 150 sq ft. Town Board has not clarified what constitutes an accessory building. Herb Kopper agreed that board needs clarification as to what an accessory building is and whether or not a garage falls into that category, but he also feels that based on what ZBA has done in the past, a garage is permitted in the Lake District and the board should move forward with the request. Mark Kindinger – Fine with allowing the request for a garage based on past actions of the board. Brian Hendrie – Question of whether or not a garage is an accessory building is a separate issue. His main concern is that the applicant could move the structure over so that no variances would be necessary; thereby making this a self-created hardship. Feels request should be denied on that basis. Herb Kopper agreed and added that the zoning/code enforcement officer could have worked with the applicant in an attempt to get him to agree to move the structure over so that the proposal would not have needed a variance. No further discussion at this time.

Motion to close the public hearing by Mark Kindinger; seconded by Brian Hendrie. Voice vote: All ayes.
Motion carried. PUBLIC HEARING CLOSED.

PUBLIC MEETING – Opened @ 9:00 p.m.

Application #11-001 ... Joanne/Ronald Gomula, Jr ... tax parcel #211.-1-26

Chair recapped: Should ZBA be looking at a frontage variance so that a subdivision could be considered by the PB, or should the ZBA consider asking the PB to consider permitting the replacement of the existing mobile home on the property? Clerk reiterated that in order for Mrs. Kenyon to get the FEMA home, she must own the piece of property. Therefore they cannot put the new home on the existing lot; has to be subdivided. Chair continues to maintain his opinion that Rhinehardt Road is not a proper road to access multiple lots. Granting a variance that could ultimately result in additional lots could compound his concerns over public safety. Mark Kindinger – Agreed. However, feels it is under the PB’s purview to approve/disapprove. Would like to receive legal assurance that ZBA has the authority to grant such a variance. Brian Hendrie – Feels it falls under §115-62. Therefore cannot see approving. Herb Kopper – Agrees but also wonders if perhaps something could be worked out with the town to bring that road up to town specifications so the town could take it over and/or maintain it. Accessibility would be a concern of his as well. Chair suggested tabling the application to allow applicant and board time to research possible remedies. Issues that remain are: 1) State Law 280-a states that a lot must be adjacent to a town road and [subdivision] can be denied by the PB if it is not. However, variance can be given under certain conditions. ZBA would like to understand those conditions and their jurisdiction. 2) Town Code §115-62 states that no permit can be issued for any building unless the lot is on a road on the town map. It is this board’s understands that this could preclude us from granting a variance. Board would like clarification. 3) Board suggests that the applicants talk with legal counsel to help them better understand the issues and perhaps work with the town board and/or planning board to investigate possible alternatives. Decision was made to table the application. Board exercised its option under §115-72 K (Time of Decision) to extend the 62 day time limit within which the ZBA must render a decision. (Brian Hendrie voiced opposition.) Board and applicants mutually agreed to July 13th date. Brian Hendrie – Expressed concern over tabling past 62 days. In the past the Board has always had to rule within 62 days. He would like our attorney to be contacted to verify that [the board] can do that. **Motion by Mark Kindinger** to table the application of Joanne and Ronald Gomula, Jr. (application #11-001) for up to 4 months (no later than July 13, 2011) to allow the applicant

See attached



5525 Crooked Street
Broadalbin, NY 12025
April 13, 2011

Members of the Galway ZBA:

From: Herb Kopper

Re: page 3 of 4 ZBA Minutes, 3/09/11 – a correction:

I cited the experience of Donald Pandori some years ago, who was given a set of standards he must meet by the town - for the extension of a private road to the place he wished to build a new house – implying that the same could be done for the Gomula Family (and those others sharing the private access road noted on their application.)

There was no intent on my part to suggest the town take the road over or maintain it. The town could however provide information that would assist the owners of the road in upgrading it.

Herb 5/10/11

Mot. by Mark Kindinger to approve minutes of 3/9/11 meeting to include clarification from Herb Kopper.

Second by Tim Bogdan - all ayes carried

and town time to research possible solutions. **Seconded by Herb Kopper.** Roll call vote: Jon Hallgren, yes; Mark Kindinger, yes; Herb Kopper, yes; Brian Hendrie, yes. Motion carried. APPLICATION TABLED until no later than July 13, 2011.

Application #11-002 ... James/Pamela Lombard ... tax parcel #185.13-2-9

Chair recapped what is being considered: Board is considering a 16' setback, which would require a 9' variance, from the south side property line. The garage is to be located on Lot 9660. Brian Hendrie again referenced Zoning Law §115-71 (2) (e). Still contends that difficulty is self-created as the structure could be moved over on the lot so as not to require any variances. Chair poled other members. Other members tended to agree but also felt some compromise was essentially being made due to the smaller size of this structure (from what was originally proposed) and didn't view it as a high impact on the property to allow the variance. Chair added that it is rather unique in that it is basically a corner lot with the setback being from the road rather than another building or property. No further discussion. **Motion by Herb Kopper** to grant James and Pamela Lombard (application #11-002) a 9' variance (resulting in a 16' setback – measured from the drip edge of the structure) from the south side property line of their property located at 9660 Harts Rd A in the Lake District of the town of Galway, tax parcel #185.13-2-9, for a 36' x 24', 3-car, free standing garage no more than 18' high with no living space as per plot plan submitted 3/09/11. **Seconded by Mark Kindinger.** No further discussion. Roll call vote: Jon Hallgren, yes; Herb Kopper, yes; Brian Hendrie, no; Mark Kindinger, yes. Motion carried by a vote of 3 yes; 1 no.

Applicant was advised to contact the building/code enforcement officer for necessary building permit once approval letter has been received from the ZBA and prior to commencing work on the project.

PRIVILEGE OF THE FLOOR - None requested

OTHER BUSINESS

New building/code enforcement officer, Chet Ciembroniewicz introduced himself to members of the Board. Brief update from deputy code enforcement officer, Mike Tillson, regarding the Casadei matter.

Motion to adjourn by Mark Kindinger. Seconded by Brian Hendrie. Voice Vote: All ayes. Motion carried.

Meeting adjourned at 10:10 p.m.

Respectfully submitted,

Carol L. DeLorme

Carol L. DeLorme, Clerk