

State of New York,
City and County of Schenectady

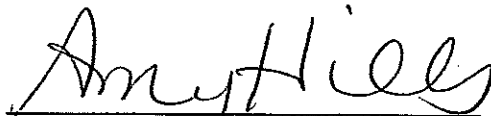
ss.:

LEGAL NOTICE
Town of Galway
ZONING BOARD
OF APPEALS
And PLANNING BOARD
NOTICE IS HEREBY GIVEN that a series of public meetings will be held by the town of Galway Zoning Board of Appeals and Planning Board with a subsequent public hearing to be held by the Planning Board on **Wednesday, May 11, 2011** in the Town Hall, 5910 Sacandaga Road, Galway, NY, to consider applications before both Boards from Joanne and Ronald Gomula, Jr. regarding property located at 4604 Jersey Hill Rd in the A/R District, tax parcel #211.-1-26:

- 5:30 pm - Joint meeting of the ZBA and Planning Board
- 6:00 pm - ZBA public meeting regarding ZBA Application #11-001, request of Joanne and Ronald Gomula, Jr. for a area variance(s) thereby seeking relief from town of Galway Zoning Law requirement of 200' minimum road frontage on a public roadway for all lots in the AR district and from the requirement of access to lots over certain types of roads outside the Lake District.
- 6:30 pm - Planning Board **public hearing** to consider PB Application #10/004, request of Joanne and Ronald Gomula, Jr. for subdivision of a 4.343-acre lot from an existing 100+/- acre parcel (tax parcel #211.-1-26) with road frontage and access for the 4-acre lot proposed to be on Rhinebeck Rd. /s/ Carol L. DeLorme
Clerk
5-3 7688

Amy Hills of the City of Schenectady, being duly sworn, says that he/she is Principal Clerk in the office of the Daily Gazette Co., published in the City of Schenectady and that the notice/advertisement, of which the annexed is a printed copy, has been regularly published in the Daily Gazette and/or Sunday Gazette as follows:

1 insertion May 3, 2011



Sworn to me on this 4th day of May 2011

LISA J. BALDWIN NOTARY PUBLIC

COMMISSION OF DEEDS

MY COMMISSION EXPIRES 8-18-2012



ZBA/PB MEETING AGENDA

Meeting Date: **Wednesday, May 11, 2011**

Location: Town Hall Complex - 5910 Sacandaga Road – Galway

5:30 pm **Joint meeting:** ZBA, Planning Board, board counsel, Martin Pozefsky and applicants, Joanne and Ronald Gomula, Jr. Question and answer session regarding interpretation of town of Galway Zoning Law as it specifically pertains to the Gomula's concurrent applications before ZBA and PB

6:00 pm ZONING BOARD OF APPEALS

- 1) Convene meeting
- 2) Roll call
- 3) Review/approval of minutes of March 9, 2011 meeting
- 4) **Public Meeting**
- 5) Untable and continuation of public meeting on Application #11-001, request of Joanne and Ronald Gomula, Jr. (tax parcel # 211.-1-26) for area variance(s) thereby seeking relief from town of Galway Zoning Law requirement of 200' minimum road frontage on a public roadway for all lots in the AR district and from the requirement of access to lots over certain types of roads outside the Lake District
- 6) Rendering of decision
- 7) Adjournment

6:30 pm PLANNING BOARD

- 1) Convene meeting
- 2) Roll call
- 3) Review/approval of minutes of March 22, 2011 meeting
- 4) SEQR review/Classification of Application #10/004
- 5) **Public Hearing**
 - Application #10/004 – Request of Joanne & Ronald Gomula, Jr. for subdivision of an approximate 4-acre lot from an approximate 100-acre parcel located at 4604 Jersey Hill Rd (tax parcel #211.-1-26), with road frontage and access for proposed 4-acre lot to be from Rhinehardt Rd.
- 6) Close Public Hearing
- 7) Open **Public Meeting**
 - Application #10/004 ... Request of Joanne & Ronald Gomula, Jr.
- 8) Rendering of decision
- 9) Adjournment



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

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

MINUTES OF ZBA MEETING

Meeting Date: May 11, 2011

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

Meeting called to order at 6:00 pm by Chair, Jon Hallgren. Clerk called the roll:

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

MEMBERS ABSENT: None

ALSO PRESENT: Carol DeLorme; Clerk, Martin Pozefsky; Board Counsel, and the applicants. Audience was comprised of approximately 15 people including PB members, George Weed; town board liaison, and Mike Tillson; PB liaison.

REVIEW AND APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING

All board members previously reviewed the minutes of the March 9, 2011 meeting. Noted that Herb Kopper submitted a note clarifying his statements (page 3 of minutes). This note will be attached and made a part of the official copy of the March 9th minutes. **Motion by Mark Kindinger** to approve the minutes as corrected. **Second by Tim Bogdan.** Voice vote: All ayes. **Motion carried.** Approved as corrected.

PUBLIC MEETING – Opened at 5:55 pm

Clerk read the legal notices as they appeared in the *Daily Gazette* on 5/03/11

Application #11-001 – Request of Joanne and Ronald Gomula, Jr. (tax parcel # 211.-1-26) for area variance(s) thereby seeking relief from town of Galway Zoning Law requirement of 200' minimum road frontage on a public roadway for all lots in the AR district and from the requirement of access to lots over certain types of roads outside the Lake District

Public hearing on this application was held 3/09/11. At public meeting the application was tabled. **Motion by Mark Kindinger** to un-table application #11-001. **Second by Tim Bogdan.** Roll call vote: All ayes. Motion carried. Policy and procedure of the ZBA was read/discussed at March 9, 2011 meeting. **Chair** asked applicant if she had any additional questions regarding tonight's proceedings. **Mrs. Gomula** responded that she did not. SEQR review was also completed on March 9th (application was determined to fall under Type II and therefore no further action required). **Chair** – Recapped Mr. Pozefsky's opinion. Understanding is that the "road" in this particular case is not a road owned by the applicants but rather a deeded right-of-way. The property does not connect to a town, county or state road, and unless the town [board] creates an overlay district in which such access would be acceptable, the ZBA does not have the authority to grant the variance requested. **Chair** then polled the board members for their opinions. All members agreed, with Tim Bogdan indicating his regrets but agreement with this opinion. **Mrs. Gomula** asked about some lots in her area that were created and are now being offered for sale and how they compare to her request for subdivision. PB Chair and ZBA Chair both explained to Mrs. Gomula that these are approved subdivision lots and all have a minimum of 200' road frontage on a public roadway, thereby

meeting the road frontage requirement. Therefore, it is an entirely different scenario than her request. Mrs. Gomula expressed her displeasure with the ruling that the right-of-way cannot be considered acceptable access for subdivision. Feels this leaves her property essentially unmarketable. Chair empathized with Mrs. Gomula but reiterated his earlier suggestion that she seek professional (e.g., legal) assistance in this matter. No further questions from the board. Chair asked for questions from the audience. Win McIntyre asked if it would make any difference if the applicants actually owned the road. Martin Pozefsky responded that the fact that it is a right-of-way is the big issue. While ownership might help, he was uncertain it would totally mitigate the situation. No further comments/questions from the audience. **Motion by Mark Kindinger** to deny the request of Joanne and Ronald Gomula, Jr. (Application #11-001) on the grounds that the ZBA lacks the jurisdiction to grant the variance requested because there is no deeded ownership to the access road, there is no established Rural Development District in the town of Galway and/or the property is not located within the boundaries of the Lake District.” **Seconded by Tim Bogdan.** Jon Hallgren, yes; Tim Bogdan, yes; Mark Kindinger, yes; Herb Kopper, yes; Brian Hendrie, yes. Motion carried. REQUEST FOR VARIANCE DENIED.

PRIVILEGE OF THE FLOOR - None requested

OTHER BUSINESS – Martin Pozefsky: Explained that ZBA hears requests for variance and interprets the Code of the Town of Galway. Wanted to re-emphasize that while ZBA may at times want to reach out to other boards for opinions, ultimately the ZBA is the board with the jurisdiction for making these decisions on request for variance/interpretation. Also reiterated that ZBA (“and this applies to planning board as well”) should limit their discussions to just applications before them. Upon questioning from Jon Hallgren, Mr. Pozefsky clarified that he was referring to open applications. They should not be discussed among the board members unless the applicants are present. Discussion/comparison to previous closed applications as a precedent is OK and is actually a good practice but cannot discuss other open applications. Also, Boards should be careful when trying to help the applicants not to design a plan for follow up. They should limit themselves to what’s before them.

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

Meeting adjourned at 6:12 p.m.

Respectfully submitted,

Carol L. DeLorme

Carol L. DeLorme, Clerk

MINUTES OF JOINT ZBA/PB MEETING

Meeting Date: May 11, 2011

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

~~DRAFT~~
Approved by
PB 5/31/11

Meeting called to order at 5:30 pm by ZBA Chair, Jon Hallgren

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

PB MEMBERS PRESENT: Mary Lynn Kopper, Rebecca Mitchell, Win McIntyre, Ruthann Daino (arrived at approx. 5:35 pm)

ALSO PRESENT: Carol DeLorme, Clerk; Martin Pozefsky, Board Counsel; and the applicant, Mrs. Joanne Gomula (who arrived approximately 5 minutes into the meeting) and her sister, Judy Kenyon. Also in the audience were Mike Tillson; PB town board liaison, George Weed; ZBA town board liaison, and approximately 6 other people from the general public.

JOINT PUBLIC MEETING regarding:

ZBA Application #11-001 - Request of Joanne and Ronald Gomula, Jr. (tax parcel # 211.-1-26) for area variance(s) thereby seeking relief from town of Galway Zoning Law requirement of 200' minimum road frontage on a public roadway for all lots in the AR district and from the requirement of access to lots over certain types of roads outside the Lake District

- And -

PB Application #10/004 -- Request of Joanne & Ronald Gomula, Jr. for subdivision of an approximate 4-acre lot from an approximate 100-acre parcel located at 4604 Jersey Hill Rd (tax parcel #211.-1-26), with road frontage and access for proposed 4-acre lot to be from Rhinehardt Rd.

Chair turned meeting over to attorney, Martin Pozefsky. Mr. Pozefsky first confirmed with Ms. Kenyon that Mrs. Gomula was on her way to the meeting. Mr. Pozefsky then provided a brief background and history of the two applications. Mr. Pozefsky then explained what the general rules are for access under NYS Town Law (§280-a) and under Town of Galway Code (§115-62). NYS Town Law basically says access to individual lots or lots in a subdivision can be either be: 1) by adjoining or abutting a public highway with a minimum of 15' on a public highway; access must be suitable for emergency purposes, safety and other reasons; or, 2) that the lot borders a private road that is set forth on a filed subdivision map. Chair Hallgren asked for clarification of the latter statement. Mr. Pozefsky -- The presumption is the PB has reviewed the subdivision, approved it including the layout and the road(s) in it, and determined that the access is suitable for purposes of access to the lot. Once filed with the County Clerk it is a formally approved, legal subdivision and those roads are then considered legal access to the lots in the subdivision. NYS Law also provides a third option: via a private road shown on a filed map that predates the existence of the town zoning law. Town of Galway has its own version of this law (§115-62) that tracks the state law except it eliminates the third option (i.e., filed map that predates town zoning law). Therefore, according to

town law, one must either have access on a public road or on a road that is set forth on a filed subdivision map that was approved by the planning board. Mr. Pozefsky explained that one of the functions of the ZBA is to interpret town law. However, his interpretation is that Galway town law also seems to say that private roads that provide access to so-called flag lots must be owned outright [by the property owners]; if the access is merely a right-of-way over these roads, that is not acceptable as too many problems can arise (e.g., ownership can change, disputes can arise, etc). Therefore the question becomes, can the ZBA grant a variance from that requirement? Case law has said zoning board only has jurisdiction to grant a variance where there is a right-of-way, IF it's in a district established by the town board itself called a "Rural Development District" (this is known as an overlay district). Galway does not have such an overlay district. However town code does make an exception for the Lake District where it appears rights-of-way can serve as access. Mr. Pozefsky does not feel the ZBA has the jurisdiction to grant a variance to the Gomulas because there is no such Rural Development District and [the property] is not located in the Lake District; without a variance from the ZBA the PB cannot approve the request for subdivision. In order for the ZBA to have that jurisdiction the town board would first have to establish a Rural Development District. The key stumbling block in this case is the fact that access is via a right-of-way and not outright ownership of the access road, and the property is not located in the Lake District or an established overlay district (such as a Rural Development District). Deed provided shows that Ms. Kress owns the road and even though Mr. and Mrs. Gomula have a right-of-way over that road via their deed, they don't actually own the road. When queried by various members of the ZBA about what would happen if the board went ahead and granted the variance, Mr. Pozefsky responded that the County [Clerk's Office] will not accept a subdivision map for filing which shows a right-of-way for access. Therefore, there would be no point in approving it.

PRIVILEGE OF THE FLOOR - None requested

No further questions/comments from board members and/or general public. Chair asked if there were any objections/problems with beginning the next meeting 5 minutes earlier than publicized. None were voiced.

Motion to close the meeting by Mark Kindinger. Seconded by Tim Bogdan. Voice Vote (including PB members): All ayes. Motion carried.

Meeting adjourned at 5:55 p.m.

Respectfully submitted,

Carol L. DeLorme

Carol L. DeLorme, Clerk