



**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: **Tuesday, October 4, 2011 @ 7:30 pm**  
Location: Town Hall Complex - 5910 Sacandaga Rd - 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 (August 2, 2011)
- 5) SEQRA review/classification
- 6) **Public Hearing**
  - Application #11-005 – Request of Peter J. Guidarelli for area variance(s) necessary to allow the reconfiguration (lot line adjustment) of a previously approved 2-lot minor subdivision, the granting of variance(s) being a prerequisite to application to the Planning Board for lot line adjustment. Subject parcels are located on Nassel Dr in the Lake District of the town of Galway, tax parcel #185.17.-2-9.1 and 185.17-2-9.2
- 7) Close Public Hearing
- 8) **Public Meeting**
  - Application #11-005 ... Peter J. Guidarelli ... tax parcel #185.17.-2-9.1 and 185.17-2-9.2
- 9) Other Business
- 10) Adjournment



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PLANNING BOARD  
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ESTABLISHED 1792

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### **MINUTES OF ZBA MEETING**

Meeting Date: October 4, 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, Mark Kindinger and Tim Bogdan

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Carol DeLorme, Clerk; Martin Pozefsky, Board Counsel; Anthony Guidarelli (representing the applicant), William Topper, acting town board liaison; Mike Tillson, representing the Building Department. (Chet Ciembroniewicz, code enforcement officer, joined later while meeting was in session.)

**PROCEDURE AND PURPOSE OF THE ZBA** – Chair read/explained the procedure and purpose of the Zoning Board of Appeals. Mr. Guidarelli indicated he was familiar with and understood the procedure.

### **REVIEW AND APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

All board members previously reviewed the minutes of the August 2, 2011 meeting. Chair requested one change: Under "Procedure and Purpose of ZBA" sentence 2 should be amended to read ... "approval would require 3 out of 4 'yes' votes as a tie vote would be regarded as a denial ..." **Motion by Mark Kindinger** to approve the minutes as amended. **Second by Tim Bogdan.** Voice vote: All yeas. Motion carried.

### **SEQRA REVIEW/CLASSIFICATION**

**Motion by Tim Bogdan** that tonight's application (#11-005) falls under the Type II SEQRA list and, therefore, no further action under SEQRA is required. **Second by Mark Kindinger.** Voice vote: All yeas. Motion carried.

Chair Hallgren stated that as he has a business relationship with both the applicant, Peter Guidarelli, and his representative, Anthony Guidarelli, he would recuse himself from discussion of this application. Meeting was then turned over to Tim Bogdan who acted as Chair for the duration of discussion of the application. Mr. Hallgren took a seat in the audience. It was explained to the applicant that with Mr. Hallgren's recusal, there are only 4 voting members. Approval will require 3 out of 4 yes votes as a tie vote would be regarded as a denial. Mr. Guidarelli indicated he understood and wished to continue with the proceedings.

**PUBLIC HEARING** – Opened at 7:35 pm - Clerk read the legal notice as it appeared in the *Daily Gazette* on 9/20/11

**Application #11-005 – Request of Peter J. Guidarelli for area variance(s) necessary to allow the reconfiguration (lot line adjustment) of a previously approved 2-lot minor subdivision, the granting of road frontage variance(s) being a prerequisite to application to the Planning Board for lot line adjustment. Subject parcels are located off Nassel Dr in the Lake District of the town of Galway, tax parcel #185.17.-2-9.1 and 185.17-2-9.2** Anthony Guidarelli (brother of applicant) was present representing Peter Guidarelli. A 2-acre lot owned by the applicant was previously approved by the PB as a 2-lot minor subdivision, wherein 1 lake front lot and 1 rear lot (both

lots being 1 acre in size) were created. The applicant has now applied to the PB for a lot line adjustment wherein the property line would be reversed so that both lots would be lake front lots (still 1 acre each). Road frontage for these lots is an easement off Nassel Drive. This reconfiguration would result in neither lot being able to meet the 200' road frontage requirement; thus the need for variance (road frontage variance falls under the category of "area variance"). The PB cannot approve the request for lot line adjustment unless a road frontage variance is granted. Nassel Drive is a private road and the easement provides access to these properties as well as camps on the other side of these properties. Brian Hendrie – Voiced concern regarding creation of a situation wherein access to the other lots would now be across another's property (cited NYS Appellate Court Eastern Region decision which stated you cannot go across another person's property to get to yours). By splitting this property down the middle there is no access to Lot 9060 (Lot 2 on map provided) and lots beyond except across another's property. Martin Pozefsky – Town Code §115-62 makes an exception in the Lake District where access can be via a right-of-way. Map presented with the application does not show the exact amount of road frontage that will be given to each lot; therefore exact amount of variance needed cannot be determined. Board discussed how to handle this. Brian Hendrie remained concern regarding the easement situation. Wondered if a decision at the state level would supersede a code at a town level. Also feels §115-62 refers to private roads, not an easement. Mr. Pozefsky's interpretation of §115-62 is that it makes an exception to the rule; town saying it will allow access by right-of-way in the Lake District. Brian Hendrie – agrees that it allows access by a private road; however the private road ends at the property line and then access is via an easement. The proposal would require access to lot 2 (and lots beyond) over lot 1. Still questions whether or not this is a violation of the appellate court ruling. More discussion followed. Members interpret current easement as providing access to 'Hathaway' lot and beyond. Now Lot 2 will need an easement as well. That may constitute a change to the easement rights. Clerk retrieved the PB file and read minutes pertaining to previous subdivision approval. File contained a copy of an access easement document. ZBA members and Mr. Pozefsky discussed recommending to PB that they review the current easement document for possible modification as part of their review process. No further discussion at this time. **Motion to close the public hearing** by Mark Kindinger. **Second** by Brian Hendrie. Voice vote: All yeas. Motion carried. Public hearing closed at 8:22 pm

## PUBLIC MEETING

**Application #11-005 ... Peter J. Guidarelli request for area variance ... tax parcel #185.17.-2-9.1 & #185.17-2-9.2**  
Tim Bogdan – Stated that as long as ZBA includes in their decision a recommendation to PB that they address easements/access as part of their review, the interests of current and future property owners will be addressed. Mr. Pozefsky indicated his agreement -- Access is something that the PB should be addressing anyway. Regarding how to handle the amount of variance needed, Mr. Pozefsky advised the board that it must include the exact numbers (amount of variance) in their motion for approval. Suggested granting conditional approval contingent upon submission of a survey map showing the exact amount of road frontage being assigned to each lot (exact amount of variance can be determined once the map has been submitted/reviewed). Review of map available indicates the road frontage to be somewhat equal; therefore amount variances should be somewhat equal as well. Mr. Pozefsky also suggested that the board could authorize the chairman to grant final approval based on those parameters rather than necessitating the board reconvening on this matter. **Motion by** Mark Kindinger, to grant conditional approval to Application #11-005, the request of Peter J. and Christina Guidarelli for a road frontage (area) variance, thereby allowing application to the Planning Board for a lot line adjustment of a previously approved 2-lot minor subdivision off Nassel Drive in the Lake District of the town of Galway (tax parcel #s 185.17-2-9.1 and 185.17-2-9.2) with the following contingencies:

- 1) Said lot line adjustment will result in continuation of two (2) lots of at least one (1) acre in size
- 2) Variance will be granted to allow road frontage of less than the minimum 200' for each lot (exact amount of variance for each lot will be determined and specified in final approval upon submission of a revised survey map showing exact road frontage measurements)

- 3) The new lot line will be drawn/located so as to maintain the required minimum 25' side yard setbacks from both the existing house on Lot #1 as well as the proposed house for Lot #2

Further, Acting Chair, Tim Bogdan, is hereby authorized to review the revised survey map, determine the exact amount of variance required for each lot, and grant final approval provided he is satisfied that all of the above conditions have been met and amount of variances fall within the parameters previously set forth. **Motion Seconded** by Herb Kopper. No further discussion. Roll call vote: Tim Bogdan, yes; Mark Kindinger, yes; Herb Kopper, yes; Brian Hendrie, yes. All yeas. Motion carried.

**Motion by** Mark Kindinger, **Second by** Herb Kopper that the ZBA recommend to the Planning Board that they review access/easement across the subject properties for all affected parcels, as well as review current easement deed for possible updating prior to granting final approval to the request for lot line adjustment. No further discussion. Roll call vote: Tim Bogdan, yes; Mark Kindinger, yes; Herb Kopper, yes; Brian Hendrie, yes. All yeas. Motion carried.

PRIVILEGE OF THE FLOOR – None requested

#### OTHER BUSINESS

Mr. Hallgren rejoined the board at this time and resumed duty of Chair.

Board discussed letter received from Chet Ciembroniewicz in response to memo submitted to Town Board by ZBA in November 2010 requesting clarification of three basic definitions that the ZBA had concerns with: 1) difference between a garage and an accessory building; 2) the number of garages and accessory buildings allowed on a property in the Lake District (feeling is that it is unclear); and, 3) the 150 sq ft maximum size for an accessory building does not seem practical if a garage is to be considered an accessory building.

Brian Hendrie – Suggested considering variances be given an expiration date if the project for which the variance was granted is not started, rather than "following the property". E.g., if the project is not started within a year, the variance should become null and void.

**Motion to adjourn** by Mark Kindinger. **Seconded by** Tim Bogdan. Voice Vote: All yeas. Motion carried. Meeting adjourned at 9:48 p.m.

Respectfully submitted,

*Carol L. DeLorme*

Carol L. DeLorme, Clerk