

September 24, 2007

The regular monthly meeting of the ZONING BOARD of APPEALS of the TOWN of CAMBRIA was called to order by Joseph Ohol, Chairman, at 8:00 P.M. He welcomed everyone to the meeting followed by the Pledge to the Flag.

Members present: Joseph Ohol, Chairman
Theresa Kroening, John Reardon, Donald Robinson, Peter Smith
Also present: Norman Allen, alternate
Clifford Burch, Building Inspector
Donald Lane, Deputy Bldg. Inspec.
Gary Billingsley, Attorney

Chairman announced the Agenda for this evening.

Secretary read Notice of Public Hearing as it appeared in the Lockport Union Sun and Journal to consider the following applications:

- (08-13-07) PHIL SORRENTINO**, 67 Place One Drive, Rochester, N.Y. 14626, for an Area Variance to permit applicant to construct a residence 275 feet from the road right-of-way upon premises commonly known as 4484 Baer Road, whereas the Zoning Ordinance does not permit construction of such a structure further from the road than 125 feet.
- (08-20-07) MICHAEL DUERR**, 4127 Beach Ridge Road, North Tonawanda, N. Y. 14120, for a Special Permit to construct a 42 foot by 60 foot pole barn to park vehicles/equipment for a small owner/operated, occupied plumbing business upon premises located between 4287 and 4319 Lockport Road, and for an Area Variance to construct said pole barn which constitutes an accessory building pursuant to the terms of the Zoning Ordinance of the Town of Cambria containing 2520 square feet that would be 14 feet tall, which is larger in surface area and height than is permitted by the Zoning Ordinance of the Town of Cambria.
- (08-23-07A) EUGENE and MICHELLE ELSON**, 3510 Lower Mountain Road, Sanborn, N.Y. 14132, for a Special Permit to permit applicants to maintain a private kennel permitting applicants to harbor between four (4) and eight (8) dogs over six (6) months old registered to applicants as permitted by the Special Permit Ordinance of the Town of Cambria.
- (08-23-07B) JASON and ANNA DUMAIS**, 3473 Upper Mountain Road, Sanborn, N.Y. 14132, for an Area Variance to permit applicants to construct a residence 475 feet from the road right-of-way upon premises located on the west side of Shawnee Road between Upper Mountain Road and Lower Mountain Road, whereas the Zoning Ordinance does not permit construction of such a structure further from the road than 125 feet.
- (09-06-07) SANDRA EDDY**, residing at 602- 77th Street, Niagara Falls, N.Y. 14304, prospective purchaser of premises owned by MARTIN and SHIRLEY KROENING, residing at 4165 Upper Mountain Road, Sanborn, N.Y. 14132, for an Area Variance to permit applicant to construct a 30 foot by 50 foot accessory building upon premises located on the west side of Cambria Road between Upper Mountain Road and Saunders Settlement Road 40 feet from the north side lot line of said premises which is contiguous to a reserved area for a possible future road whereas the Zoning Ordinance does not permit construction of such a building closer to said lot line than 60 feet.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to approve minutes of meeting of August 27, 2007 as presented. Unanimously approved, motion carried.

TABLED SPECIAL PERMIT RENEWAL

2001-10 (07-11-01) Crown Communications, Inc. 4017 Washington Road, McMurray, Pennsylvania 15317

Special Permit for Telecommunications tower on property owned by the Town of Cambria

Building Inspector said a check for \$500.00 renewal fee was received but no letter received requesting renewal of the tower. No complaints have been received on this special permit.

A motion was made by Mr. Reardon and seconded by Mr. Robinson to **renew** Special Permit to Crown Communications, Inc. for communications tower on property at 4160 Upper Mountain Road, Sanborn, N.Y. 14132, for a period of five (5) years retroactive to August 2007. Unanimously approved, motion carried.

CURRENT RENEWALS:

1995-11 Eric V. Wisor, 2958 Ridge Road, Ransomville, N.Y. 14131,
Special Permit to sell Polaris recreational vehicles

No one was present at this time on behalf of Mr. Wisor.

A motion was made by Mr. Reardon and seconded by Mrs. Kroening to **table** renewal until the end of the meeting to see if someone appears. Unanimously approved, motion carried.

2003-11 (08-28-03B) Maria Rickard, 3134 Upper Mountain Road, Sanborn, N.Y. 14132
Special Permit to operate a heating and cooling business

No one was present at this time on behalf of Ms. Rickard.

A motion was made by Mr. Reardon and seconded by Mr. Smith to **table action on** renewal until the end of the meeting to see if someone appears. Unanimously approved, motion carried.

PUBLIC HEARINGS:

(08-13-07) PHIL SORRENTINO, 67 Place One Drive, Rochester, N.Y. 14626, wife and Donald Kleinschmidt, builder, were present at this meeting.

The following have been submitted: Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement, Addendum No. 1 – Reasons for asking for a Variance, sketch of the subject property and copy of survey.

Public Hearing open.

Mr. Sorrentino said they are requesting a Variance to construct a residence 275 feet from the road

right-of-way on Bear Road. They purchased the property this year, 325 feet in width by 1325 feet in depth, on the west side of Baer Road.

Robert Sullivan, 4454 Baer Road, Ransomville, N.Y. 14131, said he is opposed to this request because Mr. Sorrentino's home would be right in his back yard and an invasion of their privacy.

James Litmer, 4476 Baer Road, present at this meeting, next to subject property, is opposed to the request of new owner to locate his house more than the 125 feet from the road for the following reasons:

1. "Locate his house approximately 100 feet behind my home and will eliminate any privacy in the back of my home and will obstruct the view of surrounding farm land."
2. "Aesthetic value of my home being diminished by the view of a house in the back yard, real value will decrease."
3. "Leach field will be located next to my back yard recreational area."
4. "When applying for a building permit, I was instructed by the building inspector that I could not locate my house more than 125'. Any variance to that rule would have to be somewhat extraordinary."

Public Hearing closed.

Mr. Sorrentino said there is a lot of truck traffic on Baer Road which exceeds the speed limit. He then stated the reasons for asking for a variance which are in part as follows:

1. Traffic noise
2. Setting house back will help balance the house and land together; improve visual aesthetics
3. Lot is 325' wide and the wider width will increase distance between the houses and blend the difference in setbacks.
4. Have elderly parents who visit and give them more peace and quiet which is important for their health, safety and security to be farther away from the road and the traffic and noise.

Applicant said there will be approximately 100' between house and property lines, plenty of distance between the houses.

Donald Kleinschmidt, builder, showed pictures of houses and property in that area. He said in the future applicant wishes to plant trees which will help with the privacy issue. He said they had contacted the local fire company to see if their plans were okay to get fire trucks back there if needed. He said the driveway will be eighteen (18') wide.

Mr. Sorrentino said they closed on the property in May 2007.

Concerns of board members:

Mr. Reardon feels the town has an ordinance and it should be adhered to. Is there a reason why

the house could not be closer to the 125 feet?

Mr. Sorrentino said the main reason for moving back is the house will blend in with the land and for safety when their elderly parents come for a visit. They would like the privacy and quietness.

Chairman asked applicant when you bought the property, didn't you realize there were Zoning regulations?

Mr. Sorrentino said yes, but they wanted to build back from the road and their lot is 325' in width. He said he is going to plant trees for privacy for themselves and neighbors.

Mr. Ohol said it does take a long time for the trees to grow.

Mr. Sorrentino said he is not going to plant little seedlings, they will be bigger fast growing trees.

Mrs. Sorrentino said the relatives are 79 and 82 respectively, aging parents, and they have some health issues.

A motion was made by Mrs. Kroening and seconded by Mr. Robinson to declare **negative declaration under SEQR** on application of Mr. Sorrentino. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mr. Reardon to **deny** application for an Area Variance to Phil Sorrentino to construct a residence 275' from the road right-of-way because that is a substantial request and the condition is self-created. Unanimously approved to deny application, motion carried.

Counsel suggested perhaps the board and Mr. Sorrentino could discuss possibility of granting a variance with some lesser setback than 275 feet.

Chairman feels 275' is excessive. He suggested 185' setback and applicant agreed to that.

A motion was made by Mr. Reardon and seconded by Mr. Smith to grant an Area Variance to Phil Sorrentino to construct a residence 185 feet from the road right-of-way upon premises known as 4484 Baer Road with condition that Mr. Sorrentino is to plant trees, not seedlings, larger trees, around his property. Unanimously approved, motion carried.

(08-20-07) MICHAEL R. DUERR was present at this meeting and has submitted the following:
Application for Area Variance and Special Permit, Short Environmental Assessment Form, Agricultural Data Statement and sketch of his property with proposed buildings and septic field.

He said he would like to build a house and pole barn, 42' by 60', to park vehicles and tools for his plumbing business on property between 4287 and 4319 Lockport Road. He said he has a contingency contract with John Napoli. He wants to downsize his home.

Public Hearing open:

Elizabeth Harman, 4232 Lockport Road, who lives on the Pendleton side of Lockport Road, said she is opposed to this request because of the business going in there. She said the property is residential and businesses come in and park trucks, etc. and change the area.

Public Hearing closed.

Mr. Duerr said the property consists of 3.9 acres. He said at present he operates a plumbing business in Pendleton.

Mr. Reardon asked applicant if he has a business of that nature in Pendleton now?

Mr. Duerr said “yes” and he wants to downsize his home. The new home will be smaller than the pole barn.

Building Inspector said Mr. Duerr needs a Variance because building will exceed the square footage of his future home and a Special Permit for the business.

Mr. Duerr said he has no walk-in traffic.

Concerns of board members:

Mr. Smith asked Mr. Duerr if he plans to build both the house and pole barn at the same time and Mr. Duerr replied “yes”.

Chairman asked applicant what type of buildings will they be?

Mr. Duerr said the house and pole barn will both be constructed by Morton. There will be steel doors and windows.

Mr. Smith asked how high the pole barn will be and Mr. Duerr said side walls will be 14’ high, 16’ to the eaves.

Mrs. Kroening asked applicant about signage and Mr. Duerr said there will be no signage. Trucks will be stored inside of pole barn.

Mr. Smith asked Mr. Duerr how many trucks and reply was three (3) and he showed pictures of same to the board.

Counsel asked if there would be any offices involved and Mr. Duerr replied “no” offices. He said his son and friend work for him.

Counsel asked if there would be any outside storage and applicant replied no outside storage connected with this business.

Mr. Robinson asked why is the building going to be so tall and Mr. Duerr said so he can park it and unload truck inside of building.

A motion was made by Mr. Robinson and seconded by Mr. Reardon to declare **negative declaration under SEQR** on application of Mr. Duerr. Unanimously approved, motion carried.

A motion was made by Mrs. Kroening and seconded by Mr. Smith to **approve** application for Area Variance for pole barn because square footage is more than proposed square footage of new home and a Special Permit for the plumbing business with conditions:

1. No retail business from the building.
 2. No outside storage.
 3. No signs permitted, but if request for a sign, applicant must appear before the Planning Board.
 4. No offices in storage building.
 5. Special Permit for the plumbing business is in effect for a period of one (1) year.
- Unanimously approved, motion carried.

Counsel reported the Niagara County Planning Board recommended approval of this application. It borders Town of Pendleton.

2007-11 (08-23-07A) EUGENE and MICHELLE ELSON have submitted the following: Application for Special Permit, Short Environmental Assessment Form, Agricultural Data Statement and sketch of subject property.

Public Hearing open.

Mrs. Elson was present at this meeting and said they wish to have a private kennel to house four (4) dogs. She said they have three dogs and their daughter has moved back home and has a dog.

Nancy O'Neil, 3516 Lower Mountain Road, Sanborn 14132, asked the meaning of harboring between four and eight dogs?

Counsel explained harboring means keeping on premises and 4 – 8 dogs is the wording in the ordinance. Applicant is requesting 4 dogs.

Mrs. O'Neil questioned the possibility of harboring more than 4 dogs, boarding dogs and dropping off dogs. She expressed concern about her property value, the operating of a kennel business and disposal of waste. The Elson's do not have a very big lot. Mrs. O'Neil asked the type of dogs they are harboring and state law for enclosure?

Elizabeth (Betty) Storms, 3506 Lower Mountain Road, Sanborn 14132, said dogs make noise, start barking about 6:00 A.M. Dogs are out day and night; sometimes they are clean and sometimes not.

Mrs. Elson said all of the dogs are up to date on their shots and licenses. They do bark sometimes when the children are out.

Mrs. Storms said they called the SPCA because the dogs cause a nuisance in the neighborhood. When it gets cold, have to provide a shelter.

Mrs. Elson said they do provide a shelter for them; kennel is under the tree.

Public Hearing closed.

Applicant said she and her husband work full time jobs and the children go to school. The dogs are outdoor dogs, huskies and three of the four are AKC registered. One does bark when it sees the ladies' cats outside. The dogs are crate trained. She said there will be no breeding done.

Four to eight dogs is covered in the Zoning Ordinance and she has one extra dog (4) and that is why applicants need a Special Permit . They acquired the 4th dog when their daughter came home. Chairman said this is a private kennel which means dogs are owned by the property owner. There is a difference between private and public kennel.

Mr. Reardon said this is not a business, no selling or buying. The dogs are licensed to the people who live there.

A motion was made by Mr. Robinson and seconded by Mr. Smith to declare **negative declaration under SEQR** on application of Mr. and Mrs. Elson. Unanimously approved, motion carried.

A motion was made by Mr. Reardon and seconded by Mrs. Kroening to **approve** application for Special Permit to Eugene and Michelle Elson to permit applicants to maintain a private kennel permitting applicants to harbor between four (4) and eight (8) dogs over six (6) months old registered to applicants by the Special Permit Ordinance of the Town of Cambria for a period of one (1) year. Unanimously approved, motion carried.

(08-23-07B) JASON and ANN DUMAIS were present at this meeting and have submitted the following: Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement, copy of Survey map and Statement giving the reasons why they wish to build their home 475' from the right-of-way.

Mr. Dumais said the property is located on the west side of Shawnee Road between Upper Mountain Road and Lower Mountain Road and purchased it several years ago.

Public Hearing open: there were no comments from members of the public.
Public Hearing closed.

Mr. Dumais said they purchased the land, 17 acres (600 feet frontage by 1250 feet in depth) in 2003.

Some of the reasons why they wish to build their home up to 475' from the right-of-way are:

1. At the time of purchase, the ordinance (125 feet maximum setback) was not in effect.
2. The noise level is loud, Shawnee Road is a major truck route.
3. There is a ditch 264' from the road. The land is elevated towards the rear of the property,

and slopes to the lowest point in the front of the property and they would like to be on the higher side of the ditch.

4. In 2003 had the land perk tested at 475' from the right-of-way, and it passed. The land closer to the road did not pass a perk test.
5. Have 5 children and would like to keep them as far away from the road as possible.
6. They really want to live on this property and back from the road and ditch for privacy.

Chairman asked what will be the dimensions of their future home and they showed a picture to the board, width 53 feet by 47 feet in depth, two story, 2126 square feet.

Mr. Dumais said there are trees all around the property which will buffer some of the noise. Property is at times wet in front of the ditch.

Concerns of board members:

Mr. Smith asked how wide will driveway be and Mr. Dumais said it will be wide enough and safe for fire trucks.

Chairman said the home could be placed in front of the ditch and still have 100' in the back yard before the ditch. Mr. Dumais said they want to be in back of the ditch.

Mr. Burch said regarding cost of septic system being placed in front of the ditch with gravity system and loop, would be a lot less than putting in a driveway 475' back.

Applicant said the perc test was done in the back and no perc test was done in the front of the property. Nothing has been done yet on the design of the leach system, no engineering done.

Counsel asked Mr. Dumais where he thinks septic system will go?

Chairman said it could be placed in front of the house or it could be placed on the north side of the house. Question of leaching into the ditch.

Mrs. Kroening said we try to keep standard as we can but there are differences in the two applications. This application does have a ditch running through the property. Four hundred seventy-five feet is a substantial request. Mr. Reardon agrees with Mrs. Kroening on the aforementioned.

A motion was made by Mr. Smith and seconded by Mr. Reardon to declare **negative declaration under SEQR** on application of Mr. and Mrs. Dumais. Unanimously approved, motion carried.

Chairman said the Public Hearing calls for residence to be 475 feet from the road right-of-way. He asked applicants if they would be willing to compromise on setback?

Mr. Dumais said they would like the residence to be at least fifty (50) feet beyond the ditch.

Mr. Reardon said this is a different property and we look at each application case by case.

A motion was made by Mr. Reardon to **deny** request for a setback for the residence of 475 feet and recommend a setback of 375 feet, seconded by Mrs. Kroening. Mr. and Mrs. Dumais agreed to the figure of 375 feet. Unanimously approved, motion carried.

Mr. Lane said to applicants they need to get a building permit.

TABLED SPECIAL PERMIT RENEWAL:

1995-11 Eric Wisor – Mrs. Wisor was present at this time for renewal of Special Permit for sale of Polaris recreational vehicles.

Building Inspector said he had received no complaints on this business.

A motion was made by Mr. Smith and seconded by Mr. Robinson to **renew** Special Permit to Eric C. Wisor, 2958 Ridge Road, Ransomville 14131, to sell Polaris recreational vehicles for a period of three (3) years retroactive to August 2007. Unanimously approved, motion carried.

PUBLIC HEARING

(09-06-07) SANDRA EDDY, prospective purchaser of property, Martin Kroening, owner of property and Paul Game from Paul Game Construction Co., builder, were present at this meeting.

The following have been submitted: Application for Area Variance, Short Environmental Assessment Form, Agricultural Data Statement, sketch of subject property, copy of portion of Town map highlighting subject parcel and a letter from the Niagara County Health Department dated September 4, 2007
Re: Realty Subdivision Regulations.

Public Hearing open:

Mr. Game said during the process of applicants making an offer to purchase the property, discovered subject parcel was next to a proposed 66' right-of-way for access to the back property. Mr. and Mrs. Eddy would like an accessory building 30' by 50', a regular garage, for storage of two fishing boats.

Applicants said the siding and roof will be the same as the house. In order to do that, would have to change the house plan and are asking for a variance of 40 feet from the north side lot line and per Zoning Ordinance, 60 feet from lot line is required. All buildings will face Cambria Road. Mr. Eddy said he wants to be able to back the boats into the building and make it more accessible.

Mr. Kroening said they could not go back any further because water runs south. This property is south of property that has a duplex on. They have a depth of 225'.

Counsel said in the letter from Health Department, they refer this property as "Lot H" and we will also treat this as "Lot H". They will be in compliance with setbacks, just access building needs a variance. Corner lots require 60' setback and they only have 40'.

A motion was made by Mr. Robinson and seconded by Mr. Smith to declare **negative declaration under SEQR** on application of Eddy/Kroening. Unanimously approved, motion carried.

A motion was made by Mr. Robinson and seconded by Mr. Reardon to **approve** application of Martin Kroening, owner, and Sandra Eddy, Agent, for an Area Variance to applicant to construct a 30' by 50' accessory building upon premises located on the west side of Cambria Road between Upper Mountain Road and Saunders Settlement Road, 40 feet from the north side lot line of said premises, which is contiguous to a reserved area for a possible future road. Unanimously approved, motion carried.

CURRENT SPECIAL PERMIT RENEWAL

2003-11 (08-28-03B) Maria Rickard did not appear for renewal of Special Permit for a heating and cooling business.

A motion was made by Mr. Reardon and seconded by Mrs. Kroening to **table** action on the renewal of Special Permit to Maria Rickard for one more month. Unanimously approved, motion carried.

REPORTS:

Chairman – 1. Reminded board members of the training sessions coming up:
Lewiston Town Hall – Sept. 27 - 6:00 - 8:00 P.M.
Oct. 25 - 6:00 - 8:00 P.M.
Albion High School - Oct. 3 - 5:00 - 8:45 P.M.

2. Asked Mr. Burch if he had heard anything further from Robert Moore regarding proposed pond?

Building Insp. – 1. Mr. Burch said he understands that an application will be forthcoming for the October meeting. Discussion on the issue. Copy of letter dated August 20, 2007 from Mr. Burch to Sean W. Hopkins, Esq. regarding Moore pond issue, Area Variance versus Use Variance, given to board members.

2. Bruce Ulrich is selling out his landscaping business on Lockport Road.

3. Student Village Housing Corp. – are moving parking lots and making more parking area..

4. Willow Creek subdivision – discussion.

Attorney – nothing to report

Board members – Mr. Reardon said he will not be present at the October meeting.

Mr. Robinson – is there anything further on the Luff property? Reported property was purchased by someone from out of state.

Dep. Bldg. Insp. - Referring to the tower on Barone property on Lockport Road, the bonding company
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cancelled the bond and now the bond has been renewed by a different company.

A motion was made by Mr. Robinson and seconded by Mr. Smith to adjourn at 10:20 P.M.
Unanimously approved, motion carried.

Respectfully submitted,

Marjorie E. Meahl, Rec. Secy.

Minutes approved: _____