

Town of Fenner Zoning Board of Appeals

Meeting Minutes from October 16, 2013

ZBA members present: Rudolph Braun, Chairman, Paula Douglas, member, Mary Rose Proctor, member
Paul Little, member, Jon Livingston, member

Others present: James Stokes, Fenner Town attorney, James Christensen, applicant for area variance

Chairman Braun called the meeting to order at 7:30 to review the area variance application submitted by James Christensen regarding the addition to the barn at 5549 Nelson Road. The variance is requesting to permit a zero front yard setback. It was reviewed that this barn addition has been an ongoing issue since at least 1993. Copies of the Madison County Planning Department report of October 3, 2013 were distributed for review. The memo recommendation was to return the matter for local determination. The memo states that the Madison County Planning Board voted to disapprove this application in 1991 and that they continue to stand by the reasoning behind the original 1991 disapproval of the request for an Area Variance. There was some question regarding whether this took place in 1991 or later.

Mr. Braun opened the public hearing portion of the meeting at 7:41.

Mr. Christensen reviewed the history of the barn addition and explained personal reasons behind his actions to build the barn addition without a permit. He further revealed that he has purchased land from the neighbor to the south to conform with the side yard setback requirement.

Mr. Stokes then explained that in the mid 90's Mr. Christensen was cited and fined \$350 for the barn addition and an agreement (which was filed with the Madison County Clerk's office) was made with the town that the building could stay until June 22, 2008 or 8 months after Mr. Christensen's retirement, whichever came first. After that date, the building was to be removed at Mr. Christensen's expense. Mr. Christensen placed \$2000 in an escrow account to pay for the building demolition. The building was not removed at that time nor was any action taken by the Town of Fenner. At the September 11, 2013 Town Board Meeting, the town Board agreed to allow the building addition to remain pending approval of the area variance for the front yard setback requirement of 50 feet. It was noted that the safety regarding the line of sight at the intersection is mainly caused by the barn, which is grandfathered since it was constructed prior to zoning regulations being in effect. The Town of Fenner Board also agreed that the money held in escrow would be used to pay the towns legal fees and a donation to Perryville cemetery.

Mr. Braun closed the public hearing at 7:54

The ZBA members expressed concern that the addition may be used for commercial purposes in the future. Mr. Stokes reviewed that the barn and addition are in Zone A which is not commercial use zoning.

ZBA member Paula Douglas asked if the Town would be obligated to move forward with the demolition if the variance was not approved. Mr. Stokes responded that the town would be obligated as the matter needs to be resolved. Mr. Stokes outlined some concerns regarding the town handling the removal of the addition.

ZBA members expressed mixed feelings about granting the variance and sending a message that it's okay to build without a permit. Mr. Stokes reminded the ZBA that weighing the public good against the hardship to the applicant is why the ZBA exists.

There was further discussion regarding what would be gained by taking the addition down.

ZBA member Paula Douglas moved for a vote on the variance request. ZBA member Mary Rose Proctor seconded the motion. Chairman Braun did a roll call vote with the following result:

ZBA member Jon Livingston voted No.

ZBA member Mary Rose Proctor voted Yes.

ZBA member Paul Little voted No.

ZBA member Paula Douglas voted Yes.

Chairman Rudolph Braun voted Yes.

The application for an Area Variance was granted.

Mr. Stokes will prepare a resolution outlining the granting of the area variance to be submitted to the Madison County planning board. A copy of this resolution will be attached to the original agreement in the Madison County Clerk's office.

Chairman Braun adjourned the meeting at 8:20.

Paula Douglas

Secretary of the Zoning Board of Appeals of the Town of Fenner, Madison County, New York