

**PLANNING BOARD
TOWN AND VILLAGE OF ARCADE
17 Church Street, Arcade, New York 14009
Village Office 585 492-1111
Town Office 585 492-4685**

At a meeting of the Planning Board of the Town and Village of Arcade held on Wednesday, March 13, 2013, at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

MEMBERS PRESENT: Paul Bijhouwer, Don Suttell and Rich Kosmerl

MEMBERS ABSENT: Andy Schnitzler, Aaron Felber

OTHERS PRESENT: Sandra Dutton

The meeting was called to order at 7:05 P.M. by Chairman Bijhouwer.

APPROVAL OF MINUTES:

Approval of the minutes of February 13, 2013 was tabled as a quorum from the February meeting was not present.

ZONING BOARD OF APPEALS REQUESTS RECOMMENDATION AND COMMENT ON AREA VARIANCE, PERMIT NO. 2168-AV, SUBMITTED BY GEORGE HUDSON, REQUESTING CONSTRUCTION OF A GARAGE NOT IN COMPLIANCE WITH SECTION 412 NO. 9 OF LOCAL ZONING LAW AT PROPERTY LOCATED AT 96 MAIN STREET. ZONING SPECIFIES A REAR YARD SETBACK OF 10 FEET AND THE GARAGE WILL BE ONLY 8 FEET FROM THE PROPERTY LINE:

The Board:

1. Reviewed the application;
2. Reviewed the minutes of the February 2013 meeting of the Zoning Board of Appeals (see Attachment B);
3. Read the recommendation and comments from the Wyoming County Planning Board which recommends denial of the variance with comments (see Attachment A);
4. Read a letter from James McAuley, Attorney at Law, representing Father Michael O'Hara, owner of the premises at 15 Clough Ave. This property abuts the rear of the applicant's property (see Exhibit 1).

In discussion:

1. Regarding the Criteria for Area Variance completed by the applicant, he stated that he had removed an unusable barn and is replacing it with a new one. The Board maintains that this is not the matter at hand. He also stated that it is in keeping with the characteristic of the surrounding neighbors. Exhibit 1 from neighbor Father O'Hara through his attorney strongly objects to this statement.
2. The applicant in the Criteria for Area Variance maintains he has not caused the problem that he is requesting to change. This Board agrees with the Wyoming County Planning Board that he did cause the problem and it is a self-created hardship.
 - a. It is the property owner's legal responsibility to ascertain the correct boundaries of his property and the setbacks before beginning construction. The applicant admitted that he did not obtain a survey and merely assumed where the property line was located and that he could rebuild in the same area as the demolished structure.
 - b. The fact that he obtained a building permit from the County is irrelevant. The ZEO issued a Certificate of Building Compliance based on good faith that the applicant knew where the property line was located. Since the applicant has already constructed the garage to a substantial degree within the setback zone, he is completely responsible for self-creation of the problem.
3. The applicant could obtain his own surveyor at his cost to survey his property. If by chance that survey did not agree with the survey completed by Father O'Hara and the applicant's survey shows he is within 10 feet of the property line then he would have a basis for his argument. If such be the case the two parties could proceed on their own to court to dispute the surveys.
4. If the applicant can prove that it has been less than a year since demolition of the old structure, he could rebuild within the same setback of the original structure without a variance. He has told the ZBA that the new structure is not exactly on the original footprint as he was not able to remove all of the original foundation.

MOTION by Paul Bijhouwer, seconded by Rich Kosmerl and unanimously carried, to recommend to the Zoning Board of Appeals of the Town and Village of Arcade that Area Variance Application, Permit No. 2168-AV, submitted by George Hudson, for property located at 96 East Main Street be denied based on the above comments.

WORK SESSION - DEVELOPMENT OF AMENDMENT TO COMPREHENSIVE PLAN FOR ENERGY DEVELOPMENT:

As directed by the Board, the Secretary reported the following:

1. She has spoken with the Wyoming County Planner, Art Buckley, and he stated that a full EAF needs to be completed.

2. Distributed copies of an excerpt from “Zoning and the Comprehensive Plan” found on the New York State government website that states this will be a Type I Action under SEQR and that the local governing body, in this case the Town Board, is responsible for adopting the plan, assuming Lead Agency and assuring and documenting that SEQR requirements are met.
3. The Town Board has not responded to the letter dated Feb. 15, 2013, which indicates that the Town Board is in agreement that all forms of energy be addressed.

The Board reviewed the steps that will be needed to amend the Comprehensive Plan and write corresponding Zoning Laws for both commercial and private energy development (to include oil, gas, solar, wind, geothermal and biomass).

1. Complete a SEQR Full Environmental Assessment Form (EAF). If this is framed correctly it would cover both the Comprehensive Plan and the new Zoning Laws.
2. Town Board reviews, approves and signs the EAF as Lead Agency and sends out Lead Agency notifications. Notification should be sent to the Village of Arcade, all adjoining municipalities (towns and counties), the DEC, DOT, Wyoming County Planning Board, Public Service Commission and the Army Corp of Engineers.
 - a. The Planning Board will do the legwork and secretary will prepare the drafts for Lead Agency notifications for the Town Board and Village Clerk but the Town Board must do enactments and sign SEQR.
3. Write the draft for Comprehensive Plan amendment followed by public hearings held by the Town Board, approval by Town Board and the necessary NYS legalities completed. Since the Comprehensive Plan is a combined plan for both the Town and the Village, the VOA will also have to conduct a public hearing and approve the amendment.
4. Write draft of Zoning Laws, again followed by Public Hearings and approval by Town Board and the necessary filings with NYS. The Village will have to hold separate Public Hearing and adoption of zoning ordinances.

In discussion, things to be considered:

1. Ask the VOA for guidance regarding the zoning ordinances so the Town and Village ordinances can be reconciled, or the VOA should consider adopting the Town ordinances with such modifications as they see fit. The VOA will also need to follow procedures for adoption of new zoning laws for energy development as there are areas within the village limits (i.e. North Street) that will not fall under the Town’s laws.
2. The Board needs to consider that Arcade is a Right-to-Farm community with Agricultural Districts which need to be protected. Since Arcade has a village situated within the Town it also needs protection.

3. Do we have the right to adopt laws regarding energy transmission lines running through the Town? Are any Federal agencies involved in energy transmissions lines in NYS? For purposes of SEQR do we have to involve any Federal agencies? The Board directed the Secretary to contact Larry Kilburn, Supt. of Public Works, for answers to these questions.

In conclusion:

1. The Board will begin work on the EAF at the April meeting.
2. Rich Kosmerl volunteered to draft an outline of proposed zoning ordinances.
3. The Secretary was directed to send the above information to the Town and Village Boards to keep them apprised and to ask the Village Board for input.

ADJOURNMENT:

There being no further business brought before the Board, the meeting adjourned at 8:08 P.M. upon **motion** by Don Suttell, seconded by Paul Bijhouwer and unanimously carried. The next regular meeting of the Planning Board of the Town and Village of Arcade is scheduled for Wednesday, April 10, 2013 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully submitted,

Holly L. Almeter
Secretary

Wyoming County Planning Board REFERRAL RESPONSE FORM

For referrals as required in accordance with NYS General Municipal Law Article 12B, Section 239-l and m

Location of Proposed Action: 96 East Main Street, Village of Arcade

Applicant: George Hudson

Type of Proposed Action (separate form completed for each action): Construction of 24' by 24' pole style barn two car garage

Area Variance Use Variance Site Plan Special Use Permit Other: New Zoning

Ordinance/Local Law New/Amend Comprehensive Plan Amend Zoning Text/Map

WCPB Recommendation on this Action

The WCPB took the following action at their meeting on March 4, 2013 with respect to this referral:

Approval with Modification Disapproval w/comments None No recommendation;

proposed action has no significant negative county-wide or inter-community impacts

Comments: The proposed action is an Area Variance requesting relief from the rear yard set-back requirements allowing the construction of a 24'x24' pole style barn two car garage. This variance request is being made after partial construction of the garage and a subsequent stop work order from the Village ZEO, when it was determined that the building setback is in violation of the Village Zoning Code.

The Applicant claims to have a Wyoming County building permit. However, according to Wyoming County Fire & Building Code officials, the County does issue building permits unless a valid municipal zoning permit is included with the County building permit application.

1. The Village is commended for submitting a completed Site Plan Checklist with the referral.
2. The property owner has demolished a dilapidated barn/garage structure and begun to construct a new building in its place. However, the landowner failed to obtain a survey of the property prior to the commencement of the new construction which was within the minimum set-back.
3. Despite the Property Owner's claims in **Criteria for Area Variance, Item 5**, this is clearly a self-created hardship and one that should have been avoided. A building permit is not a blanket approval to build anywhere on a property. It is the property owner's legal responsibility to ascertain the correct boundaries of his property and the relevant set-backs prior to beginning construction. By his own admission the owner did not obtain a survey and merely assumed he could begin construction in the same general area as the previously demolished structure.
4. Additionally, it should be clarified that the building set-back extends from the nearest building projection (i.e. the roof soffits and gutters) to the property line -- not from the building foundation to the property line.
5. The Village has the right to:
 - a. Refuse the Area Variance and order the immediate removal of the new construction from the set-back area;
 - b. Fine the Applicant for administrative costs, violating his zoning permit; and/or grant the Variance with strict conditions imposed.
6. The Village should also ensure that the new structure; if allowed, does not create a drainage problem on adjoining properties.
7. There appear to be no significant county-wide negative impacts related to this proposed project.
8. A record of application for and approval status of all necessary permits from State and/or County agencies or officials must be provided by the Applicant.
9. A New York State SEQR Short Environmental Assessment Form has been submitted.
10. **Section 239-m of general municipal law requires referring bodies to file a report of the final action it has taken regarding the referral made to the WC Planning Board. This report must be sent to the WCPB within thirty days after final action.**

Attachment B
PB minutes March 13, 2013

AREA VARIANCE APPLICATION, PERMIT NO. 2168-AV, SUBMITTED BY GEORGE HUDSON, REQUESTING CONSTRUCTION OF A TWO-CAR GARAGE NOT IN COMPLIANCE WITH SECTION 412, NO. 9 OF VILLAGE ZONING LAW, AT PROPERTY LOCATED AT 96 EAST MAIN STREET:

The Chairman explained the procedure for an Area Variance and read the application.

In discussion the applicant stated:

1. He had received a Wyoming Co. Building permit and construction has begun. He thought the rear property line was at the tree line but now has been informed it is to the north of the tree line. As a result, the two-garage is only eight feet from the property line instead of the 10 feet required. He has stopped construction as per the Zoning Enforcement Officer.
2. The garage is 24 feet by 24 feet with 9 ft. sidewalls, a single overhead door and no loft. It is a pole barn with eight ft. centers, four ft. trusses and six by six posts.
3. He does not have a survey. He purchased the property at a bank auction and they did not provide him with a survey.
4. At this time the walls are framed and the roof is on.
5. When the property was purchased there was an existing barn which was falling down and not useable. That has been removed and the new garage being constructed in its place.

The Board:

1. Completed the Area Variance checklist (see Attachment A);
2. Completed SEQR;
3. Stated that the application must be sent to the Wyo. Co. Planning Board as it is located on a State Highway (Rte. 39).

MOTION by Doug Eigenbrod, seconded by Paul Sanders and unanimously carried, to accept as complete this Type II Action under SEQR Section 617.5 C 12, for Area Variance Application, Permit No. 2168-AV, submitted by George Hudson, requesting construction of a two-car garage not in compliance with rear yard setback located at 96 East Main Street. Further, the Board directed the Secretary to forward the application to the Wyoming County Planning Board for recommendation and comment and to publish a Public Hearing to be held on Monday, March 18, 2013, at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, NY.

ADMITTED IN
NEW YORK, MARYLAND AND
THE DISTRICT OF COLUMBIA

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February 12, 2013

Village of Arcade
Chris Lexer, Zoning Officer
17 Church Street
Arcade, NY 14009

RE: Zoning Variance

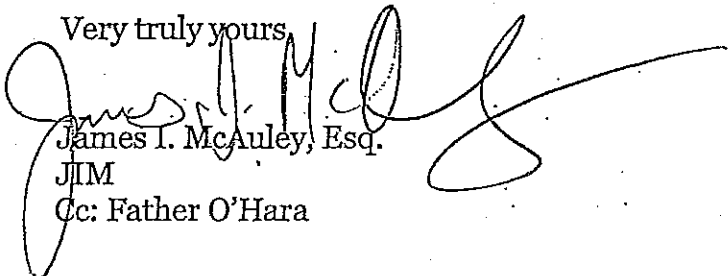
Dear Mr. Lexer:

Please be advised that I represent Father Michael D. O'Hara, owner of the premises at 15 Clough Avenue in the Village of Arcade. As you are aware, one of Father O'Hara's neighbors has asked for a variance request in order to build a garage within the buffer zone. Father O'Hara has asked me to state to you, in your capacity as Zoning Officer, that he is opposed to such a variance being granted for the following reasons:

- 1.) That such a variance would lower his property values because the end result would be out of character for the neighborhood;
- 2.) Father O'Hara was not provided any other information, such as a copy of a survey;
- 3.) Until Father O'Hara retained a surveyor, the individual seeking the variance acted as if Father O'Hara's land was his (allegedly even throwing branches on Father's property!), and therefore, no variance was needed;
- 4.) It is not a reasonable use of the property because, under the circumstances, the applicant could certainly have built elsewhere, but wishes to intrude towards Father O'Hara's property;
- 5.) The denial of such a variance would not create an undue hardship for the applicant;
- 6.) It would not be unreasonable to deny the applicant's request for a variance;
- 7.) The applicant has not carried his burden to show that he has no other alternatives.

In closing, we would like to reiterate that we are opposed to the granting of said variance. Thank you.

Very truly yours,



James I. McAuley, Esq.
JIM
Cc: Father O'Hara