

**ZONING BOARD OF APPEALS
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 Zoning Board of Appeals of the Town and Village of Arcade held on Monday, December 16, 2013 at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York:

MEMBERS PRESENT: Jeff Snyder, Paul Sanders, Lee Ameis

MEMBERS ABSENT: Gordon Cramer, Doug Eigenbrod

OTHERS PRESENT: ZEO Marv Zielonka, Matt Dworzack

The meeting was called to order at 7:00 P.M. by Chairman Snyder followed by introductions of Board Members, Secretary and ZEO.

APPROVAL OF MINUTES:

MOTION by Paul Sanders, seconded by Lee Ameis and unanimously carried, to accept the Minutes of November 18, 2013.

PUBLIC HEARING FOR AREA VARIANCE APPLICATION, SBL NO. 175.-1-14.11, SUBMITTED BY NORMAN DWORZACK, REQUESTING DIVISION OF PROPERTY WHICH DOES NOT LEAVE MINIMUM SIDELINE SETBACK REQUIREMENTS IN AN AG DISTRICT AT PROPERTY LOCATED AT 2423 GENESEE ROAD:

The Chairman asked if the application needed to be read. Everyone present indicated that it was not necessary. The Chairman read the Minutes from the Planning Board meeting of December 11, 2013 and their recommendation and comments (see Attachment A). The Planning Board agrees with the ZBA findings from their November meeting and recommends that the barn and well be sold with the house. The other possibility is to remove the garage and readjust property lines as stated above. The Planning Board strongly discourages non-compliant lots being created. Doing so is contrary to the intent of zoning. Note that buildings do not last forever but lot lines often do and it is best to leave lots compliant for future generations of the applicant's family and for posterity.

MOTION by Lee Ameis, seconded by Paul Sanders and unanimously carried to open Public Hearing for Area Variance application, SBL No. 175.-1-14.11, submitted by Norman Dworzack,

requesting division of property which does not leave minimum sideline setback requirements in an Ag District at property located at 2423 Genesee Road.

Matt Dorzack, son of the applicant, was present to represent his parents who were out of town.

In discussion:

1. The Chairman explained the Public Hearing process and that the Board had 61 days to render a decision.
2. As mentioned at the previous meeting, the ZBA believed that they could not issue a variance for another property not in compliance. The issue is creating a non-compliant lot of the property the applicant wants to keep.
3. The Chairman had researched the issue and cited from ZONING BOARD OF APPEALS, James A. Coon, Local Government Technical Series, page 20 under the section Area Variance, "Conditions must relate solely to the particular land that is the subject of the application, and must not concern unrelated land or other issues."
4. The Board stated that the ZBA is tied to the effect of the other piece of property and according to the above cited information cannot create a non-compliant lot.
5. The Board asked if the applicant had considered other options to which Mr. Matt Dorzack stated that his father had not discussed it with him.
6. The Board stated that due to the way the application has been submitted it is clear that the ZBA cannot approve it.
7. The Board stated that the realtor may have steered the applicant wrong with regards to the worth of the property with and without the barn and the applicant should consider other options in the division of the property. The Chairman stated that he had spoken with the mortgage department at M & T Bank and was told that the bank would definitely not give a mortgage if the water well was not on the property however another bank might be willing to do so. The applicant should take that into consideration when considering other options.
8. The Chairman asked three times if anyone else had any further comments. There were none.

MOTION by Lee Ameis, seconded by Paul Sanders and unanimously carried to close the Public Hearing.

MOTION by Paul Sanders, seconded by Lee Ameis and unanimously carried, that in accordance with the Local Government Technical Series, page 20 under the section Area Variance as cited above, the Zoning Board of Appeals is not authorized to create a separate non-compliant property and therefore the Area Variance application, SBL No. 175.-1-14.11, submitted by Norman Dworzack, requesting division of property which does not leave minimum sideline setback requirements in an Ag District at property located at 2423 Genesee Road is denied.

The Board provided Mr. Matt Dworzack with copies of the options from the Planning Board for the applicant's consideration.

Board Member's Reasons:

Paul Sanders – voted to deny – The piece of property the applicant would keep would not be in compliance.

Lee Ameis – voted to deny – In accordance with the NYS technical manual, we cannot create another property with our decision that is out of compliance.

Jeff Snyder – voted to deny - We cannot support this variance as it would cause another piece of property to be non-compliant.

ADJOURNMENT:

There being no further business brought before the Board, the meeting adjourned at 7:28 P.M. upon **motion** by Lee Ameis, seconded by Paul Sanders and unanimously carried. The next regular meeting of the Zoning Board of Appeals of the Town and Village of Arcade will be held on Monday, January 20, 2014, at 7:00 P.M. in the Village Boardroom, 17 Church Street, Arcade, New York.

Respectfully submitted,

Holly L. Almeter
Secretary

Attachment A – ZBA Minutes of December 16, 2013

TO: Arcade Zoning Board of Appeals
FROM: Arcade Planning Board
DATE: December 14, 2013
RE: Recommendation and Comments – Dworzack Variance

FROM THE MINUTES OF THE PLANNING BOARD MEETING OF DECEMBER 11, 2013:

THE ZONING BOARD OF APPEALS REQUESTS RECOMMENDATION AND COMMENT ON AREA VARIANCE APPLICATION, SBL NO. 175.-1-14.11, SUBMITTED BY NORMAN DWORZACK, REQUESTING DIVISION OF PROPERTY WHICH DOES NOT LEAVE MINIMUM SIDELINE SETBACK REQUIREMENTS IN AN AG DISTRICT AT PROPERTY LOCATED AT 2423 GENESEE ROAD:

The applicant was not present as he was on vacation. The Board read the application and minutes from the Zoning Board of Appeals meeting of November 18, 2013.

In discussion:

1. The Board agreed with the findings of the Zoning Board of Appeals.
2. The applicant is causing himself additional self-created hardships by dividing the property in this manner.
3. Possible options:
 - a. The applicant could include the barn in the sale of the property. With the well located on the barn property and a permanent easement needed to transfer ownership of the well, the applicant may very well find that a buyer will find it difficult to secure a mortgage. Is the applicant prepared to hold the mortgage? The well situation could also decrease the value of the property in a sale offsetting what he has spent on barn renovations;
 - b. The applicant could remove the garage, move the west property line 35 feet from the barn and add the footage needed to the east, eliminating the need for a variance. Both lots would then be in compliance.
 - c. The property line of the western most property could be extended eastward to include the garage and then for a sufficient distance northward from the road, then drawn back to the proposed property line, creating a rectangular offset. If there was then sufficient space to keep the garage 35 ft. from the property line and also the house and other structures on the other property 35 ft. from the property line (we could not calculate if that was feasible as there were no lateral dimensions on those structures), then both properties could be compliant. As that would take the garage off the house property, the owners could remedy that by offering a perpetual lease on the garage and right-of-way to it to any new owner of the house property, if that was their wish to include its use with the house.

The Planning Board agrees with the ZBA findings and recommends that the barn and well be sold with the house. The other possibility is to remove the garage and readjust property lines as stated above. The Planning Board strongly discourages non-compliant lots being created. Doing so is contrary to the intent of zoning. Note that buildings do not last forever but lot lines often do and it is best to leave lots compliant for future generations of the applicant's family and for posterity.