

WAYNE COUNTY PLANNING BOARD

MINUTES

June 30, 2021

Chairman, Mert Bartels called the June meeting of the Wayne County Planning Board to order at 7:01 p.m. This meeting was held in person at the Wayne County Court House 26 Church Street, Lyons, NY in the upper chambers. Mr. Bartels invited all to stand and recite the Pledge of Allegiance.

Members present were Ron Baker (Sodus), Mert Bartels (Macedon), Robert Burns (Marion), Kenneth Conklin (Ontario), Steve Guthrie (Rose), Bob Hutteman (Arcadia), Larry Lockwood (Huron), Bob Milliman (Wolcott), Bert Peters (Williamson), Larry Ruth (Walworth), Ron Thorn (Galen), and Jim Wedman (Lyons).

Members absent were Matt Krolak (Palmyra).

County staff in attendance were Bret DeRoo, Thomas Lyon, Brian Pincelli, and Deb Hall

MAY 2021 MINUTES Chairman Bartels asked for a motion to approve May 2021 Planning Board minutes.

Motion – Mr. Ruth, **Second** – Mr. Baker, **Abstention** – none, **Motion Carried**.

Action – Record the minutes as presented.

ZONING AND SUBDIVISION REFERRALS

The following five (5) referrals were reviewed and upon discussion, determined to have no inter-municipal or countywide impact (NCI). Responses to each project will include the following comments.

Local Law 2 of 2021, 43 Phelps St., Town of Lyons

Amendment to Text, Tax Map Ref. No. n/a _____

Description: Additional section of code providing reimbursement for consultant and professional fees.

Comments: The Town attorney should review and approve the proposed amendment. As the Town progresses with efforts to update the comprehensive plan and supporting codes, the following documents and web link may contain useful information and are available from the NYS Department of State on their website as follows:

1. “Creating the Community You Want: Municipal Options for Land Use Control” at <https://dos.ny.gov/system/files/documents/2019/05/creatingthecommunityyouwant.pdf>
2. “Questions for the Analysis and Evaluation of Existing Zoning Regulations” at <https://dos.ny.gov/system/files/documents/2019/05/evaluatingzoning.pdf>
3. Zoning and the Comprehensive Plan at <https://dos.ny.gov/system/files/documents/2019/05/zoningandthecomprehensiveplan.pdf>
4. “Guidebook for Local Governments” at <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Communities-and-Local-Governments/Solar-Guidebook-for-Local-Governments>

70 Ridge Road LLC, 70 Ridge Rd., Town of Ontario

Use Variance, Tax Map Ref. No. 60117-12-922513

Description: Applicant desires to use property for (1) commercial garage and (2) plumbing, HVAC, electrical supply or contracting.

Comments:

- 1) the hardship criteria (rules/test) that are required to grant the use variance must be substantiated at the local level,
- 2) the minimum variance necessary should be considered,
- 3) comments from the municipal attorney, as found in their email to the CEO, dated 06/03/21, should be taken into consideration when reviewing the variance and
- 4) as the town progresses with updating their comprehensive plan, consideration should be given to variance applications such as this to help determine if there has been a repeated request for similar variances. If so,

that could be a sign that the Town may wish to review applicable regulations to determine if they still meet intended objectives. If they do not, code modifications could potentially be made in an effort to both meet supported land use goals and also and minimize the need for variances.

For reference, the NYS Department of State has a useful reference document available, “Zoning Board of Appeals” on their website at <https://dos.ny.gov/system/files/documents/2019/05/zoningboardofappeals.pdf>. Details regarding each of the area variance “hardship rules/test” can be found in this document.

Additional comments to consider:

- 1) Traffic generating characteristics of the proposal should be considered, including, but not limited to the following: driveway location, building area(s), parking area(s), driveway sight distances (i.e. they should meet American Association of State Highway and Transportation Officials - AASHTO recommendations) and on-site traffic circulation. Proposed on-site traffic circulation, driveway location, building area(s), stormwater management area (if applicable) and associated parking area should be designed/developed in a manner that will provide safe pedestrian and vehicular interaction between those items as well as access to Ridge Rd. and Countyline Rd, and no on-site development should impede available sight distances,
- 2) Development should be done in a manner that helps it remain compatible with surrounding land uses and is also aesthetically pleasing (from all applicable directions) through use of items such as building/property maintenance, fencing, berms, landscaping, etc., particularly given that the parcel is located on the corner of the highly traveled Ridge and Countyline Roads and also near existing residential uses,
- 3) Screening (e.g. fence, berm, landscaping, etc.) should be used to help the proposed development remain compatible with surrounding land uses (i.e. mitigate visual and noise impacts between this proposal and adjacent residential uses – this comment relates to “protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas”),
- 4) Snow maintenance/removal plans should be considered,
- 5) All applicable/necessary easements (“cross-lot” included) should be in place to ensure that the development/subdivision maintains function and compatibility (e.g. access/driveway, parking, stormwater management utility, etc. easements),
- 6) “Operational noises” should be mitigated (i.e. noise generated by business activity should not impact nearby residential uses),
- 7) Outside storage should be limited (e.g. equipment in disrepair should not be permitted to accumulate),
- 8) Any/all hazardous/toxic materials must be properly stored, handled and disposed of,
- 9) Future plans (if any) for the total acreage should be considered and
- 10) All necessary local, federal and state recommendations/regulations and approvals/permits must be followed/obtained (e.g. NYS Department of Health – water and sanitary sewer, NYS Department of Environmental Conservation-Phase II Stormwater Management and Erosion and Sediment Control Plans as well as NYS Uniform Fire Prevention and Building Codes, NYS Department of Health, etc.).

Legal counsel for the town advised the following in part, “Although the Board felt that a good case could be made for the change of use, the technical difficulties in meeting the use variance criteria of the statute may render this route problematic. In addition, it would be expensive for the applicant to hire the economic testimony tending to show the absence of a reasonable rate of return. The purchase price of this parcel was not discussed. Therefore, these calculations cannot even begin in this absence. Additionally, there is some concern as to the case law holding that purchasing property with zoning in effect precludes, in a use variance, any finding that the hardship was not self-created.... Even if a hardship is demonstrated, however, a use variance will not be granted if the hardship is self-imposed, such as where the landowner was aware of the zoning restrictions at the time of purchase...” [court cases cited where it was determined that] “An owner who knowingly acquires land for a use prohibited by zoning may not obtain a use variance on the ground of hardship.”

Weeks Subdivision, 2630 & 2660 Smith Hill Rd., Town of Walworth

Final Subdivision, Tax Map Ref. Nos. 61115-00-125725 & 61115-00-147681

Description: Re-subdivision of Lots R-1 and 3 and boundary line adjustment.

Comments:

- 1) The proposed lots should be configured with enough area for each lot to contain an existing and/or construct a new wastewater treatment system (or connection to municipal sewer) that will meet local and/or

New York State (e.g. Department of Health, Uniform Fire Prevention and Building Code) codes/regulations,

- 2) The proposed lots should be configured with enough area for each lot to have a driveway that meets AASHTO (American Association of State Highway and Transportation Officials) recommendations for sight distance,
- 3) Future plans for the total acreage should be considered,
- 4) All applicable/necessary easements (“cross-lot” included) should be in place to ensure that the development/subdivision maintains function and compatibility (e.g. access/driveway, parking, stormwater management utility, etc. easements),
- 5) Development, including water and wastewater treatment/sanitary service, and driveway design that includes provision for emergency service vehicle access (if applicable) must meet all local, federal and NYS codes/regulations (e.g. Department of Health, Uniform Fire Prevention and Building Codes, Department of Environmental Conservation - Phase II Stormwater Management and Erosion and Sediment Control regulations) - if applicable and
- 6) Development should be done in a manner that keeps it compatible with surrounding land uses and is also aesthetically pleasing through use of items such as building design/materials, property maintenance, fencing, berms, landscaping, etc, and
- 7) The property owner(s) should be aware that portions of the parcel appear to contain (or be near) both NYS Department of Environmental Conservation and National wetland areas (approximate mapping available online at <https://gisservices.dec.ny.gov/gis/erm/>) and any planning/development should be done in accordance with applicable regulations.

7261 Salmon Creek Rd. Subdivision, 7261 Salmon Creek Rd., Town of Williamson

Final Subdivision, Tax Map Ref. No. 65118-00-480898

Description: Subdividing 1.5 acres with residence from 8.79 acres to be conveyed. Retaining 7.29 acres for agricultural use.

Comments: Although the proposed subdivision does appear to meet town regulations, Board was curious if the lot layout meets development patterns the town desires through implementation of items such as their comprehensive plan, zoning and subdivision regulations. Per ZONING 178 Attachment 1 Town of Williamson § 178-10. Bulk and Use Table for the A-1 Agriculture District [Amended 5-26-2015 by L.L. No. 2-2015], a minimum lot size of 8 acres is required for a permitted use listed as a “Customary Agricultural operation” or “Farm”. The proposed lot size that will remain for agricultural use (“Lot 1”) is shown to contain 7.290 acres of area, to centerline. They also questioned why Lot 2 is configured as proposed (i.e. not rectangular in shape and leaving road frontage on both sides of the lot, between the proposed and existing lot lines – 62.56’ to the southwest and approx. 49.94’ to the northeast).

- 1) The proposed lots should be configured with enough area for each lot to contain an existing and/or construct a new wastewater treatment system (or connection to municipal sewer) that will meet local and/or New York State (e.g. Department of Health, Uniform Fire Prevention and Building Code) codes/regulations,
- 2) The proposed lots should be configured with enough area for each lot to have a driveway that meets AASHTO (American Association of State Highway and Transportation Officials) recommendations for sight distance,
- 3) Future plans for the total acreage should be considered,
- 4) All applicable/necessary easements (“cross-lot” included) should be in place to ensure that the development/subdivision maintains function and compatibility (e.g. access/driveway, parking, stormwater management utility, etc. easements),
- 5) Development, including water and wastewater treatment/sanitary service, and driveway design that includes provision for emergency service vehicle access (if applicable) must meet all local, federal and NYS codes/regulations (e.g. Department of Health, Uniform Fire Prevention and Building Codes, Department of Environmental Conservation - Phase II Stormwater Management and Erosion and Sediment Control regulations) - if applicable and
- 6) Development should be done in a manner that keeps it compatible with surrounding land uses and is also aesthetically pleasing through use of items such as building design/materials, property maintenance, fencing, berms, landscaping, etc. - if applicable.

Michael Bourbonnais, 7858 North Maple Rd., Town of Wolcott

Special Permit, Tax Map Ref. No. 75119-11-540626

Description: Demo existing Cottage and rebuild same.

Comments:

- 1) The proposed development should be designed/implemented in a manner so that it will not interfere with adjacent property owner(s) views of Port Bay to the extent possible,
- 2) The proposed wastewater treatment system must meet applicable local and/or New York State (e.g. Department of Health, Uniform Fire Prevention and Building Code) codes/regulations,
- 3) Proposed development must meet NYS Uniform Fire Prevention and Building Codes,
- 4) Development should be done in a manner that keeps it compatible with surrounding land uses and is also aesthetically pleasing through use of items such as building design/materials, fencing, berms, landscaping etc., and
- 5) The property owner(s) should be aware that portions of the parcel may contain (or be near) National wetland area (approximate mapping available online at <https://gisservices.dec.ny.gov/gis/erm/>) and FEMA flood zone area (approximate mapping available online at <https://msc.fema.gov/portal>) and any planning/development should be done in accordance with applicable regulations.

After brief review, the Board recommended these referrals be returned to their towns for local action with a notation of NCI, no countywide impact.

Motion – Mr. Guthrie, **Second** – Mr. Hutteman, **Opposed** – None, **Abstention** – None. **Motion carried**

Action – Return these referrals with comments to the municipalities to be handled as local matters.

The two (2) following projects were each reviewed and discussed by the Board separately.

Steven Glover, 309 Lake Rd., Town of Ontario

Area Variance, Tax Map Ref. No. 61119-00-220392

Description: Applicant requesting an Area Variance for existing barn and 672 sq. ft. addition to the barn

Comments: Mr. Ruth referred to the size and shape of the existing lot as a “bowling alley” lot, so aligned with many others along the lake front in this area, thus squeezing in many lots. Mr. Peters suggested that since the lot is a total of 9 acres that hardship was not a factor for placing the addition so close to the lot line. Mr. Baker stated that some property owners have problems obtaining a mortgage due to these configurations and variances. Mr. Hutteman clarified that the existing building does not have an existing variance where it should. Mr. DeRoo confirmed that town officials and attorney are working through these issues. The following comments also were considered.

- 1) The hardship criteria (rules/test) that are required to grant the area variance must be substantiated at the local level,
- 2) The minimum variance necessary/adequate should be considered,
- 3) development should be done in a manner that keeps it compatible with surrounding land uses and is also aesthetically pleasing through use of items such as building design/materials, property maintenance, fencing, berms, landscaping, etc.,
- 4) Screening (e.g. fence, berm, landscaping, etc.) should be considered to help the proposed development remain compatible with surrounding land uses,
- 5) The proposed development must meet applicable local, federal and New York State codes/regulations (e.g. Department of Health - wastewater treatment and water supply system - related, Uniform Fire Prevention and Building Codes),
- 6) All applicable/necessary easements (“cross-lot” included) should be in place to ensure that the development/subdivision maintains function and compatibility (e.g. access/driveway, parking, stormwater management, utility, etc. easements).
- 7) The Town may wish to review applicable regulations to determine if they still meet intended objectives should there be repeated requests for similar variances and
- 8) The property owner(s) should be aware that portions of the parcel may contain (or be near) National wetland area (approximate mapping available online at <http://www.dec.ny.gov/gis/erm/>) and FEMA flood zone area (approximate mapping available online at <https://msc.fema.gov/portal>) and any planning/development should be done in accordance with applicable regulations.

For reference, the NYS Department of State has a useful reference document available, “Zoning Board of Appeals” on their website at <https://dos.ny.gov/system/files/documents/2019/05/zoningboardofappeals.pdf> Details regarding each of the area variance “hardship rules/test” can be found in this document.

After this discussion, the board heard a motion to disapprove this request thus rendering local action, if so desired, to override this recommendation with a supermajority.

Motion – Mr. Ruth, **Second** – Mr. Wedman. Chairman Bartels requested roll call vote. **Ayes** – 10, **Opposed** – 2.

Abstention – None. **Motion carried**

Action – Disapprove the referral and send back to town with comments.

6367 E. Townline Rd Subdivision, 6367 E. Townline Rd., Town of Williamson

Final Subdivision, Tax Map Ref. No. 67117-05-046754

Description: Subdividing 0.534 acre parcel into 2 parcels.

Comments: Mr. DeRoo described the purpose of the project as the desire for continued use of the subdivided parcel as a parking lot for the church across the street. Mr. Guthrie asked what would happen to the existing parking for the single family home, and if it changed to multi-family in the future, and clarified that the existing use is not changing. Mr. Lyon clarified that a variance would need to be requested for future multi-family use of the existing home. Mr. Peters commented that it was located near a busy intersection with Ridge Rd. The following comments were also considered.

- 1) The proposed lots should be configured with enough area for each lot to contain an existing and/or construct a new wastewater treatment system (or connection to municipal sewer) that will meet local and/or New York State (e.g. Department of Health, Uniform Fire Prevention and Building Code) codes/regulations,
- 2) The proposed lots should be configured with enough area for each lot to have a driveway that meets AASHTO (American Association of State Highway and Transportation Officials) recommendations for sight distance,
- 3) Future plans for the total acreage should be considered,
- 4) All applicable/necessary easements (“cross-lot” included) should be in place to ensure that the development/subdivision maintains function and compatibility (e.g. access/driveway, parking, stormwater management utility, etc. easements),
- 5) Development, including water and wastewater treatment/sanitary service, and driveway design that includes provision for emergency service vehicle access (if applicable) must meet all local, federal and NYS codes/regulations (e.g. Department of Health, Uniform Fire Prevention and Building Codes, Department of Environmental Conservation - Phase II Stormwater Management and Erosion and Sediment Control regulations) - if applicable and
- 6) Development should be done in a manner that keeps it compatible with surrounding land uses and is also aesthetically pleasing through use of items such as building design/materials, property maintenance, fencing, berms, landscaping, etc. - if applicable.

After this discussion, the board heard a motion to approve the referral with comments for the subdivision.

Motion – Mr. Guthrie, **Second** – Mr. Burns. Chairman Bartels requested roll call vote. **Ayes** – 9, **Opposed** – 2.

Abstention – 1. **Motion carried**

Action – Approve the referral with comments and send back to town for final action.

Having completed discussion of the agenda items, Chairman Bartels then asked Mr. DeRoo about training opportunities for board members. Mr. DeRoo stated that in cooperation with Seneca County, a training session was being planned for some time in October. The Dept of State offers many courses online these days, some of which are later in the evening, i.e. 5 p.m. to 9 p.m. The next meeting is to be held on July 28. Hearing no other business to be discussed, Chairman Bartels asked for motion to adjourn. Motion – Mr. Wedman, Second – Mr. Milliman. All members were in favor. Meeting adjourned at 7:26 p.m.

Respectfully submitted,



Deb Hall, Senior Clerk